

UPDATE INFORMATION

Vols. I & II – Portland City Code

September 30, 2016 – Quarterly Update

Retain this page to document what update was last applied to your books.

How to download Code update packets and/or Code Titles:

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Contact the Auditor's Office Council Clerk/Contracts
Section if you have questions: 503-823-4082.

Previous Update Packet June 30, 2016

CODE OF THE CITY OF PORTLAND, OREGON
Insertion Guide for Code Revisions
Office of the City Auditor 503-823-4082
3rd Quarter 2016 (September 30, 2016)

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TITLE 2 LEGISLATION AND ELECTIONS

Office, the Office of Equity and Human Rights, the Bureau of Fire and Police Disability and Retirement, the Bureau of Human Resources, the Bureau of Internal Business Services, the Bureau of Technology Services and the Portland Development Commission.

- D.** “City official” means any City elected official; the at will staff of a City elected official; any City director as defined in this section; or appointee to the Portland Development Commission, the Planning and Sustainability Commission, the Design Commission, and the Fire and Police Disability and Retirement Board.
- E.** “Consideration” includes a gift, payment, distribution, loan, advance or deposit of money or anything of value, and includes a contract, promise or agreement, whether or not legally enforceable.
- F.** “Official action” means introduction, sponsorship, testimony, debate, voting or any other official action on any ordinance, measure, resolution, amendment, nomination, appointment, or report, or any matter, including administrative action, that may be the subject of action by the City.
- G.** “Lobby” or “Lobbying” or “Lobbies” means attempting to influence the official action of City officials. Lobbying includes time spent preparing emails and letters and preparing for oral communication with a City official. Lobbying does not include:

 - 1. Time spent by an individual representing his or her own opinion to a City official.
 - 2. Time spent participating in a board, committee, working group, or commission created by City Council through approval of resolution or ordinance.
 - 3. Time spent by a City official or City employee acting in their official capacity as an official for the City.
 - 4. Time spent submitting a bid, responding to related information requests, and negotiating terms on a competitively bid contract or intergovernmental agreement.
 - 5. Oral or written communication made by a representative of a labor organization that is certified or recognized, pursuant to ORS 243.650 et seq., as the exclusive bargaining representative of employees of the City of Portland, to the extent that such communications do not deal with actual or potential ordinances that are unrelated to the collective bargaining process, or implementation or application of any collective bargaining agreement provision.

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6. Formal appearances to give testimony before public hearings or meetings of City Council.
 7. Work performed by a contractor or grantee pursuant to a contract with or grant from the City.
 8. Time spent by any person holding elected public office, or their specifically authorized representative, acting in their official capacity.
- H.** “Lobbying entity” means any individual, business association, corporation, partnership, association, club, company, business trust, organization or other group who lobbies either by employing or otherwise authorizing a lobbyist to lobby on that person’s behalf.
- I.** “Lobbyist” means any individual who is authorized to lobby on behalf of a lobbying entity.
- J.** “Person” means any individual, business association, corporation, partnership, association, club, company, business trust, organization or other group.
- K.** “Gift” means something of economic value given to a City official without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not City officials on the same terms and conditions; and something of economic value given to a City official for valuable consideration less than that required from others who are not City officials. However, “gift” does not mean:
1. Campaign contributions, as described in ORS Chapter 260.
 2. Gifts from family members.

2.12.030 Registration for Lobbying Entities.

(Amended by Ordinance Nos. 180205, 181204 and 187854, effective September 1, 2016.)

- A.** Within three working days after a lobbying entity has spent 8 hours or more or estimates that it has spent cumulative 8 hours or more or has spent at least \$1,000 during any calendar quarter lobbying, the lobbying entity shall register with the City Auditor by filing with the Auditor a statement containing the following information:
1. The name, address, email, website and telephone number of the lobbying entity;
 2. A general description of the trade, business, profession or area of endeavor of the lobbying entity;

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3. The names, addresses, email, website and telephone number of all lobbyists who are employed by or otherwise authorized to lobby on behalf of the lobbying entity. The list must include:
 - a. Individuals who are paid to lobby for the interests of the lobbying entity.
 - b. Other persons, including lobbying entity employees or volunteers, who are authorized to lobby on behalf of the lobbying entity.
 - c. Previous City of Portland employment status of individuals who are paid or otherwise authorized to lobby on the entity's behalf, the affiliated bureau(s) or office(s) of employment, and dates of employment.
 4. The subjects and any specific official actions of interest to the lobbying entity.
- B.** A business, organization, or association who anticipates registering as a lobbying entity is encouraged to register at the beginning of each calendar year.
- C.** Registrations shall expire December 31 of every year. Lobbying entities shall renew their registrations once the 8-hour threshold has been reached in each calendar year.
- D.** An authorized representative of the lobbying entity must sign the registration required by this Section.

2.12.040 Quarterly Reporting Requirements for Lobbying Entities.

(Amended by Ordinance Nos. 180205, 180620, 181204, 186176 and 187854, effective September 1, 2016.)

- A.** A lobbying entity registered with the City Auditor or required to register with the City Auditor shall file a report, if the lobbying entity has spent an estimated 8 hours or more or at least \$1,000 during the preceding calendar quarter lobbying, with the City Auditor, by April 15, July 15, October 15, and January 15, showing:
1. The specific subject or subjects of the official action of interest to the lobbying entity, including but not limited to the names of City officials a lobbying entity met with or contacted through direct mail, email or telephone regarding such subject or subjects, the name of the registered lobbyist representing the entity and the date of the contact
 2. A good faith estimate of total moneys, if the total exceeds \$1,000, expended by the lobbying entity or any lobbyist employed by or otherwise authorized to lobby on behalf of the lobbying entity, for the purpose of lobbying City

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officials on behalf of the lobbying entity in the preceding calendar quarter reporting period for:

- a. Food, refreshments, travel and entertainment;
- b. Printing, postage and telephone;
- c. Advertising, direct mail and email;
- d. Miscellaneous and gifts;
- e. Compensation paid to lobbyists; and
- f. Reimbursements to lobbyists for their expenses.

- 3. The name of any City official to whom or for whose benefit, on any one occasion, the lobbying entity made an expenditure in excess of \$25 in the preceding calendar quarter for the purposes of lobbying, and the date, name of payee, purpose and amount of that expenditure.

- B. Statements required by this section need not include amounts expended by the lobbying entity for personal living and travel expenses and office overhead, including salaries and wages paid for staff providing clerical assistance and others not engaged in lobbying activities and maintenance expenses. If the amount of any expenditure required to be included in a statement is not accurately known at the time the statement is required to be filed, an estimate of the expenditure shall be submitted in the statement and designated as an estimate. The exact amount expended for which a previous estimate was made shall be submitted in a subsequent report when the information is available.
- C. A lobbying entity shall update any information submitted in Section 2.12.030 that has changed since registration.
- D. A statement required by this section shall include a copy of any notice provided to a City official under ORS 244.100.
- E. An authorized representative of the Lobbying Entity must sign the declaration required by Section 2.12.090 A. for each quarterly report.
- F. Lobbying entities who expect to spend 8 hours or more lobbying City Officials in a calendar quarter, but do not anticipate spending over \$1,000 in the same reporting period for the purpose of lobbying may sign and file a certificate of limited expenditure provided by the Auditor's office in lieu of the financial portion of the quarterly report described in Section 2.10.040 A.2. The certificate affirms that the lobbying entity will spend less than the threshold required for quarterly financial reporting of moneys expended under Section 2.12.040 A.2. If a lobbying entity that files a certificate of limited expenditure spends over \$1,000 in a calendar

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quarter for the purpose of lobbying, the lobbying entity shall withdraw the certificate of limited expenditure and shall report moneys expended pursuant to Section 2.12.040 A.2.

- G.** A lobbying entity may amend a quarterly report without penalty if it files the amended report within 25 days after the end of the calendar quarter.

2.12.050 Exemptions to Registration and Reporting Requirements for Lobbying Entities.

(Amended by Ordinance Nos. 180620 and 181204, effective September 7, 2007.) In addition to the thresholds set forth in Section 2.12.030 and 2.12.040 for the registration, reporting and financial reporting of lobbying entities, Sections 2.12.030 and 2.12.040 do not apply to the following persons:

- A.** News media, or their employees or agents, that in the ordinary course of business directly or indirectly urge official action but that engage in no other activities in connection with the official action.
- B.** Lobbying entities that spent fewer than 8 hours lobbying during every calendar quarter in a calendar year.
- C.** Any lobbying entity that satisfies all three of the following requirements:
 - 1.** Complies with state public record and meeting laws or with the standards referenced in Section 3.96.020 G.;
 - 2.** Is classified as a non-profit organization, registered with the Oregon Secretary of State Corporation Division; and
 - 3.** Is formally recognized by the Office of Neighborhood Involvement or through City Council resolution or ordinance.

2.12.060 Declaration Required by Lobbyists.

(Amended by Ordinance No. 180205, effective June 7, 2006.) Prior to offering public testimony before City officials, at the beginning of any meetings or phone calls with City officials, or in emails and letters to City officials, a lobbyist must declare which lobbying entity he or she is authorized to represent for that communication.

2.12.070 Reporting Requirements for City Officials.

(Amended by Ordinance Nos. 180205, 180620, 187854 and 187961, effective September 1, 2016.)

- A.** City officials shall file written reports documenting any gifts, meals or entertainment in excess of \$25 received from a lobbying entity, regardless of the entity's registration status, or any person authorized to lobby on the lobbying entity's behalf. Such reports shall include:

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1. Name of lobbying entity, and if applicable, name of lobbyist;
 2. Subject of lobbying;
 3. Value of gift, meal or entertainment; and
 4. Date of receipt.
- B.** City officials shall file written reports after a lobbyist or lobbying entity, regardless of the entity's registration status, has agreed to make a donation of personal or real property to the City. Such reports shall include:
1. Name of lobbying entity, and if applicable, name of lobbyist;
 2. Gift or donation requested;
 3. Purpose of donation; and
 4. Date of request.
- C.** The reports, if any, required by subsections 2.12.070 A. and B. shall be filed with the City Auditor 15 days after the end of the calendar quarter. City officials, other than elected officials, are not required to file reports with the Auditor if the amount of the gift, meal or entertainment is less than \$25 or if no gifts or donations have been requested in the calendar quarter.
- D.** City Elected officials and City directors shall post their calendars of activities that reflect official City business 15 days after the end of the calendar quarter for the previous calendar quarter, unless an elected official or City director determines that such posting poses a safety threat.
1. Unless otherwise exempted, calendars required by this Section shall note the date and length of scheduled official business that includes other City Elected officials, City directors or outside parties. Calendar items must list primary participants or organizations in attendance.
 2. Elected officials' and City directors' quarterly calendars required by this Section shall be retained in accordance with City Administrative Rules and posted publicly on the originating office's website for a period of at least one calendar year.
- E.** A City Official may amend a quarterly report without penalty if he or she files the amended report within 25 days after the end of the calendar quarter.

2.12.080 Prohibited Conduct.

(Amended by Ordinance No. 187854, effective September 1, 2016.)

- A.** No former City elected official shall, for a period of 2 years after the termination of the official's term of office, lobby for money or other consideration a City elected official or their salaried at-will staff.
- B.** No former salaried at-will staff of a City elected official, shall, for a period of 1 year after the termination of employment, lobby for money or other consideration any City elected official or their salaried at-will staff.
- C.** No former City director shall, for a period of 2 years after termination of the director's appointment, lobby for money or other consideration the current City director of the office or bureau to which the former City director was appointed or, regarding matters within the powers and duties of the bureau to which the former City director was appointed, the City elected official in charge of the office or bureau to which the City director was appointed.
- D.** No Former City employee shall lobby a City Official for money or other consideration regarding a contract if the employee exercised contract management authority with respect to that contract while employed by the City. This prohibition shall be for the duration of the contract.
- E.** The prohibitions in this Section shall not apply to:
 - 1.** Prevent any former City elected official or other City employee from representing himself or herself, or any member of his or her immediate family, in their individual capacities, in connection with any matter pending before the City;
 - 2.** The activities of any former City elected official or other City employee who is an elected or appointed officer or employee of any public body, when that former City elected official or other City employee is solely representing that agency in his or her official capacity as an officer or employee of the public body;
 - 3.** Any ministerial action. For purposes of this subsection, a ministerial action is one that does not require a City official or other City employee to exercise discretion concerning any outcome or course of action.
 - 4.** Prevent City officials or other City employees from seeking information or participation from former City elected officials or other City employees where the public interest would be served by the information or participation.

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2.12.090 Verification of Reports, Registrations and Statements.

(Amended by Ordinance No. 181204, effective September 7, 2007.)

- A.** Each report, registration or statement required by this Chapter shall contain or be verified by a written or electronic declaration that it is made under the penalties of false swearing. Such declaration shall be in lieu of any oath otherwise required.
- B.** No person shall willfully make and subscribe any document which contains or is verified by a written or electronic declaration for false swearing which the person does not reasonably believe to be true and correct to every matter.

2.12.100 Public Nature of Reports, Registrations and Statements.

(Amended by Ordinance No. 186176, effective August 30, 2013.) All information submitted to the City Auditor in any report, registration or statement required by this Chapter is a public record and will be posted on Office of the Auditor website within three business days after receipt, except if the information is subject to amendment under this Chapter, the Auditor will post the information within three business days after the amendment period has closed.

2.12.110 Auditor's Duties.

(Amended by Ordinance No. 187854, effective September 1, 2016.) In carrying out the provisions of this Chapter, the City Auditor:

- A.** Shall prescribe forms for registrations, statements and reports, and provide such forms to persons required to register and to file such statements and reports;
- B.** Shall accept registrations and reports in an electronic format;
- C.** Shall accept and file any information voluntarily supplied that exceeds the requirements of this Chapter;
- D.** Shall make registrations, statements and reports filed available for public inspection and copying during regular office hours, and make copies available. The Auditor may charge fees to recover the cost of retrieval and copying;
- E.** May audit whether registrations and reports required by this Chapter have been completed properly and within the time frames specified in this Chapter;
- F.** May initiate investigations and accept and investigate complaints of alleged violations of this Chapter;
- G.** May make such inquiries and obtain such reasonable assistance and information, including records, from any office or person as the Auditor shall require for enforcement purposes, including requests to produce documentary or other evidence that is reasonably relevant to the matters under investigation;

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- H.** May recover all reasonable costs incurred in enforcement in this Chapter, including but not limited to attorney's fees.
- I.** Is authorized to adopt administrative rules to carry out the duties and to administer the provisions of this Chapter.

2.12.120 Penalties.

(Amended by Ordinance No. 187854, effective September 1, 2016.) A person who violates any provision of this Chapter or fails to file any report, registration or statement or to furnish any information required by this Chapter shall be subject to a civil penalty in an amount not to exceed \$3,000 per violation. By administrative rule, the Auditor shall establish enforcement criteria with increased fines for repeated violations. At the request of the Auditor, the City Attorney may seek civil penalties and enforcement of any provision of this Chapter in Multnomah County Circuit Court or other appropriate venue.

2.12.130 Severability.

If any provision of this Chapter, or its application to any person or circumstance, is held invalid by any court, the remainder of this Chapter and its application to other persons and circumstances, other than that which has been held invalid, shall not be affected by such invalidity, and to that extent the provisions of this Chapter are declared to be severable.

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CHAPTER 2.14 - REPORTING BY POLITICAL CONSULTANTS

(Chapter added by Ordinance No. 187689, effective
May 20, 2016.)

Sections:

2.14.010	Purpose.
2.14.020	Definitions.
2.14.030	Registration for Political Consultants.
2.14.040	Termination of Registration.
2.14.050	Quarterly Reporting by City Elected Official.
2.14.060	Public Nature of Reports and Registrations.
2.14.070	Prohibited Conduct.
2.14.080	City Auditor's Duties.
2.14.090	Penalties for Violation of this Chapter.
2.14.100	Enforcement.

2.14.010 Purpose.

The purpose of this Chapter is to improve transparency by requiring Political Consultants advising City elected officials to meet certain registration and reporting requirements.

2.14.020 Definitions.

As used in this Chapter unless the context requires otherwise:

- A. "City elected official" means the Mayor, City Commissioners, or Auditor.
- B. "Day" means a calendar day by 5 p.m. unless "business day" is specified. If the computed date for action falls on a Saturday, Sunday or legal City holiday, then the "day" shall be the next business day by 5 p.m.
- C. "Political Consultant" means a person or entity that provides Political Consulting Services to a City elected official or successful candidate for elected office, or a successful candidate's principal campaign committee, registered with the Oregon Secretary of State. The term "Political Consultant" does not include attorneys who provide only legal services, accountants who provide only accounting services, professional fundraisers, or pollsters who provide only polling services. The term "Political Consultant" does not include a person who
 - 1. Does not engage in Political Consulting Services as a trade or profession, or
 - 2. Is a City employee.
- D. "Political Consulting Services" include actions in campaign management and political strategy services, including but not limited to: advocacy and strategy; political polling; advising or assisting in voter contact strategies and services;

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advising in media strategy, buying and advertisement; providing candidate development, policy training, political image consulting, and designing, implementing and analyzing polls and surveys; performing issues research and opposition research; developing, assisting in strategic communication such as news releases, talking points and speech writing; and advising on negative information handling and political crisis management. This Chapter does not regulate the content and viewpoint of the services provided to a City elected official.

2.14.030 Registration for Political Consultants.

- A.** Within 15 days after providing any Political Consulting Services to a City elected official, a Political Consultant must register with the City Auditor.
 - 1.** The registration must include at least the following information:
 - a.** The name, address and contact information of the Political Consultant, including the organization, if applicable, with which the Political Consultant is associated and the address and contact information of that organization if different than that of the Political Consultant.
 - b.** If the Political Consultant is an entity, the names, addresses and contact information of principals, employees and contractors that provide Political Consulting Services to a City elected official.
 - c.** If an entity registers, the individual employees or contractors of the entity do not need to register separately.
 - 2.** The name of the City elected official to whom the Political Consultant provides Political Consulting Services, and the date when services commenced. If services are provided in support of a City referred measure under Chapter 2.08, then the name, address and contact information for the lead representative for the measure, and the date when services commenced.
- B.** A Political Consultant must file an updated statement within 15 days if any previously reported information changes.
- C.** If a person for whom Political Consulting Services has been provided later becomes a City elected official, a Political Consultant must file a statement as required by this Section within 15 days from certification of election results.

2.14.040 Termination of Registration.

When a Political Consultant who is required to register under this Chapter later terminates all Political Consulting Services to a City elected official, the Political Consultant shall file a termination statement on the form required by the City Auditor within 15 days of service termination.

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2.14.050 Quarterly Reporting by City Elected Official.

- A.** A City elected official shall file a statement with the City Auditor identifying the Political Consultant who provides or provided services to the City elected official, and the date when services commenced. If a City elected official sponsors a City referred measure under Chapter 2.08, the City elected official shall identify the measure and the Political Consultant that will perform or performed Political Consulting Services for the measure. Sponsorship of a City referred measure by a City elected official shall be determined by the City elected official who signed a resolution filed pursuant to Chapter 2.04.
- B.** The statement in this Section shall be filed with the City Auditor 15 days after the end of the calendar quarter as proscribed in Subsection 2.12.020 A.
- C.** Amendments to statements submitted under this Section may be made without penalty within 25 days after the end of the calendar quarter.
- D.** The City elected official shall file an updated statement within 15 days of change of any information reported.
- E.** If a person through election becomes a City elected official, the person shall file the statement required in this Section at the next quarterly reporting period that follows certification of elections results. If a person is appointed to the position of City elected official pursuant to Charter Section 2-206, the person shall file the statement required in this Section at the next quarterly reporting period following appointment.

2.14.060 Public Nature of Reports and Registrations.

All information submitted to the City Auditor in any statement required by this Chapter will be posted on the City Auditor's website within 3 business days after the receipt, except if the information is subject to amendment under this Chapter, the Auditor will post the information within 3 business days after the amendment period has closed.

2.14.070 Prohibited Conduct.

- A.** A City elected official shall not knowingly utilize a Political Consultant who is in violation of this Chapter.
- B.** A Political Consultant shall not provide Political Consulting Services without reporting as required under this Chapter.
- C.** No person shall submit false, fraudulent or misleading information on statements, including but not limited to misrepresenting the scope or nature of services provided or the identity of clients to whom services are provided.

2.14.080 City Auditor's Duties.

The City Auditor is authorized to adopt, amend and repeal administrative rules, policies, procedures and forms for the regulation and enforcement of this Chapter, including but not limited to prescribing forms for registration and reporting, determining the method for filing, conducting appropriate inquiry and audit of reports or statements for completeness and accuracy, establishing fees for late filing or non-filing, and imposing civil penalties for non-compliance.

2.14.090 Penalties for Violation of this Chapter.

- A.** A person who fails to report as required by this Chapter shall be subject to a civil penalty and other administrative sanctions until the registration or reporting is complete and in compliance with this Chapter.
- B.** A person who provides false or misleading information may be subject to a civil penalty and other administrative sanctions.
- C.** A person who violates any section of this Chapter may be subject to a civil penalty of up to \$1,000 per violation.

2.14.100 Enforcement.

The City Auditor may request that the City Attorney initiate action in Multnomah County Circuit Court to enforce the provisions of this Chapter, including collection of any unpaid fees or civil penalties. Upon such a request by the Auditor, the City Attorney shall make a determination of whether facts supporting a prima facie enforcement action exist. If so, the City Attorney shall either initiate an enforcement action on behalf of the City or shall retain outside counsel to work with the Auditor to do so. The City may seek enforcement of all provisions of this Chapter in the enforcement action, including but not limited to recovery of all fees and civil penalties assessed under this Chapter as well as enforcement of any other provision of this Chapter. In any enforcement action, the City shall be entitled to recover any costs and attorneys' fees incurred as a result of the violation of this Chapter.

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- 3.131.020 Membership and Staffing.
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Chapter 3.123

PORTLAND UTILITY BOARD

(Chapter replaced by Ordinance No. 187174,
effective July 31, 2015.)

Sections:

- 3.123.010 Created - Purpose.
- 3.123.020 Scope.
- 3.123.030 Membership.
- 3.123.040 Appointments - Composition.
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- 3.123.070 Staffing.
- 3.123.080 Meeting Schedule.
- 3.123.090 By-Laws.
- 3.123.100 Annual Report and Work Session.

3.123.010 Created - Purpose.

A Portland Utility Board is hereby created. The Board's purpose is to advise the City Council, on behalf of and for the benefit of the citizens of Portland, on the financial plans, capital improvements, annual budget development and rate setting for the City's water, sewer, stormwater, and watershed services. The Board will advise Council on the establishment of fair and equitable rates, consistent with balancing the goals of customer needs, legal mandates, existing public policies, such as protecting water quality and improving watershed health, operational requirements, and the long-term financial stability and viability of the utilities.

3.123.020 Scope.

- A.** The Portland Water Bureau and the Bureau of Environmental Services use multi-year financial planning to prioritize programs and to project operating and capital costs associated with policies and programs, and to estimate overall rate impacts. The Board will fully participate in the bureaus' financial planning and budgeting processes. The Board will work with the bureaus to develop long-term, 20-year mission plans. The bureaus update their financial plans throughout the year to reflect significant changes in revenues or requirements, and revise the plans annually. The Board will review the proposed financial plans and revisions, and submit its findings and recommendations to the Council as part of the City's annual financial planning process. The Board will actively monitor bureau spending through the fiscal year and be briefed on final fiscal year accounting including status of debt load and rate stabilization funds. The Board will monitor bureau and City Council responses to and implementation of audits, in

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consultation with the Commissioner(s)-in-Charge. The Board will monitor City Council budget amendments, capital improvement plans (CIP) and implementing actions throughout the fiscal year. The Board will participate in evaluating the performance of the bureaus. The bureaus will engage with the Board throughout the fiscal year when developing budgets. The Board may serve, at the Mayor's pleasure, as an advisor in the development of Mayor's budgets for the Portland Water Bureau and the Bureau of Environmental Services.

- B.** The Board will periodically consult the bureaus and the Commissioner(s)-in-Charge on strategic communications, public education and involvement, as well as review audits and other reports. The Board will identify and report to the Commissioner(s)-in-Charge, the Mayor or the Council on important issues and challenges for the Portland Water Bureau and the Bureau of Environmental Services. The Board will monitor the bureaus' efforts to achieve equity in the provision of services throughout the City.
- C.** Participate in the rate design process: The Board will report on proposed rate changes to the Council during the annual budget hearings and development processes for water, sanitary sewer, watershed health, and stormwater. The Board shall report on other city activities or proposed policies with significant impacts to water, sanitary sewer, and stormwater rates.
- D.** When the bureaus form other advisory groups on utility matters such as facility or project specific concerns, the Board and its staff will exchange information with these other advisory groups to coordinate policy advice to the Council and the bureaus.
- E.** Relationship to other interested parties: The Board's primary responsibility and duties are to advise the Council, and its deliberations and recommendations shall be directed to Council accordingly. The Board may also share the results of its deliberations and recommendations delivered to Council with interested individuals and groups including neighborhoods, business associations, and public interest groups.

3.123.030 Membership.

(Amended by Ordinance No. 188015, effective September 29, 2016.) The Board shall have 11 permanent members. Board members shall be appointed by the Mayor in consultation with the Commissioner(s)-in-Charge of the bureaus, and confirmed by the Council. Any Council member may submit nominations to the Commissioner(s)-in-Charge. In consultation with the Commissioner(s)-in-Charge, the Mayor shall appoint the Chair of the Board. Six members shall constitute a quorum of the Board. Board members serve without compensation, except they may receive from their employer their regular salary during time spent on Board matters.

3.123.040 Appointments - Composition.

(Amended by Ordinance No. 188015, effective September 29, 2016.)

- A.** General Criteria. All members must reside in or work predominantly in the city of Portland and have an interest in water, sewer, stormwater, and watershed health issues, such as system development and maintenance, service delivery, service costs and impacts on low-income households, economic development, public health, conservation, green infrastructure or the environment. In making Board appointments, the Mayor and Council shall strive to have a Board which reflects the diversity of the Portland community, including, but not limited to, the following factors: areas of expertise, advocacy, experience, community involvement, profession, education and/or, economic status. Preferred appointees should have a range of qualified professional and academic expertise, and community volunteer experience. Appointees will include a current employee in a represented bargaining unit with the Portland Water Bureau or the Bureau of Environmental Services. Skills that will serve the Board well include: technical knowledge of water, stormwater, and sewer utility operation and issues, accounting, civil engineering, conservation, environmental sciences, equity, health sciences, public administration, urban planning, or utility economics, financial and capital improvement analysis, ecosystem science, environmental protection, political process, group process, and communications.
- B.** Restrictions. No individual with any direct financial interest in either city utility other than as a rate-paying customer or as an employee of the utility bureaus.
- C.** The Mayor shall, in consultation with the Commissioner(s)-in-Charge, appoint three non-voting, ex officio members annually, to engage utility bureau employees in the budget process. The ex officio members shall be one represented and two non-represented utility bureau employees, appointed to participate in the process of developing recommendations on the bureaus' annual budgets. The voting and ex officio members shall be evenly distributed between the utility bureaus. The term of ex officio members shall be for 1 year. Ex officio members may be re-appointed up to three times.

3.123.050 Terms.

- A.** Board members will be appointed to serve for a term of 3 years. The terms of each member shall run from the date of the City Council's confirmation of the member's appointment, or such other date as the Council may establish.
- B.** The Board may make recommendations to the Mayor regarding the reappointment of existing members. Notwithstanding the limitations of this Section, a Board member may continue to serve until his or her replacement is appointed.

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- C.** If any member of the Board is absent more than three regularly scheduled meetings of the Board during any 12 month period, without having notified the Chair in advance of such absence, such member shall be deemed to have resigned from the Board. The member's position shall thereafter be vacant and subject to appointment by the Mayor.
- D.** The Mayor may remove any member of the Board at his or her discretion for due cause, including but not limited to malfeasance or neglect of duties.

3.123.060 Standing Committees.

- A.** The Board may at any time establish standing committees of at least three individuals to address specific issues related to the Board's purpose.
- B.** The Board may designate more specific roles and responsibilities for any standing committee in the Board by-laws.

3.123.070 Staffing.

- A.** The City Budget Office will provide staffing for the Board, with logistical and topic-related support from the Portland Water Bureau, the Bureau of Environmental Services, and other bureaus or agencies as may be needed. Staffing should be experienced and skilled in financial analysis, utilities, and government operations within the context of environmental stewardship.
- B.** Commissioner(s)-in-Charge liaisons to the two utility bureaus shall serve as a resource to the Board and attend its meetings.

3.123.080 Meeting Schedule.

The Board shall meet at least once monthly on a regular date established by the Board. Additional meetings may also be scheduled during annual budget and rate review periods as determined by the Board Chair. The Board Chair, with assistance from the Board's staff, will develop meeting agendas in consultation with others including Board members, the utility bureaus, and the Commissioner(s)-in-Charge.

3.123.090 By-Laws.

- A.** The Board shall adopt by-laws to govern its procedures within the purposes of this Chapter that shall not conflict with any portion of this Chapter and which are subject to the prior review and approval of the Mayor, with approval as to legal sufficiency by the City Attorney. These by-laws shall include specifications concerning selection and tenure of standing committee chairs, division of responsibilities, attendance policies, meeting schedules, as well as communications between the Board and City agencies, the media and the general

Chapter 3.131

New Portlanders Policy Commission

(Chapter added by Ordinance No. 187805;
effective July 8, 2016.)

Sections:

- 3.131.010 Mission.
- 3.131.020 Membership and Staffing.
- 3.131.030 Purpose.
- 3.131.040 Organization and Meetings.

3.131.010 Mission.

There is established in the City of Portland a New Portlanders Policy Commission. The New Portlanders Policy Commission shall advise the City on policies and practices to integrate immigrant and refugee communities' voices and needs into the provision of City services, City decision-making and civic engagement in Portland, and to seek constructive relationships with each member of Council and the City Auditor.

3.131.020 Membership and Staffing.

The Commission shall consist of 25 voting members. All members shall serve without compensation from the City. Appointments to serve on the Commission are for staggered terms of three years. No member may serve more than two 3-year terms. The Commissioner(s)-in-Charge of the New Portlanders Policy Commission recommends, the Mayor nominates, and the Council approves members to the Commission. Members shall be appointed to provide representation from a reasonably broad spectrum of immigrant and refugee communities, striving to include a range of areas of expertise, advocacy experience, community involvement, profession, education, race, ethnicity, gender, gender identity, sexual orientation, national origin, age, religion and geographic identification.

Members must live, work, worship or be enrolled in school within the city of Portland and/or volunteer for a nonprofit within the city of Portland. If any member of the Commission is absent more than three regularly scheduled meetings of the Commission during any 12 month period, without having notified the Co-Chairs in advance of such absence, such member shall be deemed to have resigned from the Commission. The member's position shall thereafter be vacant. The Mayor may remove a member from the Commission at any time, with the recommendation of the Commissioner-in-Charge. City Elected Officials may appoint City bureau staff to the Commission as non-voting members. Staffing for the Commission shall be provided, subject to the annual City Budget process.

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3.131.030 Purpose.

The purpose of the New Portlanders Policy Commission is to:

- A.** Review, develop, evaluate and refine policy and practice recommendations for improving immigrant and refugee community integration in all City activities.
- B.** Facilitate constructive working partnerships between City leaders and newcomer community leadership.
- C.** Provide a forum for setting integration goals between City bureaus and community organizations.
- D.** Provide technical support and policy advice to City Council offices and City bureaus.
- E.** Serve as a consultant and advocate to local, state and federal agencies on policies impacting immigrant and refugee communities, as capacity allows.
- F.** Provide a report to City Council on policy and practice outcomes on an annual basis.
- G.** Engage in the City's annual budget process.

3.131.040 Organization and Meetings.

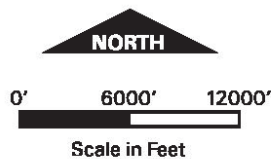
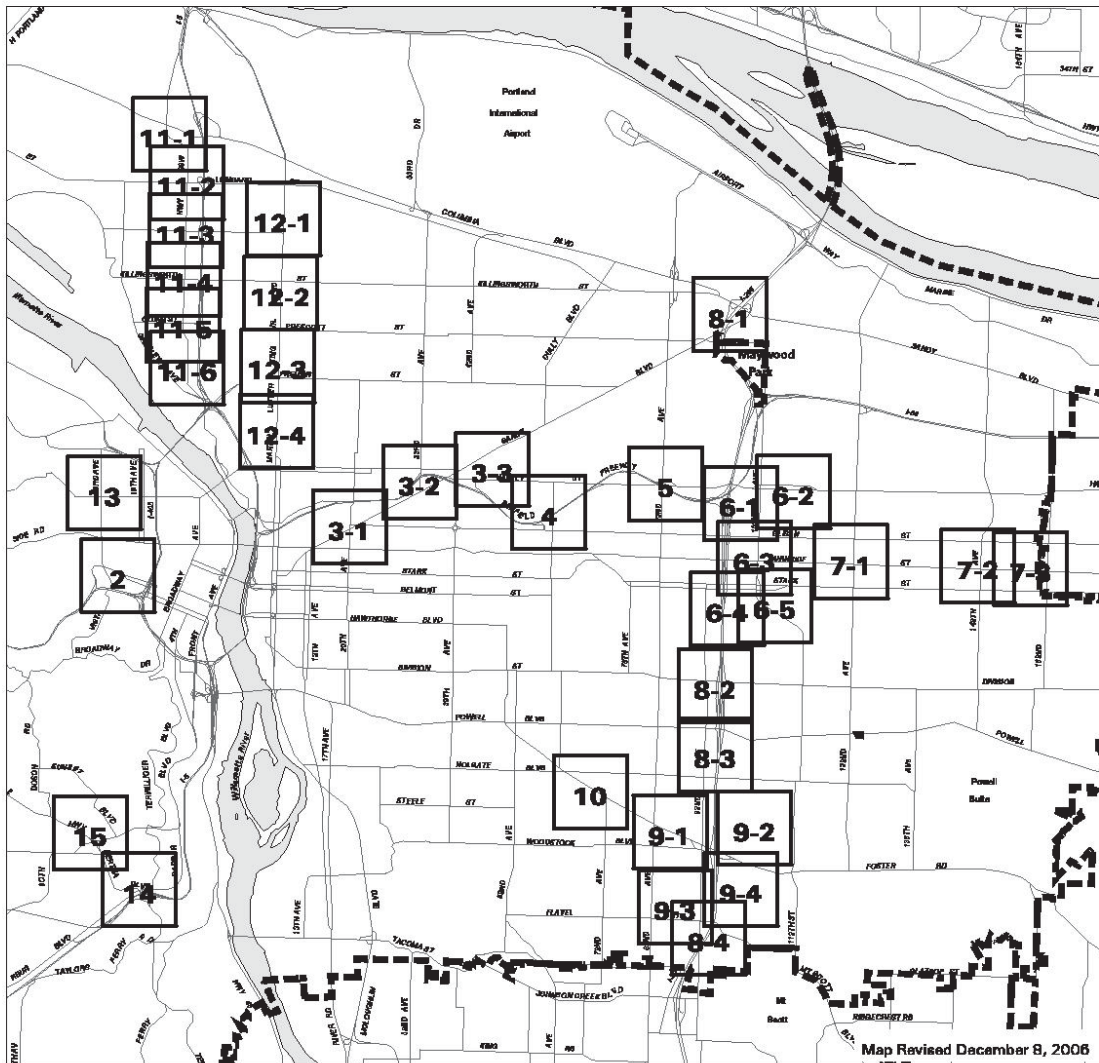
The Commission shall adopt bylaws and rules of procedure, and specify procedures for public testimony. The Commission shall elect each year a Chair or Co-Chairs and such other officers as the Commission may from time to time establish. The Commission shall meet at least quarterly, and may meet more often. The Commission Chair(s), in consultation with the Commissioner-in-Charge and the Director of the Bureau staffing the New Portlanders program, or their designee, shall set the agenda for Commission meetings.

FIGURE 1 - (Section 3.20.130)

POLICE ARREST DOCKET AND MUNICIPAL COURT TRANSCRIPT
City of Portland, Oregon
DEPARTMENT OF FINANCE AND ADMINISTRATION
Bureau of Police

<u>Name of Defendant</u>	<u>Address of Defendant</u>	<u>Arresting Officer</u>	<u>Complainant</u>	<u>Charge</u>	<u>Where</u>	<u>Age</u>
<u>Nativity</u>	<u>Occupation</u>	<u>Bail</u>	<u>Plea</u>	<u>Fine</u>	<u>Days</u>	<u>Remarks</u>

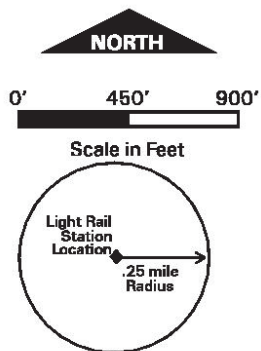
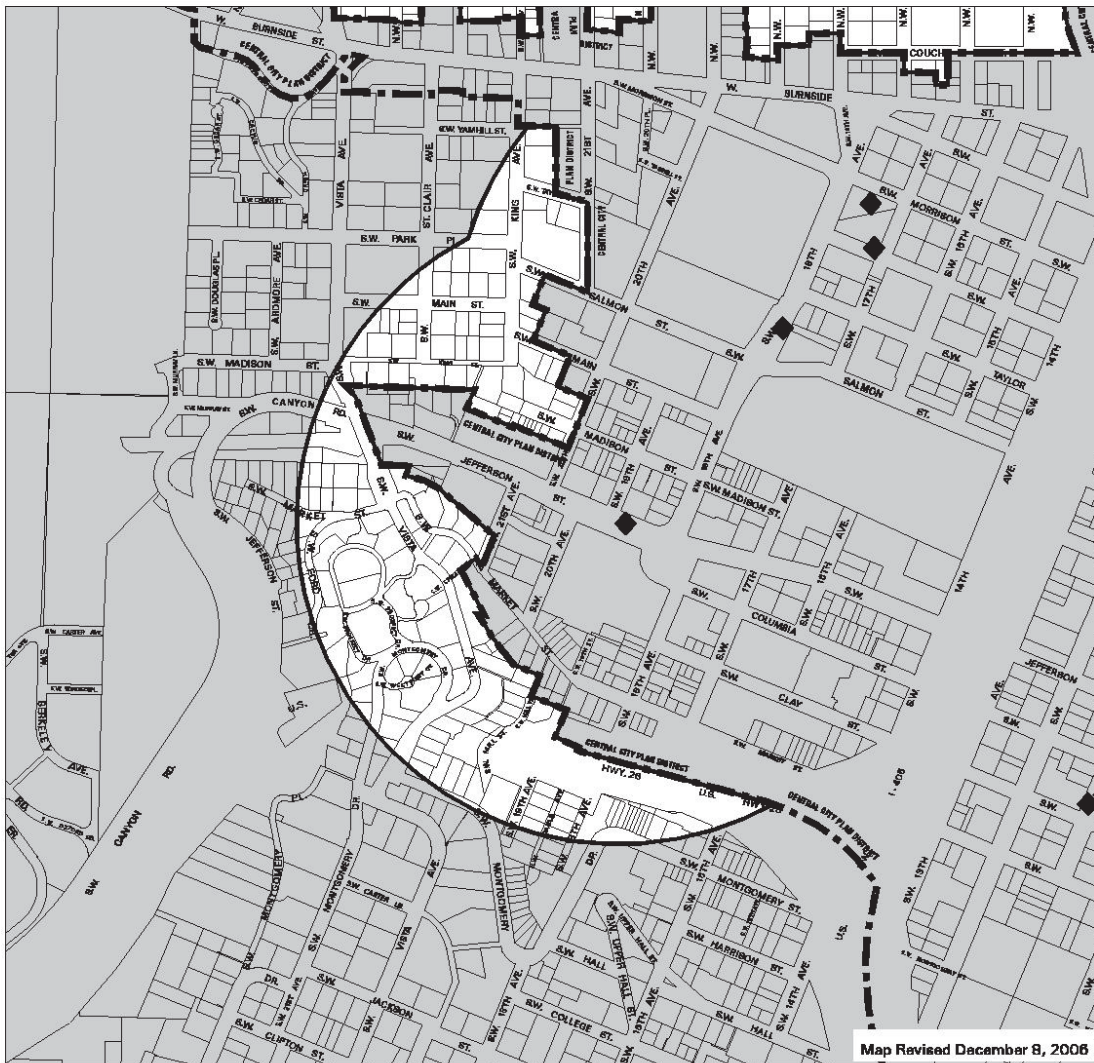
TITLE 3 ADMINISTRATION



Map 3.103-1 Property Tax Exemption for New Transit Supportive Residential or Mixed Use Development

Index Map

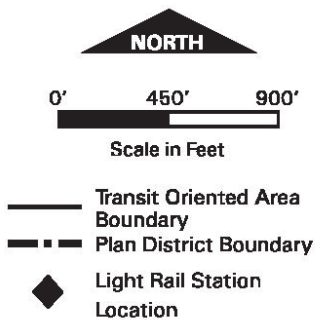
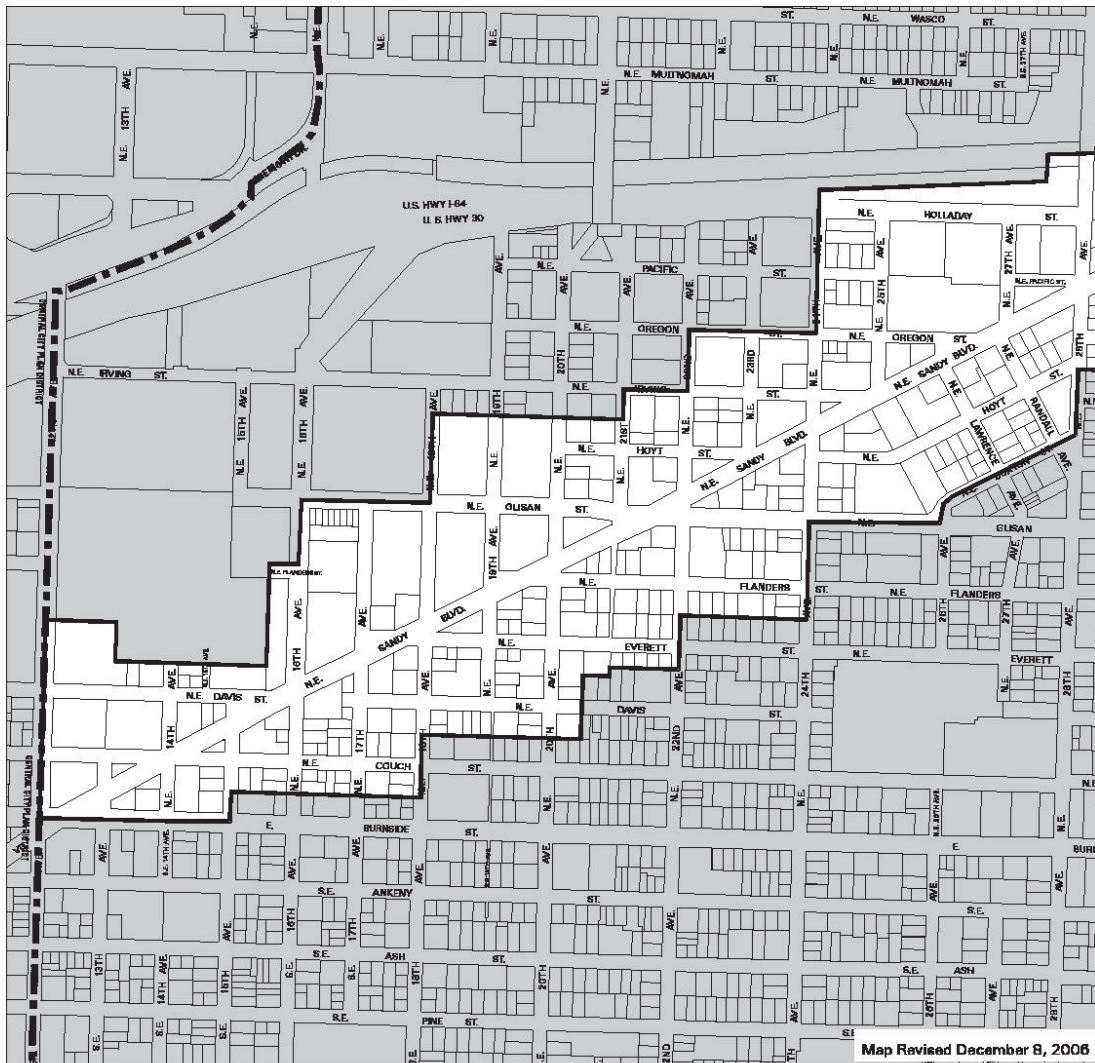
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Map 3.103-2 Property Tax Exemption for New Transit Supportive Residential or Mixed Use Development Goose Hollow Light Rail Station Areas

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TITLE 3 ADMINISTRATION

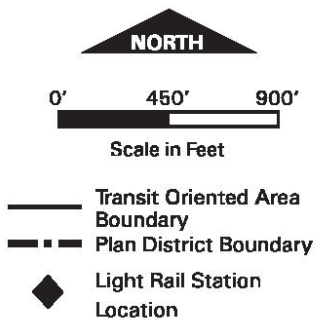
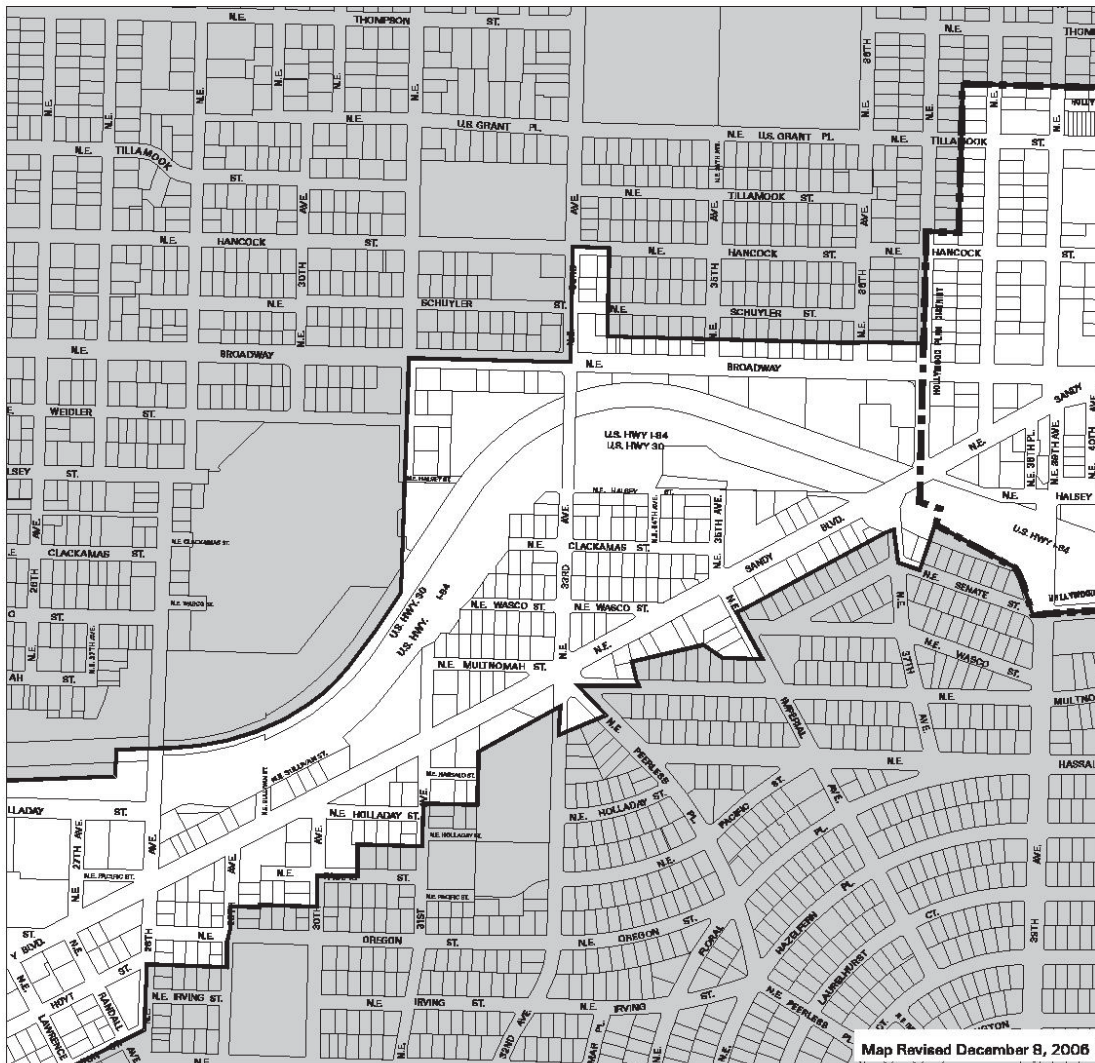


Map 3.103-3 Property Tax Exemption for New Transit Supportive Residential or Mixed Use Development

Hollywood Light Rail Station Area & Transit Oriented
Areas along Sandy Boulevard & Broadway Main Street

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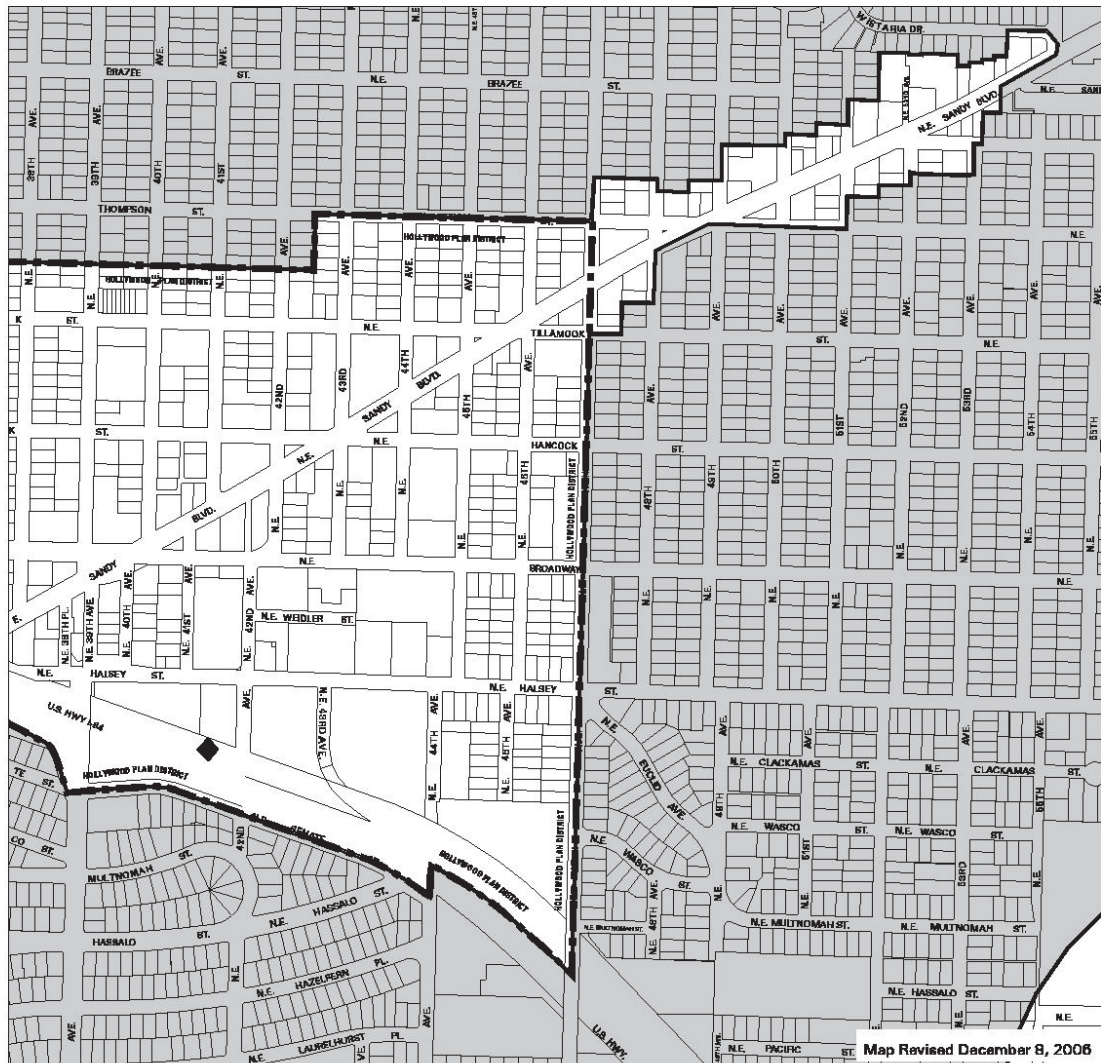
Map 3.103-3 Property Tax Exemption for New Transit Supportive Residential or Mixed Use Development

Hollywood Light Rail Station Area & Transit Oriented
Areas along Sandy Boulevard & Broadway Main Street

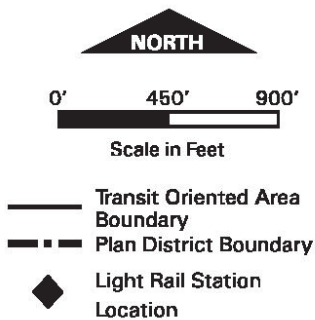
Map 2 of 3

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Map Revised December 8, 2006

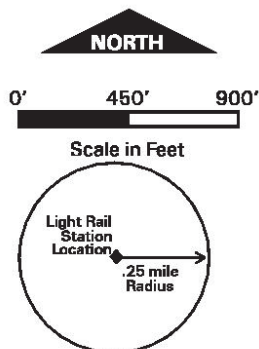
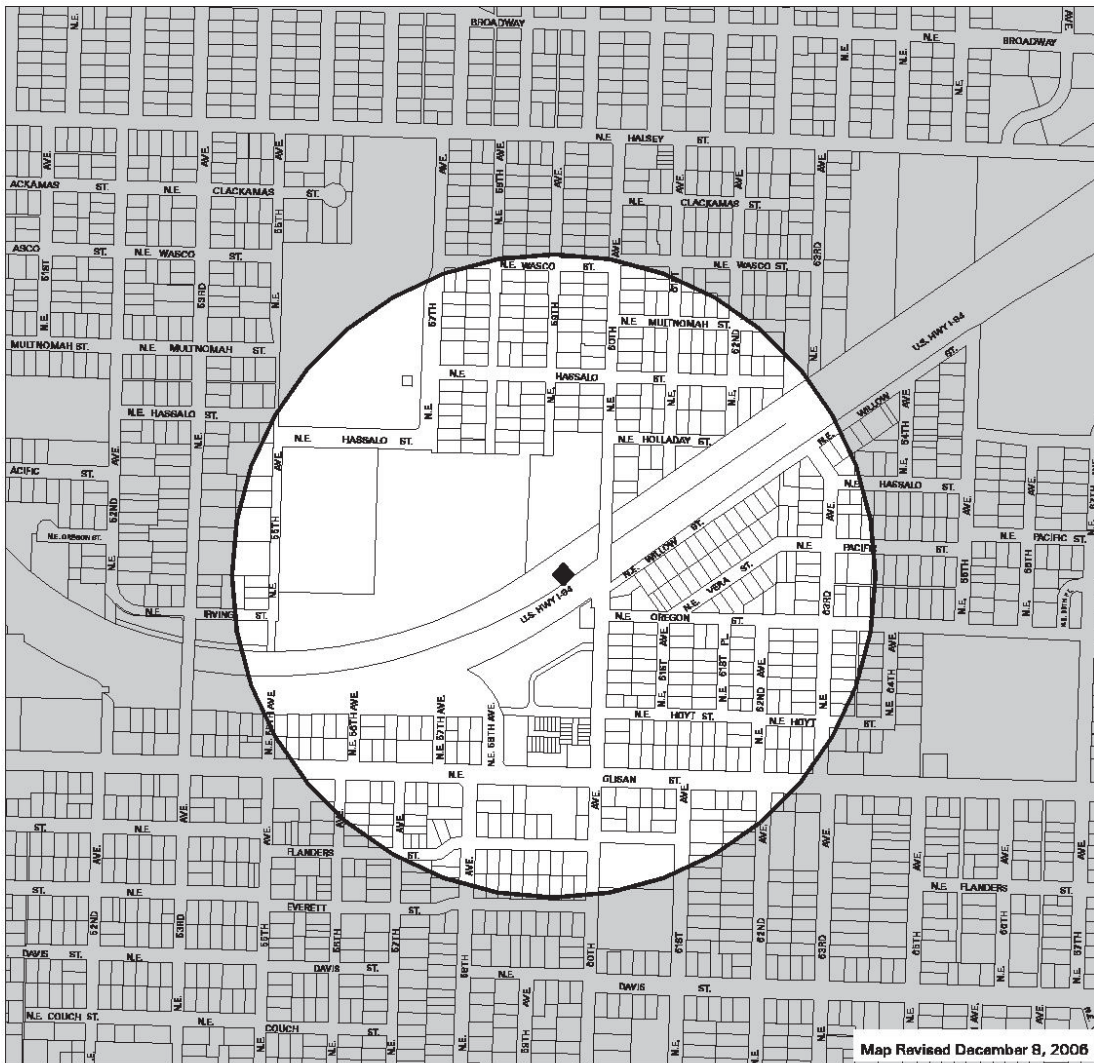


Map 3.103-3 Property Tax Exemption for New Transit Supportive Residential or Mixed Use Development

Hollywood Light Rail Station Area & Transit Oriented
Areas along Sandy Boulevard & Broadway Main Street

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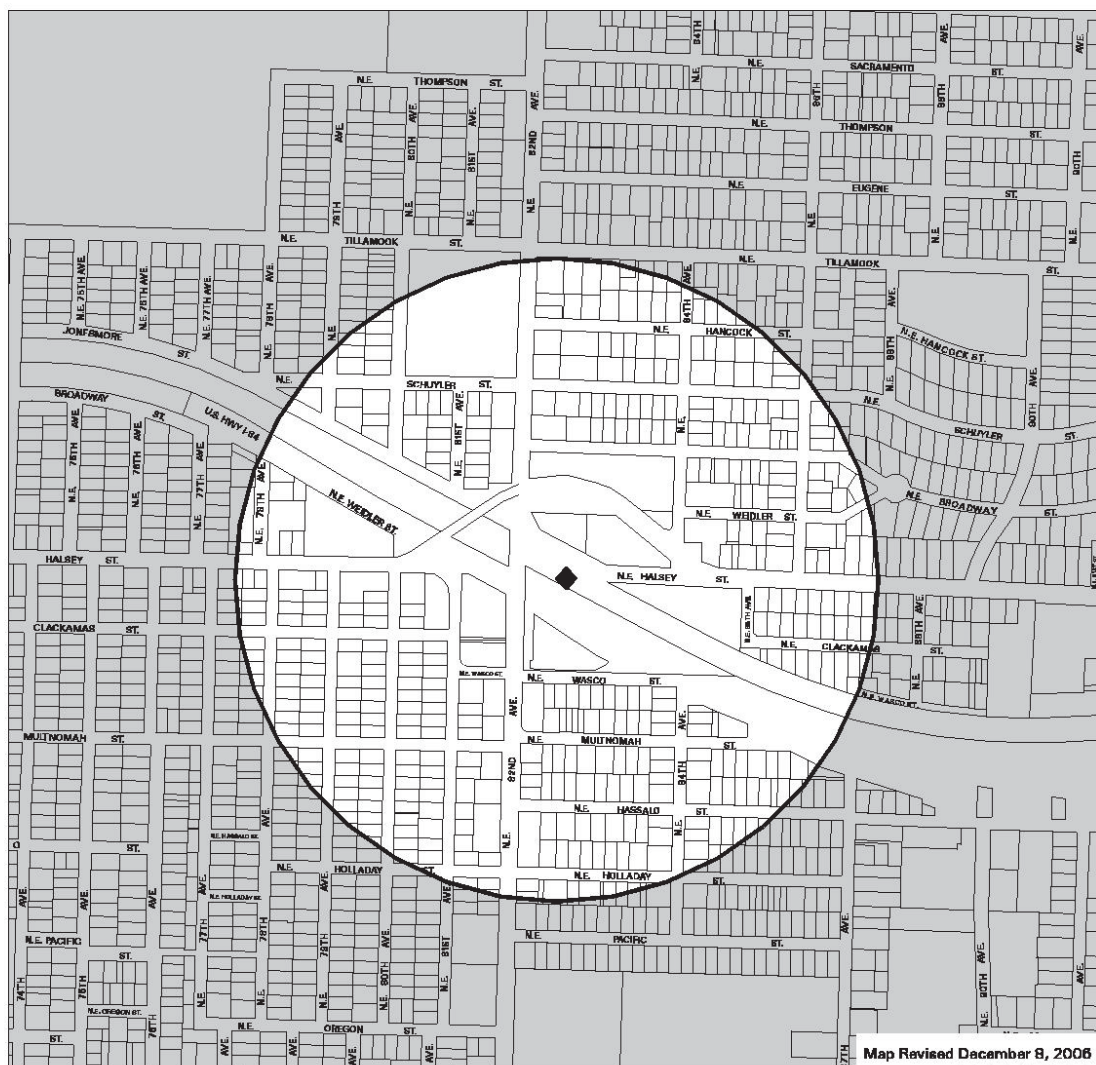


Map 3.103-4 Property Tax Exemption for New Transit Supportive Residential or Mixed Use Development 60th Avenue Light Rail Station Area

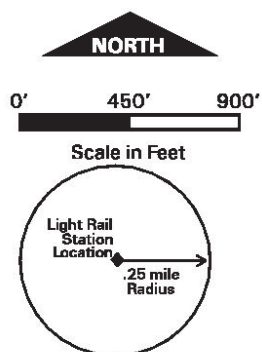
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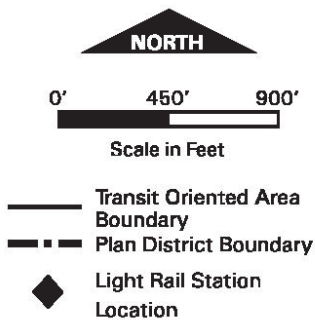
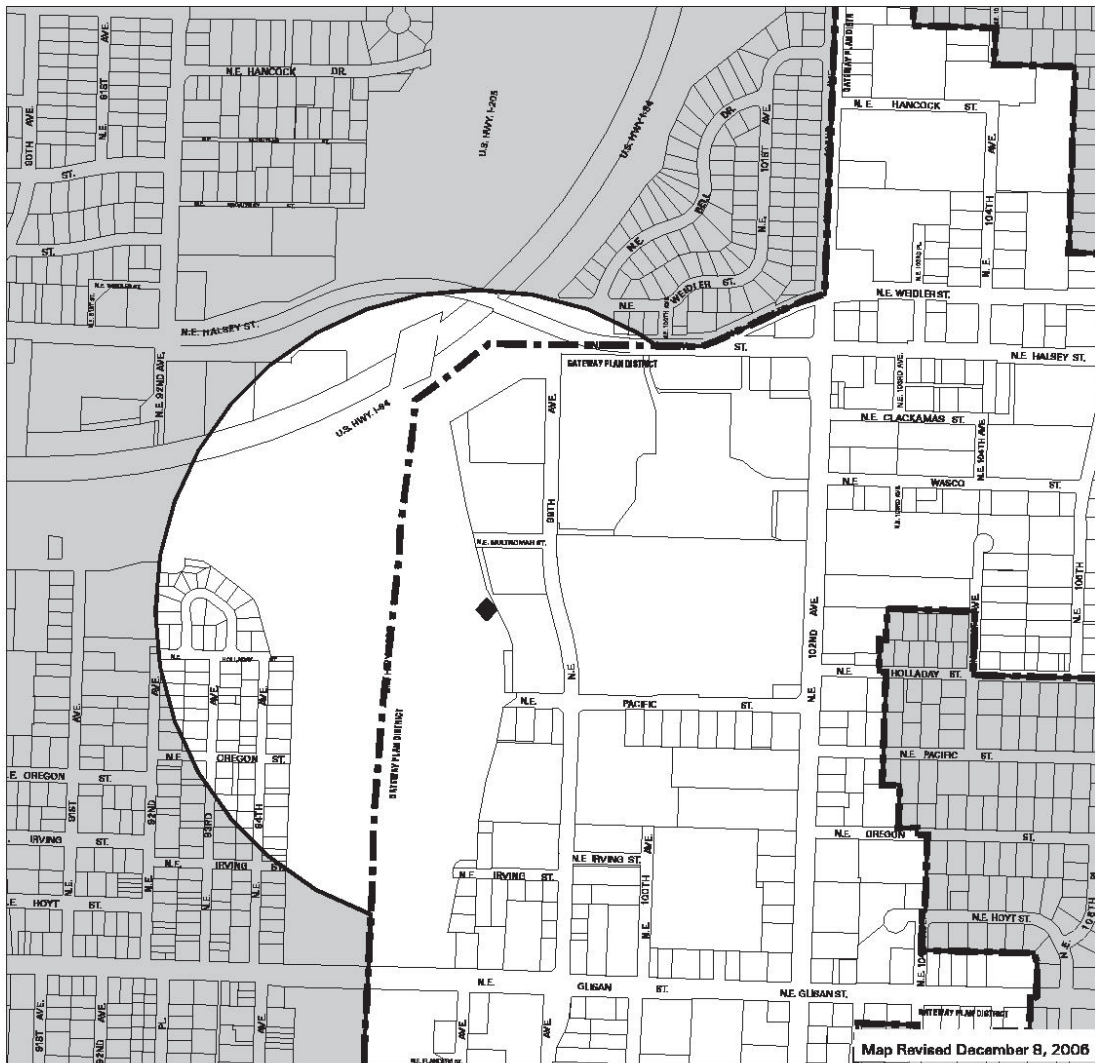
Map Revised December 8, 2006



Map 3.103-5
Property Tax Exemption for
New Transit Supportive Residential
or Mixed Use Development

82nd Avenue Light Rail Station Area

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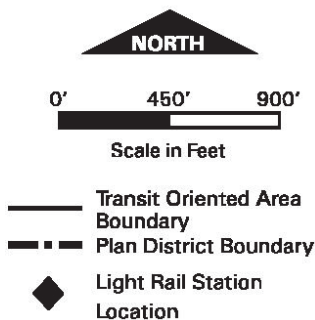
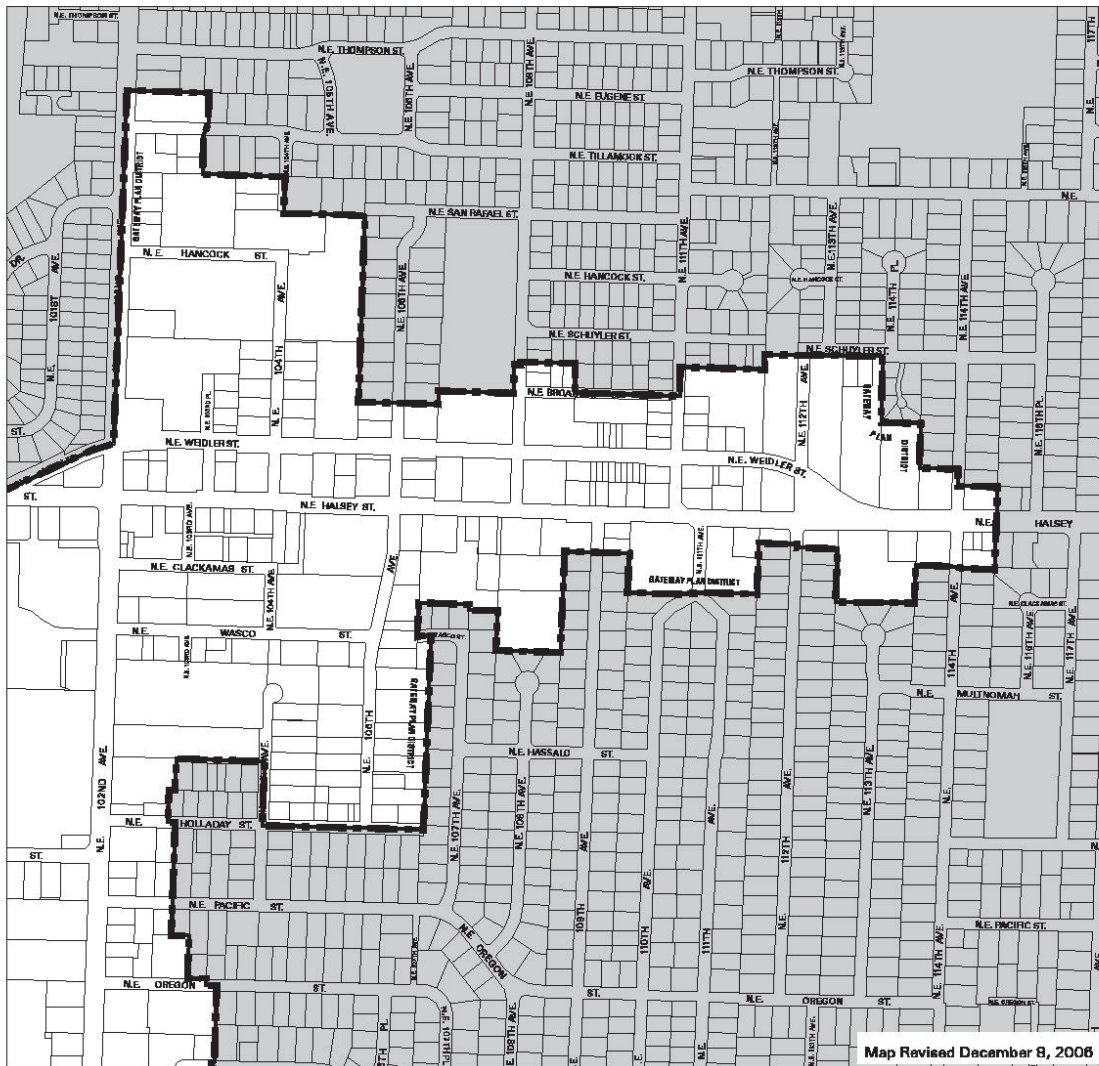
Map 3.103-6 Property Tax Exemption for New Transit Supportive Residential or Mixed Use Development

Gateway Plan District and Light Rail Station Areas

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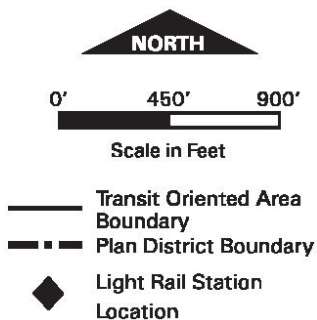


**Map 3.103-6
Property Tax Exemption for
New Transit Supportive Residential
or Mixed Use Development**

**Gateway Plan District and
Light Rail Station Areas**

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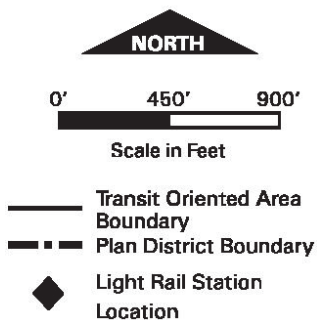
Map 3.103-6 Property Tax Exemption for New Transit Supportive Residential or Mixed Use Development

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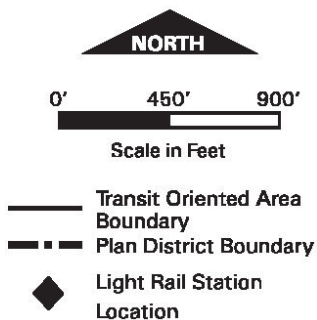
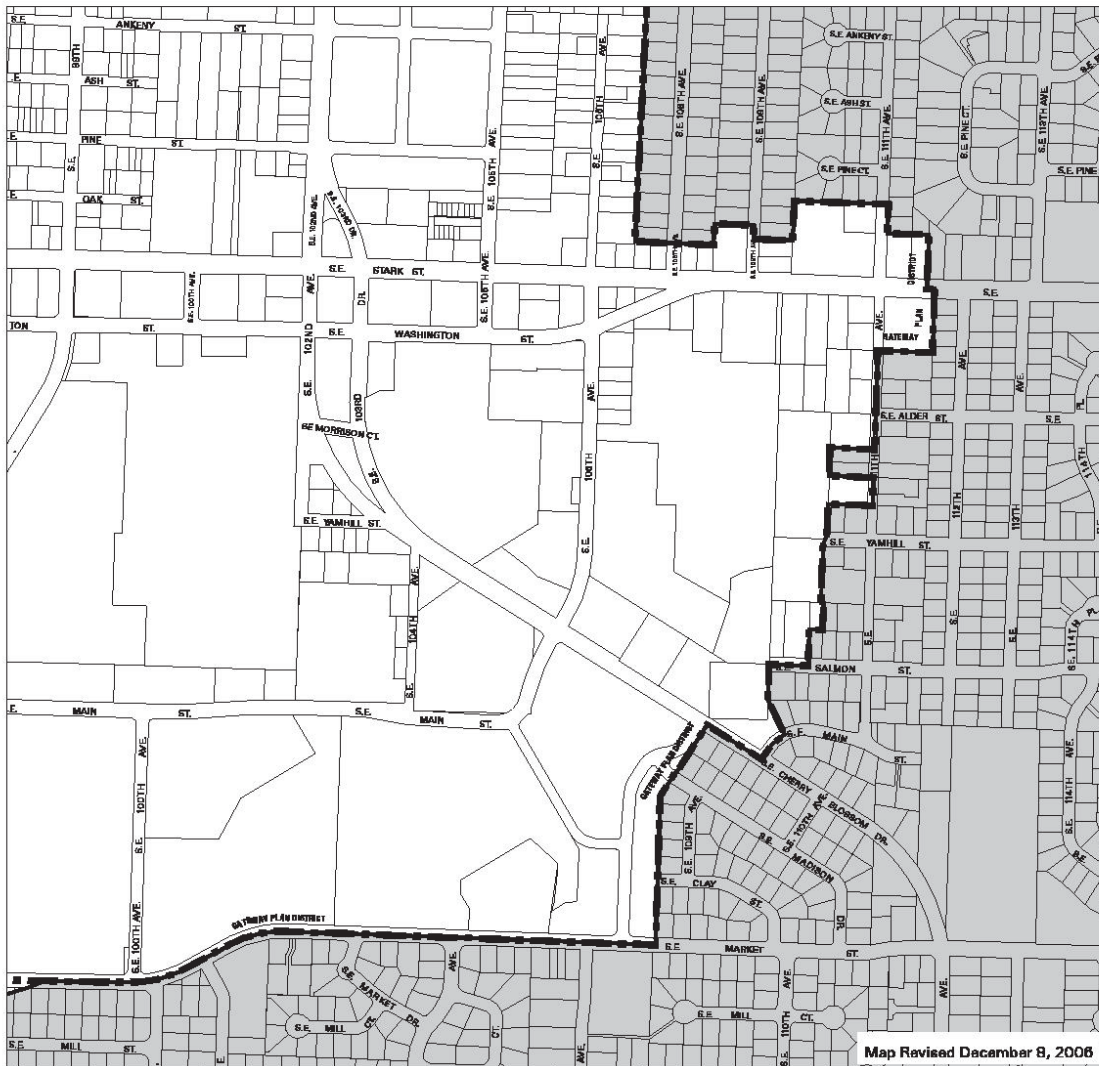


**Map 3.103-6
Property Tax Exemption for
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or Mixed Use Development**

**Gateway Plan District and
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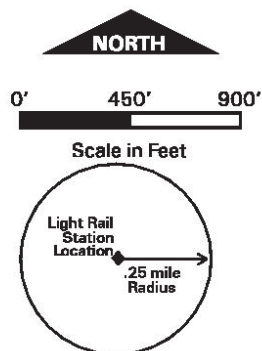
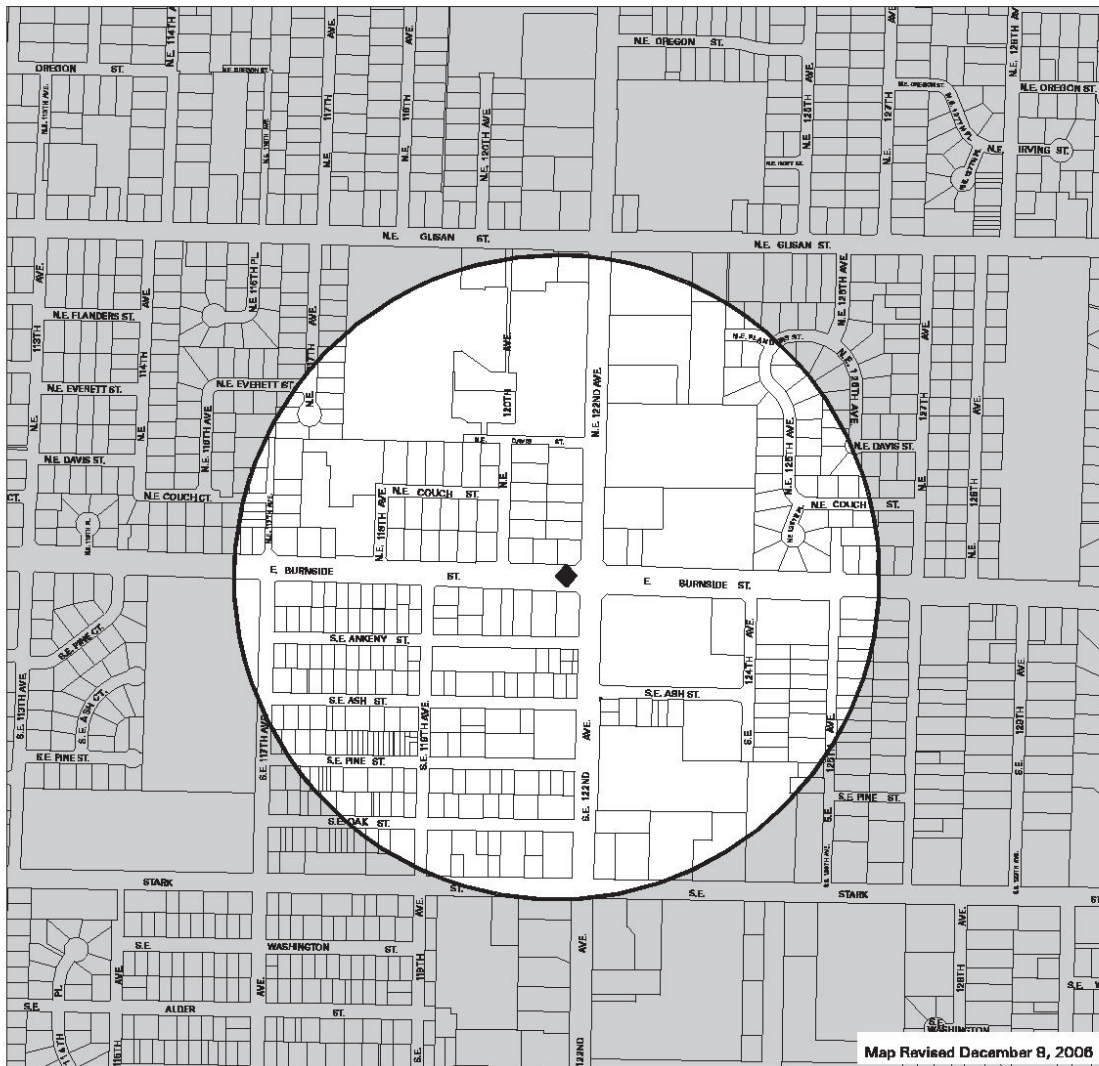
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**Map 3.103-7
Property Tax Exemption for
New Transit Supportive Residential
or Mixed Use Development**

**Light Rail Station Areas
East of Gateway Plan District**

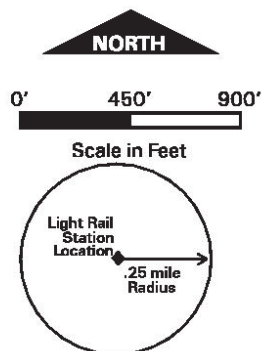
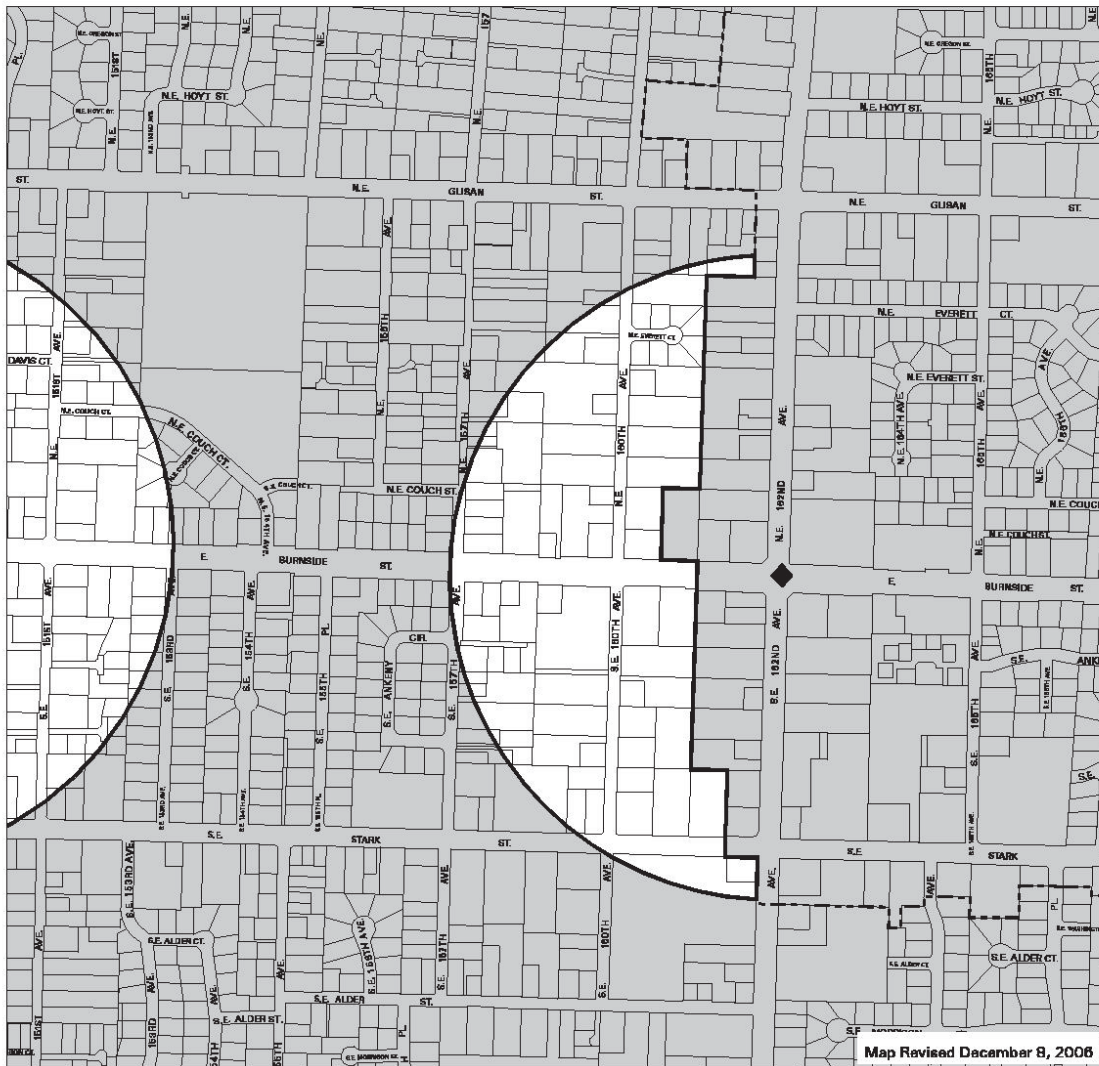
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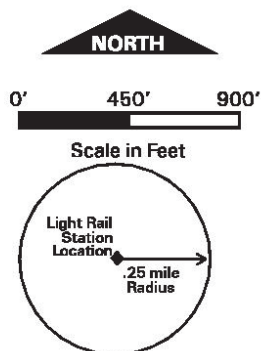
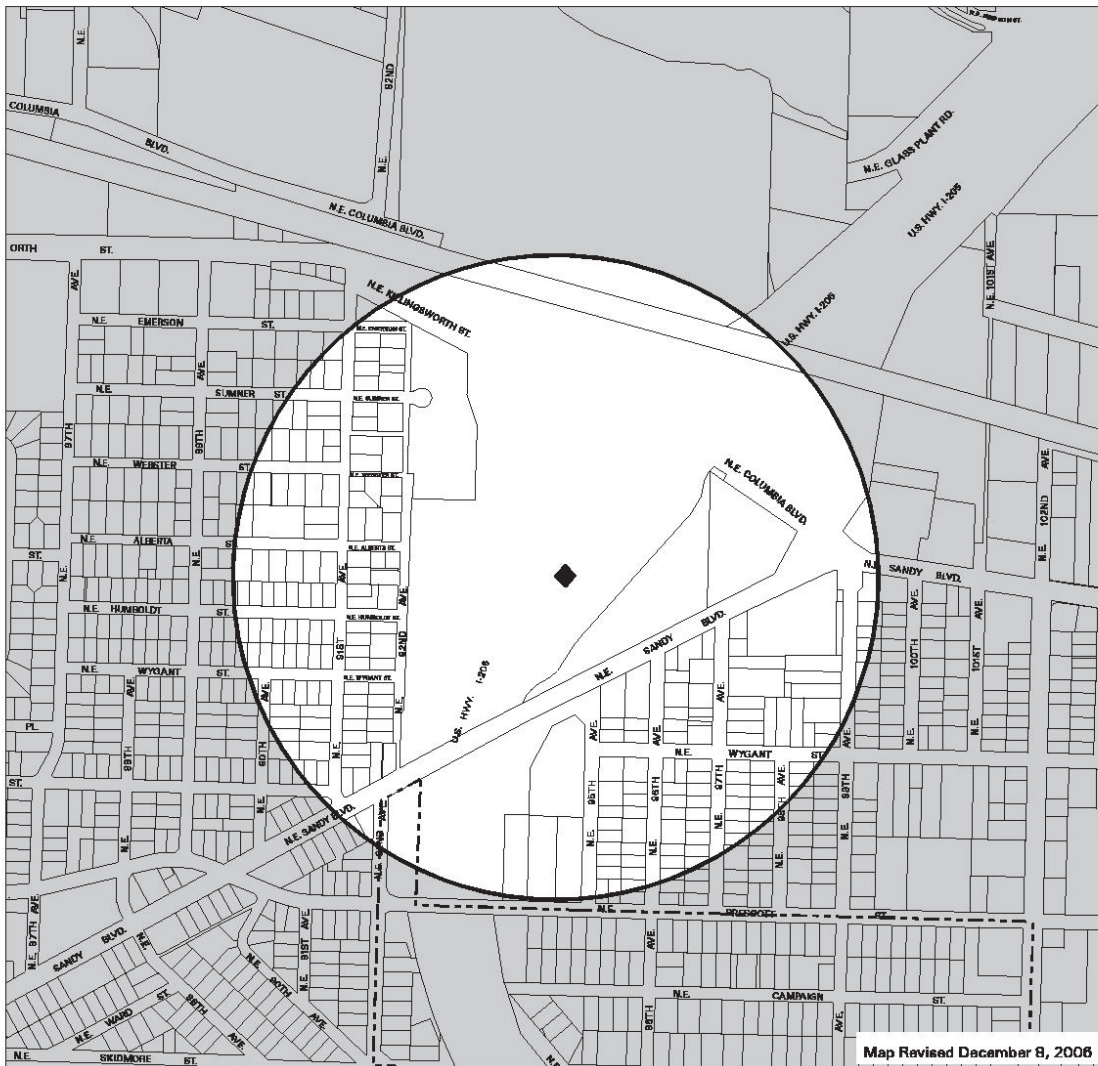


**Map 3.103-7
Property Tax Exemption for
New Transit Supportive Residential
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**Light Rail Station Areas
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Map 3.103-8 Property Tax Exemption for New Transit Supportive Residential or Mixed Use Development

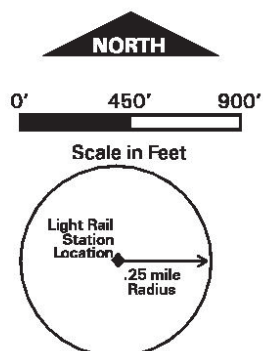
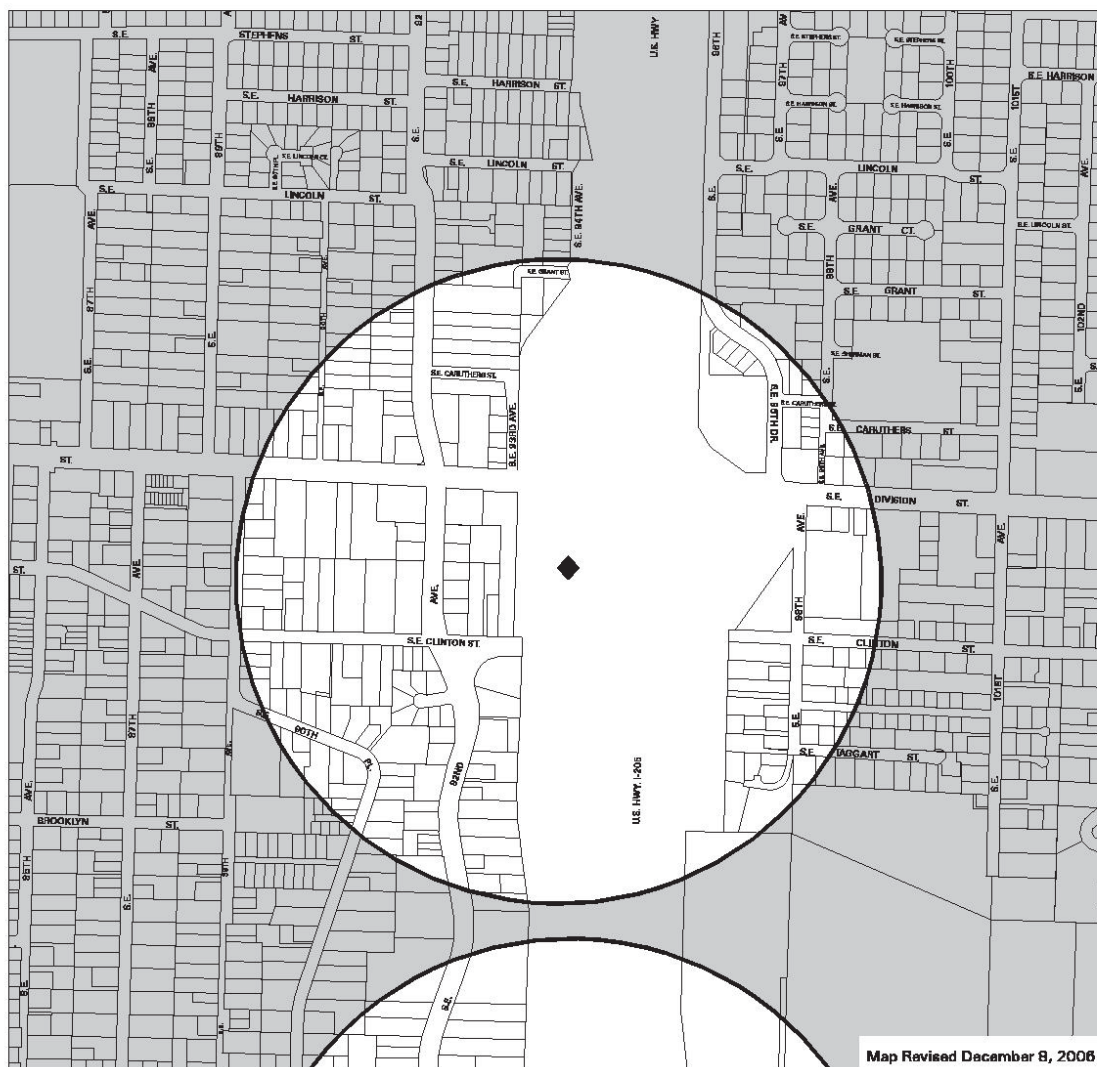
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Map 3.103-8
Property Tax Exemption for
New Transit Supportive Residential
or Mixed Use Development

I-205 Light Rail Stations Areas

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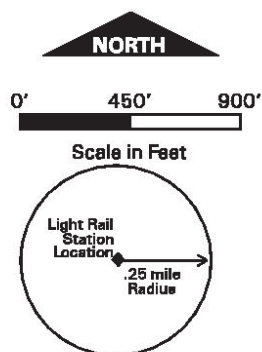
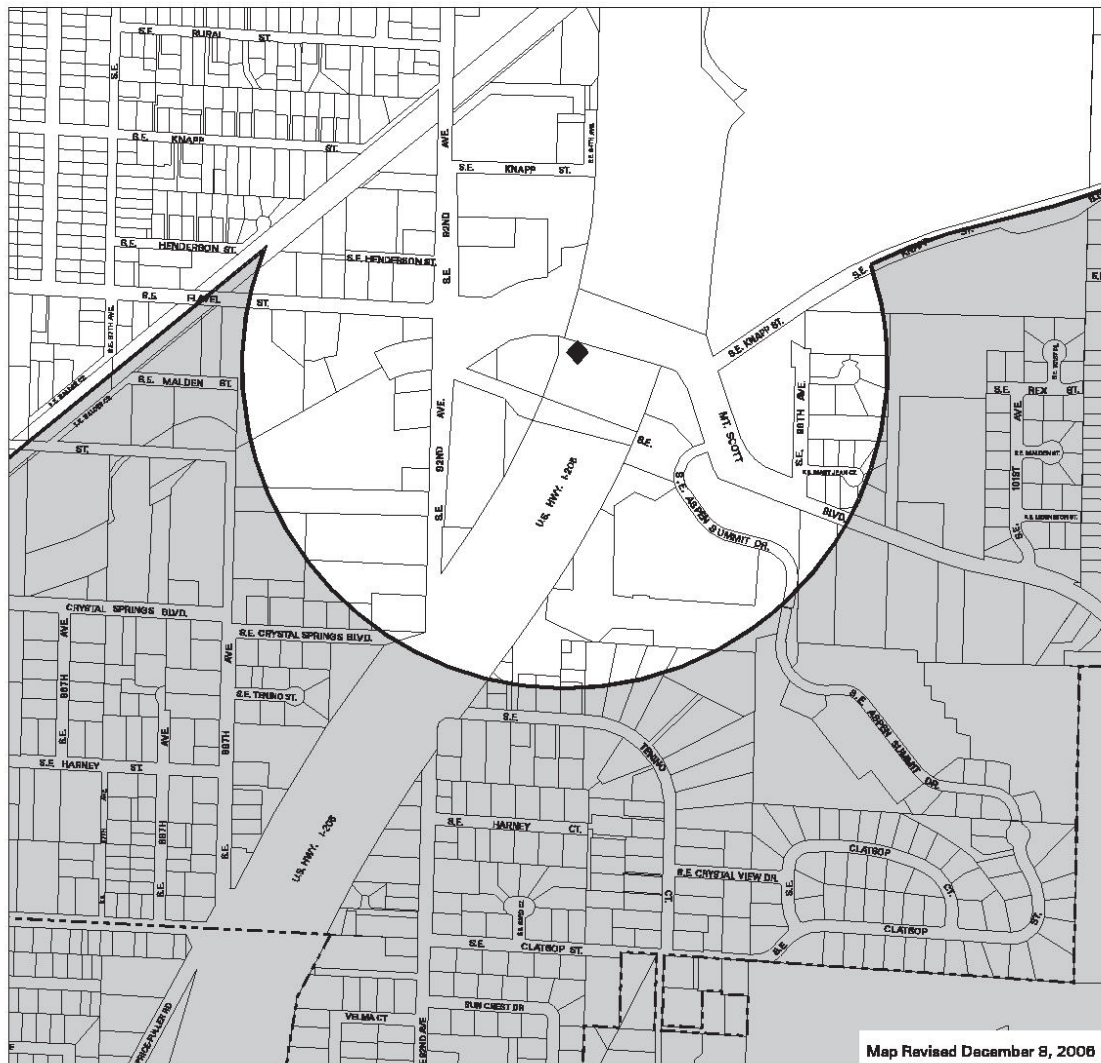
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I-205 Light Rail Stations Areas

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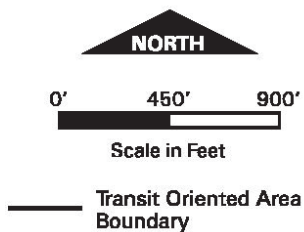


**Map 3.103-8
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or Mixed Use Development**

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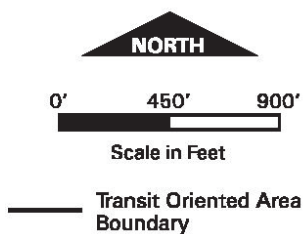
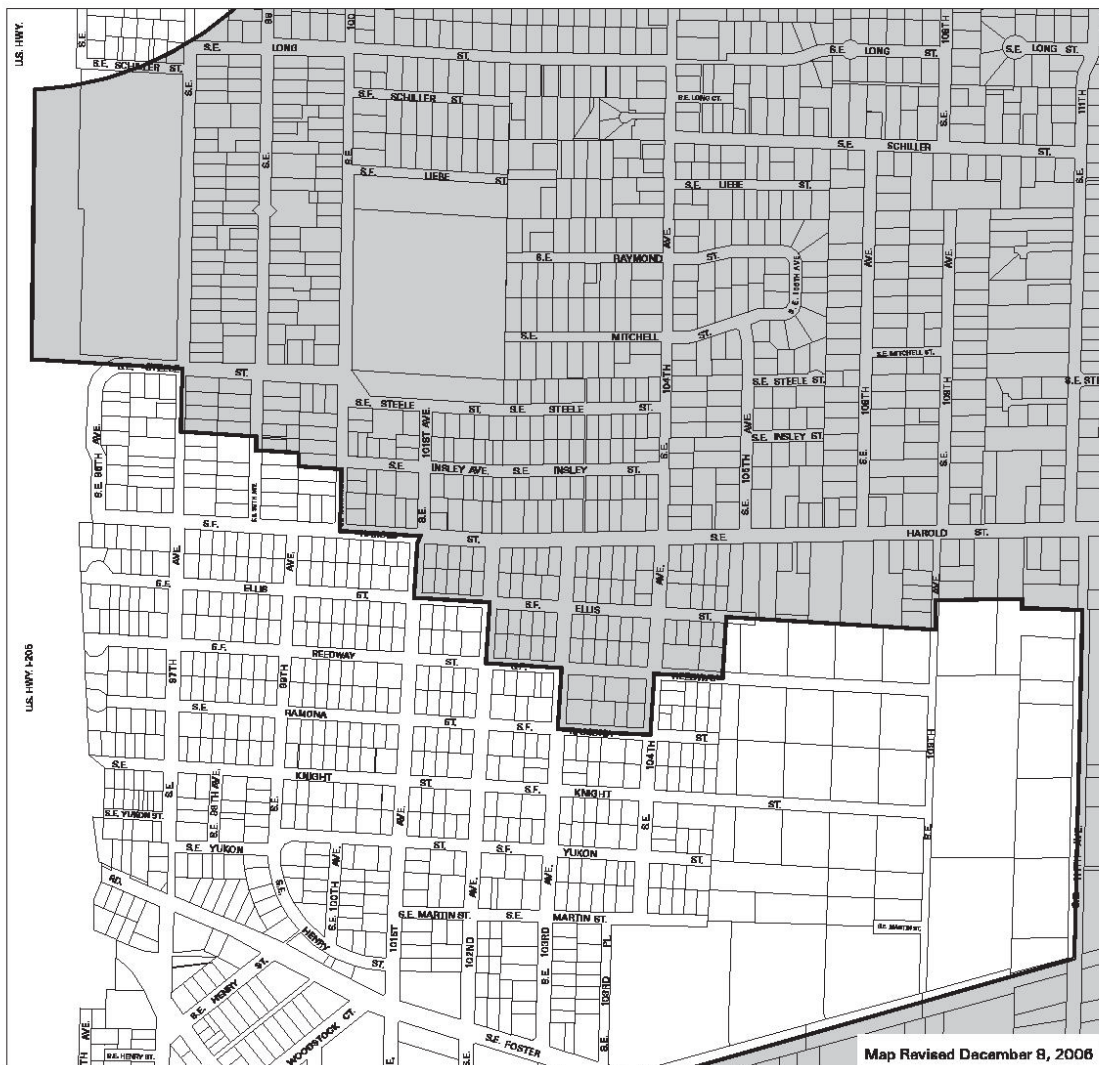
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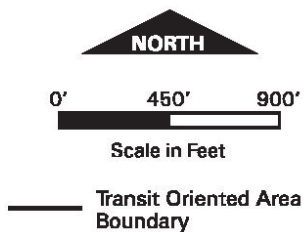
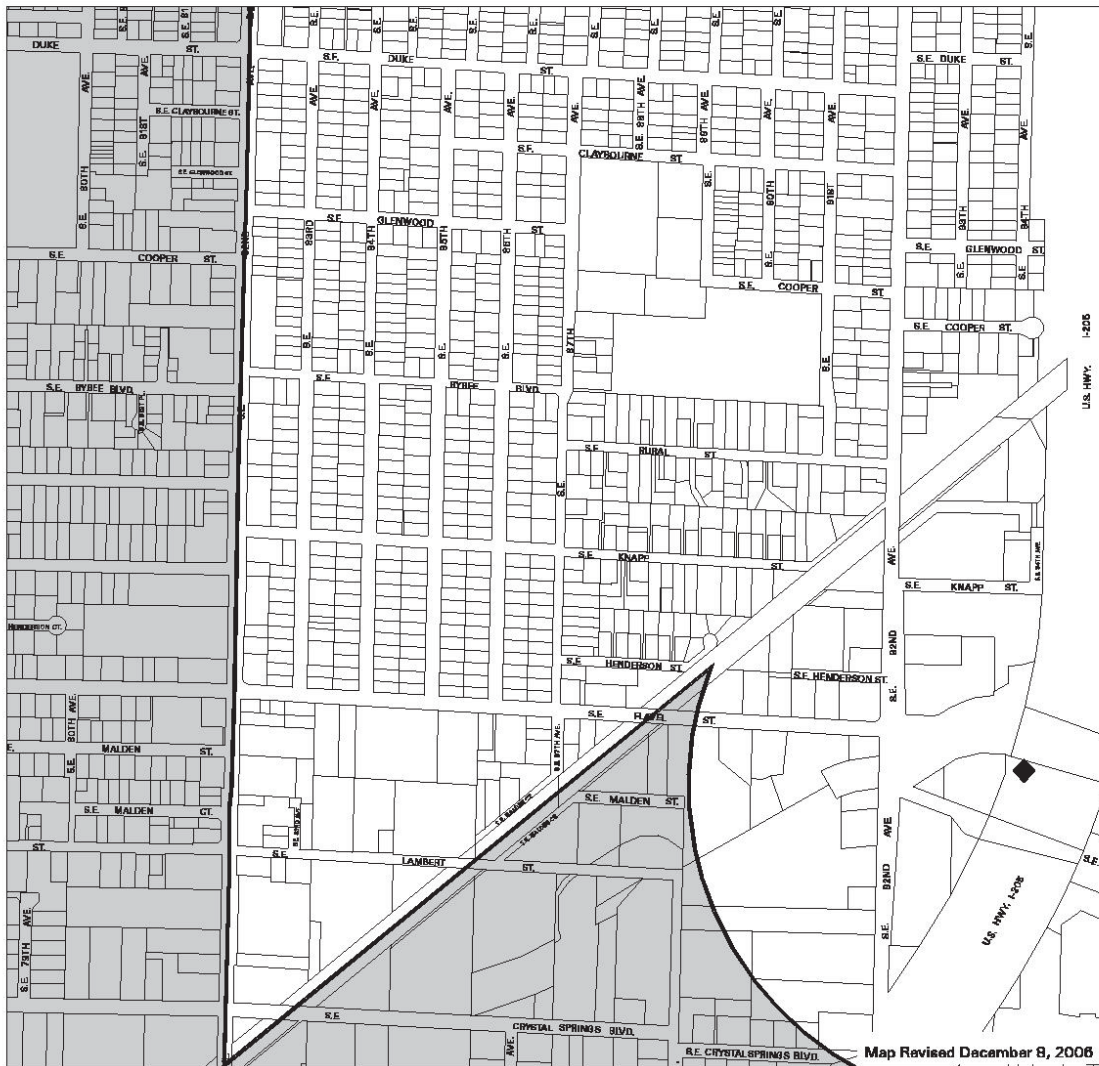


Map 3.103-9 Property Tax Exemption for New Transit Supportive Residential or Mixed Use Development

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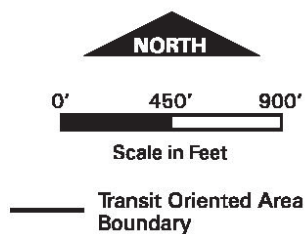
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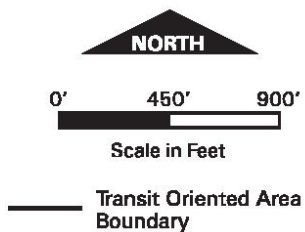
Property Tax Exemption for New Transit Supportive Residential or Mixed Use Development

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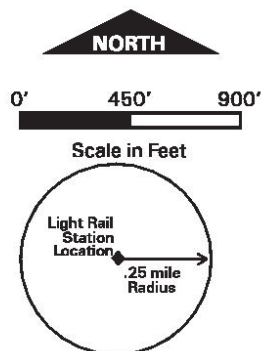


Map 3.103-10 Property Tax Exemption for New Transit Supportive Residential or Mixed Use Development

Transit Oriented Areas along
Foster Road Main Street

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**Map 3.103-11
Property Tax Exemption for
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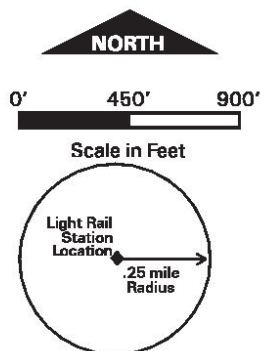
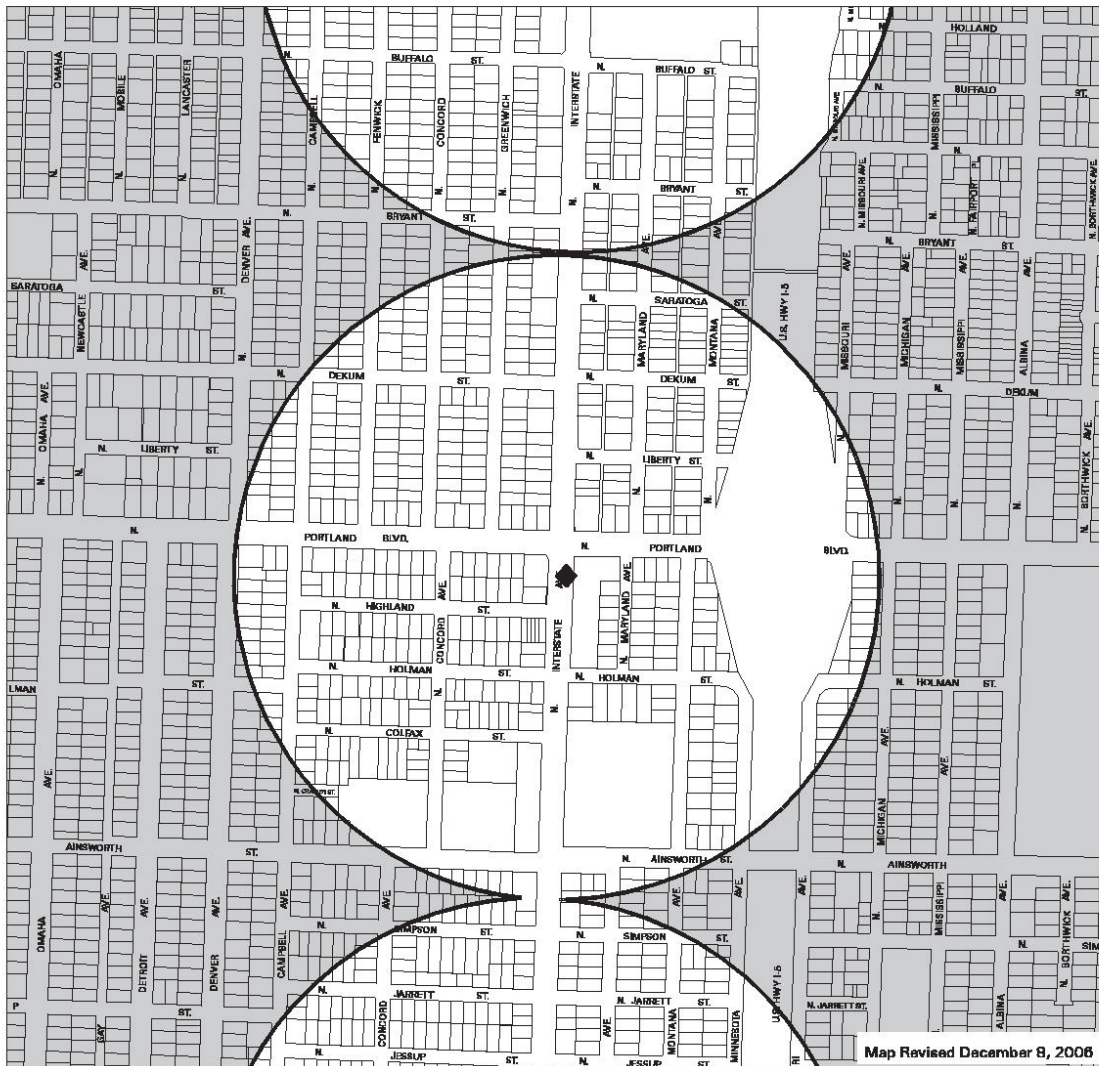
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Interstate Corridor Light Rail Station Areas

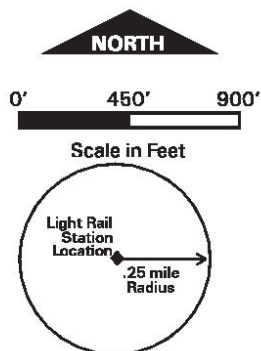
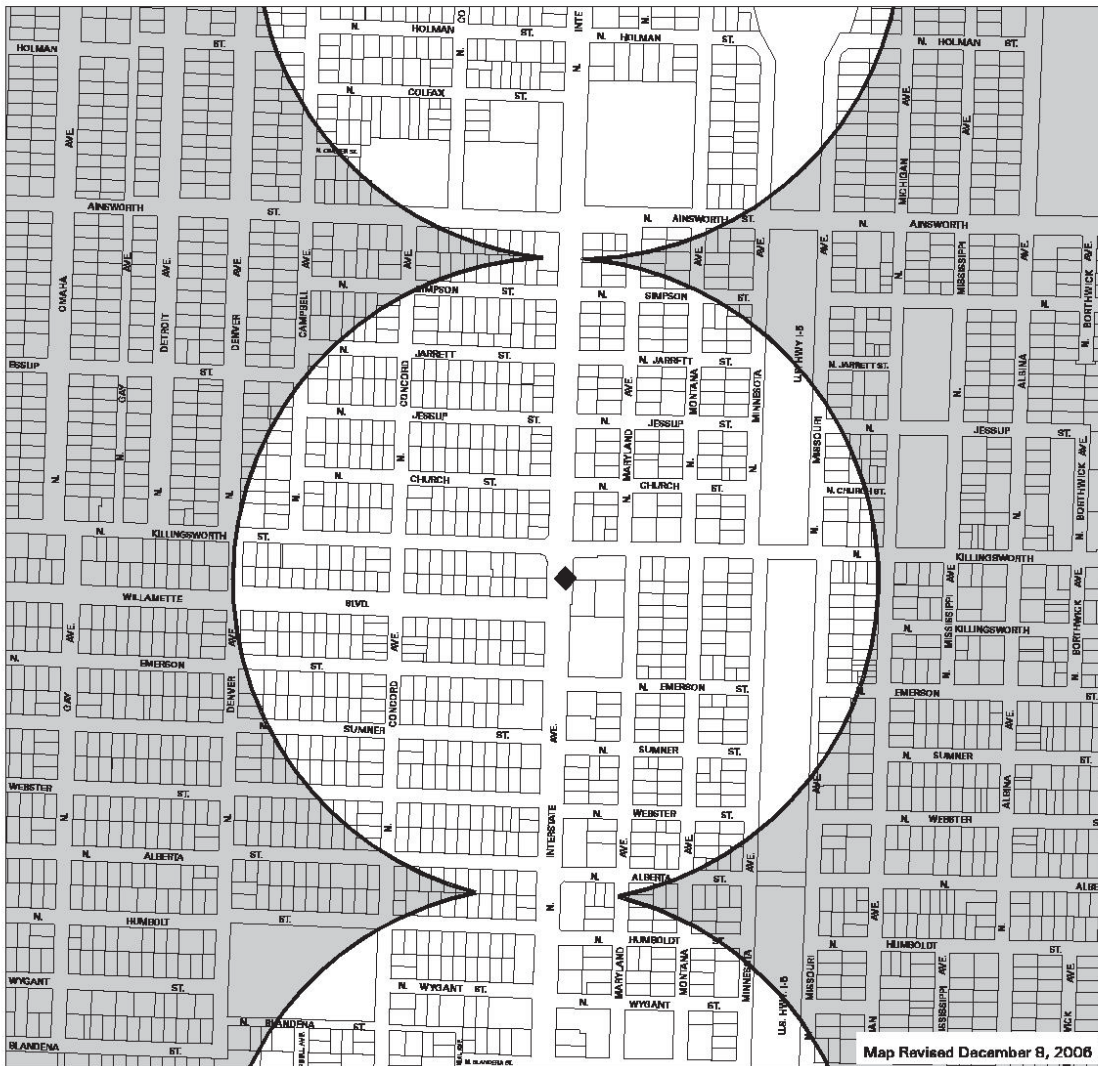
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**Map 3.103-11
Property Tax Exemption for
New Transit Supportive Residential
or Mixed Use Development
Interstate Corridor Light Rail Station Areas**

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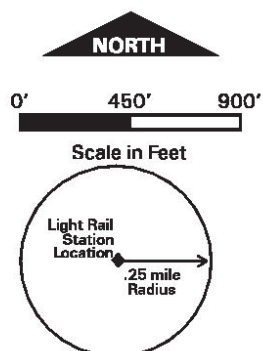


Map 3.103-11
Property Tax Exemption for
New Transit Supportive Residential
or Mixed Use Development
Interstate Corridor Light Rail Station Areas

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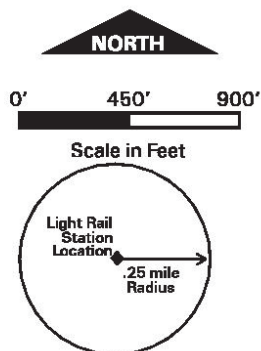
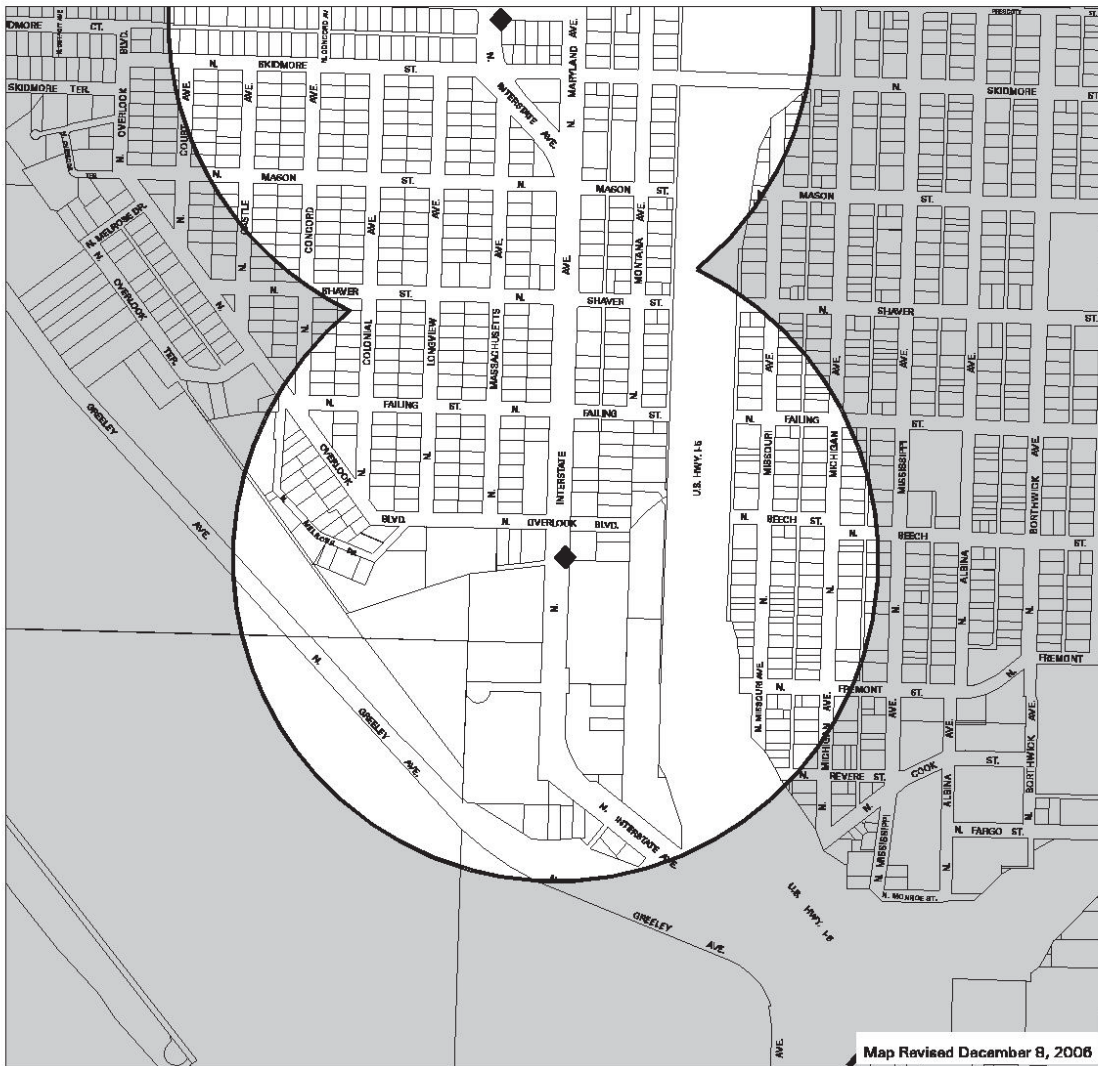
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Map 3.103-11
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or Mixed Use Development
Interstate Corridor Light Rail Station Areas

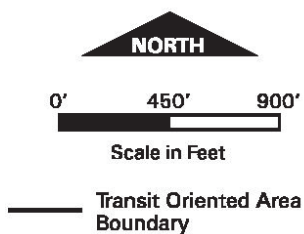
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Map 3.103-11
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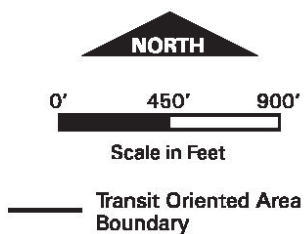
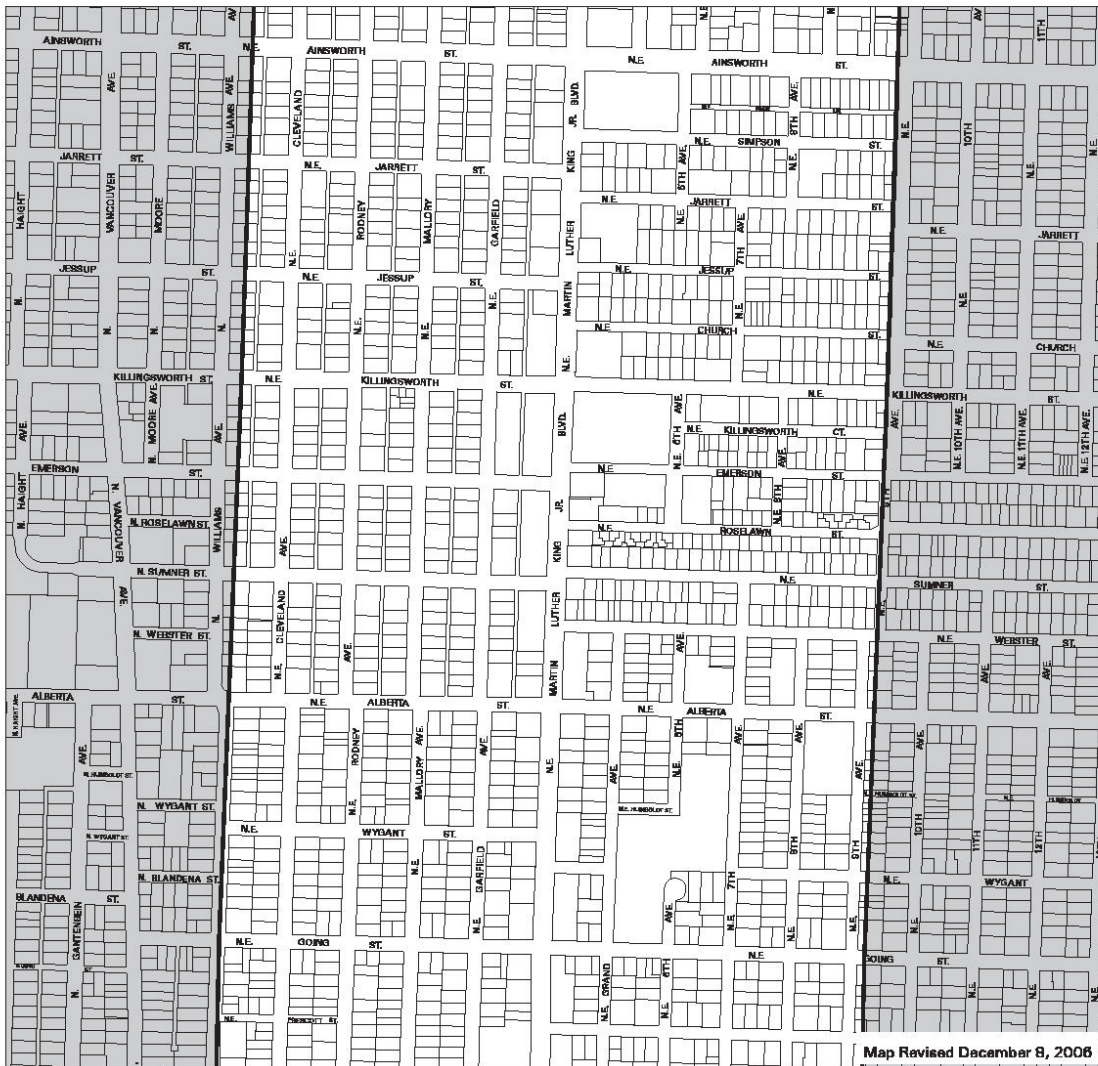


Map 3.103-12 Property Tax Exemption for New Transit Supportive Residential or Mixed Use Development

Transit Oriented Areas along
NE Martin Luther King Jr. Blvd. Main Street

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Map 3.103-12 Property Tax Exemption for New Transit Supportive Residential or Mixed Use Development

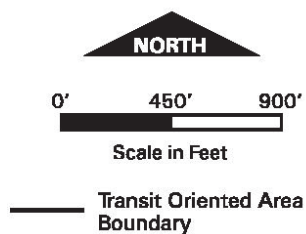
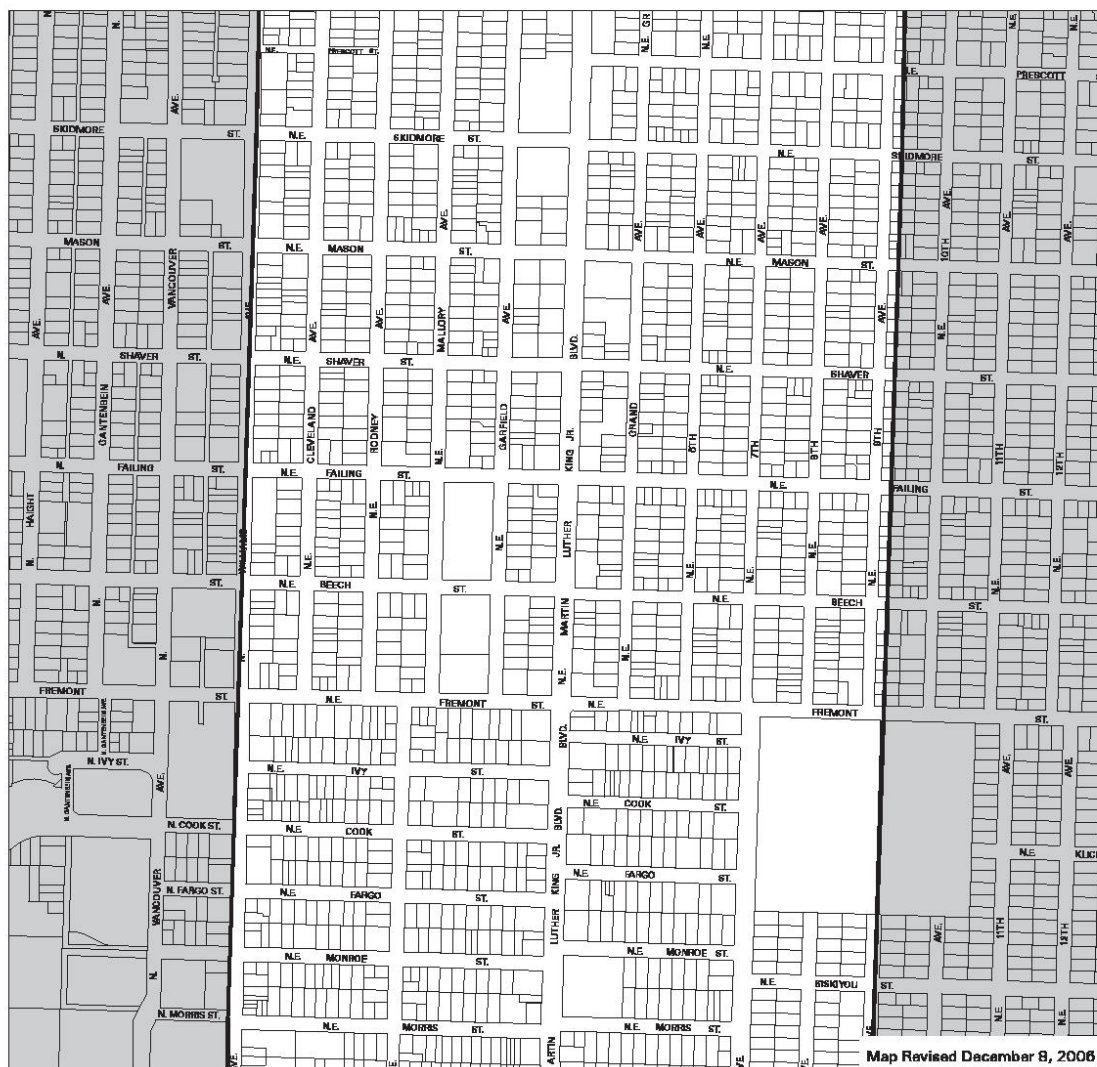
Transit Oriented Areas along
NE Martin Luther King Jr. Blvd. Main Street

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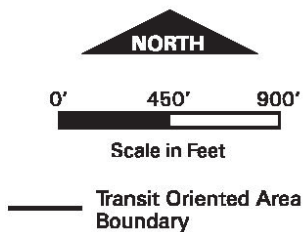


Map 3.103-12
Property Tax Exemption for
New Transit Supportive Residential
or Mixed Use Development

Transit Oriented Areas along NE Martin Luther King Jr. Blvd. Main Street

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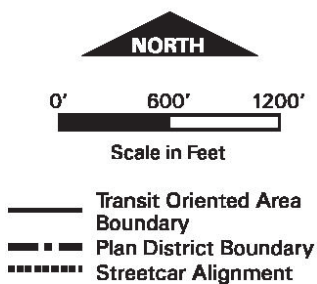
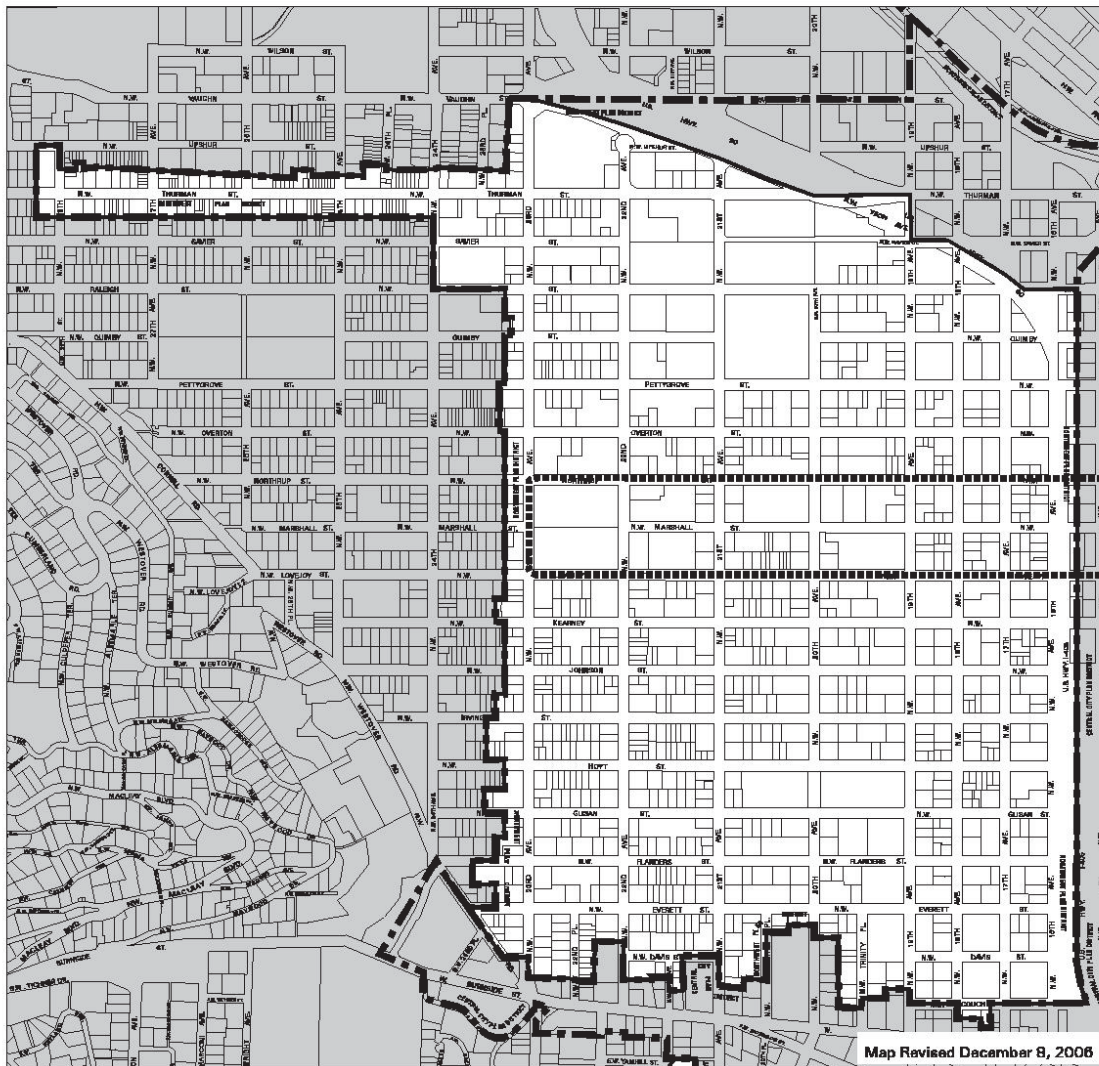
Map 3.103-12 Property Tax Exemption for New Transit Supportive Residential or Mixed Use Development

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Map 3.103-13 Property Tax Exemption for New Transit Supportive Residential or Mixed Use Development

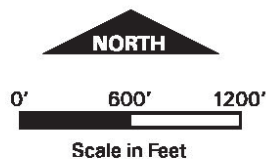
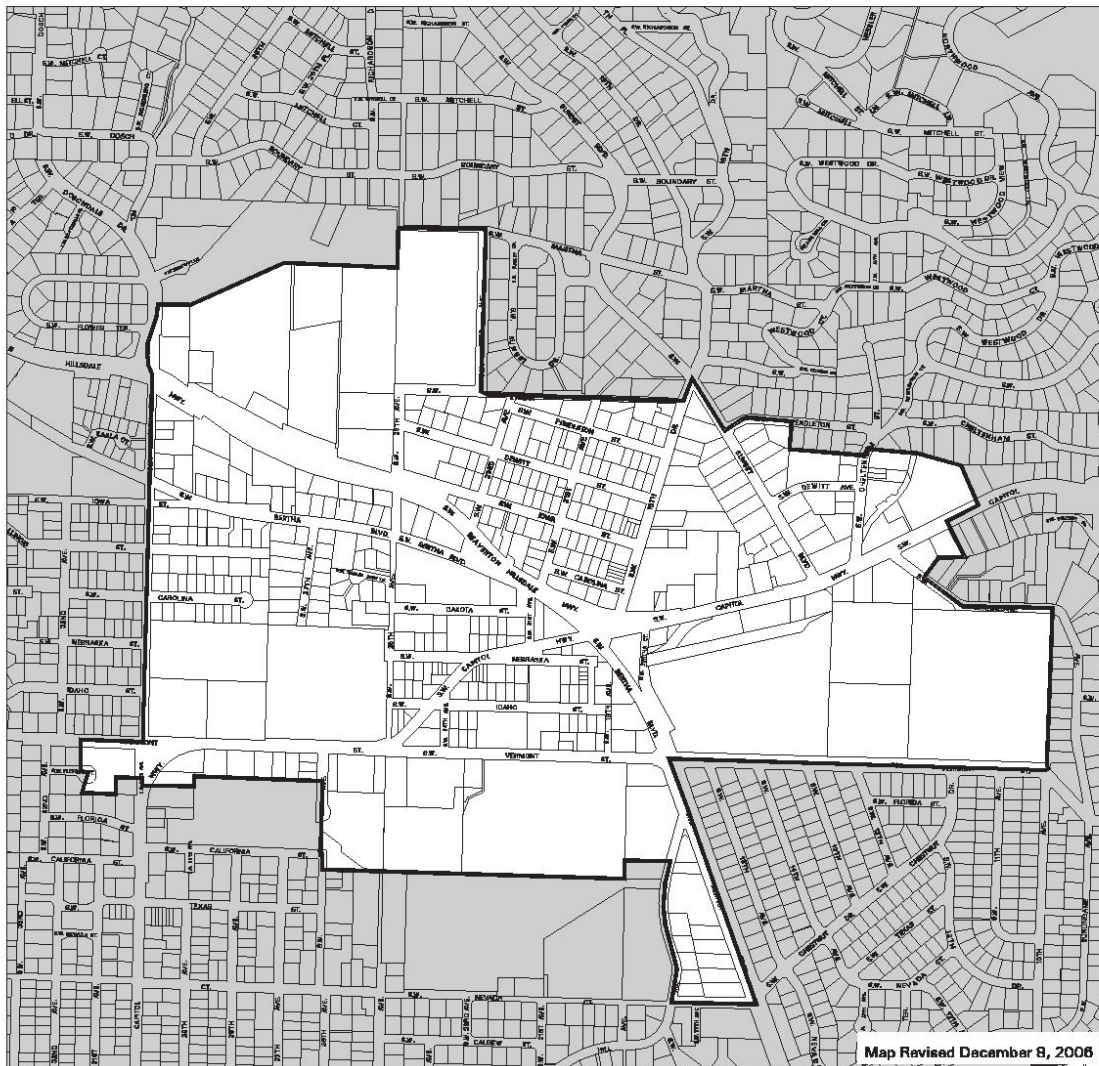
Northwest Plan District

Bureau of Planning • City of Portland, Oregon



Bureau of Planning • City of Portland, Oregon

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**Map 3.103-15
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TITLE 5

REVENUE AND FINANCE

5.04.010 Provisions Made For.

In addition to funds created in accordance with the provisions of the Charter, there shall be the funds set forth in this Chapter and such other funds as from time to time may be provided for by ordinance.

5.04.020 Sundry Trusts Fund.

(Amended by Ordinance No. 173369, effective May 12, 1999.) The Sundry Trusts Fund, created by Ordinance No. 118746, passed by the Council July 1, 1964, shall contain accounts for trust monies which neither belong in the Trustees' Fund nor require an individual trust fund. The following accounts are authorized for the Sundry Trusts Fund:

- A.** Animals for zoo account. (Repealed by Ordinance No. 150375, effective September 11, 1980.)
- B.** Civic Emergency Account. This account shall receive the City's share of the annual allocation from the Civic Emergency Fund under ORS 463.170. Expenditures shall be limited to athletic, recreational, educational, or charitable purposes. The Mayor and the Auditor are authorized to draw on this account when requisitions are presented approved by the Mayor, and one other Commissioner;
- C.** Elephant Purchase Account. (Repealed by Ordinance No. 150375, effective September 11, 1980.)
- D.** Health Protection Account. (Repealed by Ordinance No. 150375, effective September 11, 1980.)
- E.** Recreation Account. (Repealed by Ordinance No. 150375, effective September 11, 1980.)
- F.** Rose Test Garden Account. This account shall be administered in accordance with Ordinance No. 110776; passed by the Council September 23, 1959. The Mayor and the Auditor are authorized to draw checks on this account when requisitions are presented approved by the Commissioner In Charge of the Bureau of Parks;
- G.** Oaks Pioneer Park Museum Account. This account shall be administered in accordance as hereinafter provided:

All monies received from charges arising out of the operation of Oaks Pioneer Park Museum, under contract or otherwise, shall be deposited with the Treasurer of the City. The Treasurer shall hold all such funds so received in the Oaks Pioneer Park Museum Account. Disbursements shall be made in accordance with budgetary procedures upon requisition approved by the Commissioner In Charge of the Bureau of Parks and shall be limited to maintenance, operational costs, and improvement of the Oaks Pioneer Park Museum. The Mayor and Auditor are authorized to draw warrants on this account when requisitions are presented and approved by the Commissioner In Charge of the Bureau of Parks.

5.04.500 Technology Services Fund.

(Added by Ordinance No. 176003; amended by Ordinance Nos. 177852 and 181483, effective January 18, 2008.) The Technology Services Fund is hereby created as an internal service fund under the Bureau of Technology Services as described in Section 3.15.070 of this Code. The purpose of this Fund is to receive and record expenditures related to the management, operation and delivery of a variety of technology services to City bureaus and offices. The Fund also supports facilitation of multi-year funding of major technology initiatives. The Fund is supported primarily by charges to City bureaus for corporate and bureau-specific services.

5.04.510 Arts Education and Access Fund.

(Added by Resolution No. 36939 (approved at November 6, 2012 election); effective December 5, 2012.) The Arts Education and Access Fund is hereby created. The purpose of the Fund is to receive Gross Revenues received from the Arts Education and Access Income Tax and provide the Net Revenues to the School Districts and to the Regional Arts and Culture Council solely for the purposes established in Chapter 5.73 of this Code. In no case shall Net Revenues be transferred from the Arts Education and Access Fund to the City's General Fund, or any other fund, for any other purpose.

5.04.520 Mt. Hood Cable Regulatory Commission Agency Fund.

(Added by Ordinance No. 186065, effective June 5, 2013.) The Mt. Hood Cable Regulatory Commission Agency Fund is hereby created for the receipt and expenditure of monies received from cable franchisees and Public, Education and Government fees on behalf of Multnomah County and the cities of Gresham, Fairview, Troutdale, and Wood Village under the Intergovernmental Agreement, approved by Ordinance No. 166168 enacted on January 20, 1993, and as modified by subsequently approved amendments. Into this Fund shall be deposited all payments received from the cable franchisees of the County and the Cities, interest earned thereon while in this Fund and any other monies which are appropriate revenues of this Fund. The monies shall be expended only for purposes authorized under the Intergovernmental Agreement, and the Commission's approved budget.

5.04.530 Inclusionary Housing Fund.

(Added by Ordinance No. 187855, effective August 1, 2016.) The Inclusionary Housing Fund is hereby created to receive net revenues from the Construction Excise Tax. Disbursements from the fund shall be for the purposes identified in Section 6.08.130 of this Code. Except for those established purposes, in no case shall any funds be transferred from the Inclusionary Housing Fund to the City's General Fund, or any other fund, for any other purpose.

TITLE 5
REVENUE AND FINANCE

**CHAPTER 5.08 - PAYMENT OF SALARIES,
WAGES AND EXPENSES**

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- 5.08.010 Biweekly Pay Period.
- 5.08.020 Preparation and Certification of Biweekly Time Reports.
- 5.08.030 Computing Daily and Hourly Rates of Pay.
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- 5.08.105 Reimbursement to Employees in Educational Programs Authorized by Council.
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- 5.08.160 Delivery of Checks Payable to Deceased Persons.
- 5.08.170 Hold Harmless Agreements.
- 5.08.180 Effect of Death Upon Assignments and Levies.

5.08.010 Biweekly Pay Period.

All officers and employees of the City shall be paid for time earned and allowed under provisions of this Code. Such payments shall be biweekly. A pay period shall hereafter comprise 14 calendar days. Thursday, October 1, 1953, will be the first day and Wednesday, October 14, 1953, will be the last day of the first pay period; thereafter, each pay period will commence on Thursday and extend through the Wednesday of the second week.

5.08.020 Preparation and Certification of Biweekly Time Reports.

(Amended by Ordinance Nos. 132896, 136888, 147197 and 180917; effective May 26, 2007.)

- A.** It shall be the duty of the head of each appropriation unit to cause to be prepared, to approve, and to certify biweekly time reports for employees whose time deviates from standard biweekly hours and standard cost centers or when an employee is not to be paid, and cause the same to be transmitted to Central Payroll.

Biweekly time reports are not necessary for employees who worked their standard hours and whose time gets charged to the standard cost center. A payroll warrant will be automatically written for active employees whose standard time gets charged to their standard cost centers. However, each bureau manager shall submit a certification to the Accounting Division to the effect that all employees who will be paid and for whom no time report is submitted, did in fact, render the services to be paid.

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1. The Treasurer shall have notice of foreclosure sale posted on the property at least once, no less than four weeks before the sale.
 2. The posted notice shall contain the information required in Subsection 5.30.140 A.2.
- D.** Other notice. Notice shall be given to the Internal Revenue Service by registered or certified mail, at least 25 days prior to the sale.

5.30.150 Payment of Lien.

At any time prior to the foreclosure sale, a person with a recorded interest in the property may remove the property from the foreclosure list by paying in full the amount of the delinquent lien with penalties, interest, collection costs and sales costs incurred to date. If requested, notice that the property has been removed from the foreclosure sale shall be recorded in the County records in which the property is located.

5.30.160 Presale and Sale Conditions.

A bidder purchases the property “as is.” The City will not provide an opportunity for on-site inspection of the land or buildings.

5.30.170 Conduct of Foreclosure Sale.

(Amended by Ordinance No. 187833, effective June 15, 2016.)

- A.** The Treasurer shall prepare rules governing the conduct of the foreclosure sale. The rules shall be available at least 60 days prior to the foreclosure sale.
- B.** Each property shall be sold separately for its respective sales price.
- C.** Only bids in the amount of the sales price for a property are acceptable. If more than one bid equals or exceeds the sales price, the real property must be sold to the highest bidder.
- D.** If the sum received for the sale of the property under this Section exceeds the lien principal amount, plus interest, penalties and the cost of conducting the sale, the Treasurer shall apply the proceeds of the sale as follows:
 1. To the costs of conducting the sale.
 2. To the unpaid lien principal plus interest and penalties.
 3. To any persons with recorded interest in the property, in order of their priority.
 4. To the debtor or the debtor’s heirs or assigns.

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- E. Property which is not sold may again be offered for sale. The steps in Sections 5.30.130 through 5.30.240 shall be followed.

5.30.180 Waste, Improvements to the Property and Nuisance Abatement Procedures.
(Amended by Ordinance No. 187983, effective September 14, 2016.)

- A. The City shall not bear any responsibility or liability for damage or waste to the property or to any structures or fixtures during the redemption period. The purchaser shall assume all risk of such damage or waste.
- B. Purchaser may make improvements to or perform maintenance on the property during the redemption period. If the purchaser incurs costs for maintaining or improving the property during the redemption period and if the property is redeemed, the City Treasurer may reimburse all or part of the redemption penalty paid by the person redeeming the property to the purchaser.
- C. In the event the property becomes a public nuisance, the City may enforce any applicable nuisance abatement regulations. Nuisance abatement may result in additional assessments against the property, which may become the liability of the purchaser.
- D. The property may also become subject to special assessments.

5.30.190 Certificate of Sale and Notice of Sale to Property Owner.
(Amended by Ordinance Nos. 187833 and 187983, effective September 14, 2016.)

- A. After a foreclosure sale, the Treasurer shall promptly deliver a certificate of sale to the purchaser. The certificate of sale embodies the right to own the property at the end of the redemption period. The holder of a certificate of sale holds the certificate of sale subject to the rights of all persons having an interest in the property to redeem it, the right of the City to place additional liens on the property and the right of another unit of government to foreclose upon the property. All liability remains with the persons having an interest in the property until the City issues a deed at the end of the redemption period.
- B. The certificate of sale shall include the following information: a description of the delinquent account for which the property was sold; a description of the property; a statement of the amount for which it was sold; the redemption interest rate and the amount of the redemption penalty; the name of the purchaser; and, a statement that the property is being sold subject to the right of redemption within one year from the date of sale.
- C. The Treasurer shall send to the property owner and all persons known to have a recorded interest in the property a notice of the sale by registered or certified mail, within 10 business days after the sale. The notice shall contain the following information: the name of the purchaser; the right of redemption; the date the

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redemption period expires; the redemption price; and, the basis for calculating interest and penalties during the redemption period.

- D.** It shall be the responsibility of the purchaser to maintain a current address on file with the Auditor.

5.30.200 Entry of Collections and Sales.

- A.** The Treasurer shall return to the Auditor the foreclosure list with all collections and sales noted on it within three business days after the sale.
- B.** The Auditor shall enter the collections and foreclosure sales in the City lien docket. Thereafter, no transfer or assignment of any certificate of sale is valid unless such transfer or assignment is reported to the Auditor and recorded in the City lien docket.

5.30.210 Redemption.

(Amended by Ordinance No. 187983, effective September 14, 2016.)

- A.** Only persons having a recorded interest in the property, or their legal representative, may redeem the property within the redemption period. Purchasers have no redemption rights.
- B.** Property which has been sold at a foreclosure sale is not eligible for installment payments or a payment plan. Property may be redeemed only by payment in full. Redemption shall be subject to the payment to the Treasurer of the redemption price. The only acceptable form of payment shall be United States legal currency or cashier's check.
- C.** The Treasurer shall issue a receipt to the person redeeming the property and shall report the redemption to the Auditor. Redemption discharges the property from the effect of the sale.
- D.** If redemption is made by a lien creditor, the amount paid for redemption shall thereafter be deemed a part of the judgment, decree, mortgage or tax lien and shall bear like interest and may be enforced and collected as a part thereof.
- E.** Upon receipt of the redemption price, the Treasurer shall issue a check for the sales price amount paid by the holder of the certificate of sale as shown on the lien docket plus any accrued redemption interest and all or a portion of the redemption penalty. The check shall be delivered to the address provided to the City by the purchaser or any transferee or assignee.
- F.** The interest charged during the redemption period shall be set by ordinance. The redemption interest rate shall be set at a level which attracts bidders. The penalty charged during the redemption period shall also be set by ordinance. The

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redemption penalty shall be set at a rate to encourage payment by delinquent property owners.

- G.** If a property is redeemed at any time during the redemption period, the redemption period automatically terminates.

5.30.220 Issuance of Deed.

- A.** Upon expiration of the redemption period, the Treasurer shall execute a deed conveying the foreclosed property. The deed conveys to the grantee the legal and equitable title in fee simple excepting only the liens of the City or of other persons or entities which were not included in the foreclosure sale or other liens as provided by state law. The deed, however, shall not guarantee free or clear title.
- B.** The deed shall contain the following information: a description of the property; the date of sale; a statement of the amount of the delinquent account for which the property was sold; that the account was unpaid at the time of sale; and, that no redemption has been made.
- C.** The grantee shall be entitled to immediate possession upon delivery of the deed.

5.30.230 Payment of Taxes.

Property subject to delinquent property taxes may be sold by the County at a sheriff's sale. In the event the property is sold, the purchaser may lose all interest in the property. Any purchaser of property having delinquent property taxes may elect to pay the property taxes. There shall be no reimbursement from the City in the event of redemption by the property owner.

5.30.240 Sale of Property Purchased by City.

- A.** Any property purchased by the City from the foreclosure list may be sold as directed by the Council in the manner provided by Charter, Code or State law. Proceeds from the sale shall be used to reimburse the fund from which the property was purchased, any liens paid or other expenses incurred. Any remaining proceeds shall be placed in the assessment collection fund unless otherwise designated by Council.
- B.** In selling property as described in Subsection 5.30.240 A., except in situations where the purchaser agrees to accept a quit claim deed, the Treasurer shall purchase title insurance as a precondition of sale and shall pay the cost of the policy.

CHAPTER 5.33 - GOODS AND SERVICES

(Chapter replaced by Ordinance No. 180350,
effective August 25, 2006.)

Sections:

5.33.010	Definitions.
5.33.020	City Council as Local Contract Review Board.
5.33.030	Application of Purchasing Code.
5.33.040	Authority of Chief Procurement Officer.
5.33.060	Authority of Directors.
5.33.065	Authority for Stormwater Improvements.
5.33.070	Purchasing Goods, Services and Public Improvements from City Employees.
5.33.075	Affirmative Action.
5.33.076	Equal Employment Opportunity.
5.33.077	Equal Benefits.
5.33.080	Environmentally Preferable Procurement.
5.33.085	Preference for Goods Fabricated or Processed within State or Services Performed Within State.
5.33.090	Use of Price Agreements.
5.33.100	Overview of Source Selection and Contractor Selection.
5.33.105	Feasibility and Cost Analysis.
5.33.110	Qualified Rehabilitation Facilities.
5.33.120	Sole-Source Procurements.
5.33.130	Emergency Procurements.
5.33.135	Declaration of State of Emergency or Disaster.
5.33.140	Cooperative Purchasing.
5.33.145	Rules on all types of Cooperative Procurements.
5.33.150	Joint Cooperative Procurements.
5.33.160	Permissive Cooperative Procurements.
5.33.170	Interstate Cooperative Procurements.
5.33.180	Small Procurements.
5.33.190	Intermediate Procurements.
5.33.200	Competitive Sealed Bidding.
5.33.205	Multi-Step Sealed Bids.
5.33.210	Competitive Sealed Proposals.
5.33.211	Procedures for Competitive Range, Multi-Tiered and Multi-Step Proposals.
5.33.220	Special Procurements.
5.33.300	Public Notice of Solicitation for Contracts over \$150,000.
5.33.310	Specifications and Brand Names.
5.33.320	Bids or Proposals are Offers.
5.33.330	Facsimile Bids and Proposals.
5.33.340	Electronic Procurement.
5.33.350	Reverse Auctions.

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5.33.360	Contract Conditions.
5.33.400	Offer Preparation.
5.33.410	Bid or Proposal Security.
5.33.420	Pre-Offer Conferences.
5.33.430	Addenda to Solicitation Document.
5.33.440	Request for Clarification or Change.
5.33.450	Offeror Submission.
5.33.460	Pre-Closing Modification or Withdrawal of Offers.
5.33.470	Receipt, Opening and Recording of Offers.
5.33.480	Late Offers, Late Withdrawals and Late Modifications.
5.33.490	Mistakes.
5.33.495	Time for City Acceptance.
5.33.500	Responsibility of Offerors.
5.33.505	Qualified Products Lists.
5.33.510	Prequalification of Prospective Offerors; Pre-Negotiation of Contract Terms and Conditions.
5.33.530	Debarment of Prospective Offerors.
5.33.540	Disadvantaged, Minority, Woman, Service-Disabled Veteran or Emerging Small Business Enterprise Prohibited Conduct; Sanctions; Appeals.
5.33.610	Offer Evaluation and Award.
5.33.620	Negotiation With Offerors Prohibited.
5.33.625	Contract Preferences.
5.33.630	Reciprocal Preferences.
5.33.635	Contract Preferences: Recycled Materials.
5.33.640	Rejection of All or Part of an Offer.
5.33.645	Rejection of All Offers.
5.33.650	Notice of Intent to Award.
5.33.660	Cancellation, Delay or Suspension of Solicitation.
5.33.670	Disposition of Offers if Solicitation Canceled.
5.33.675	Documentation of Award.
5.33.685	Availability of Award Decisions.
5.33.690	Performance and Payment Security; Waiver.
5.33.695	Notification to State of Nonresident Contractor.
5.33.700	Protests and Judicial Review of Special Procurements.
5.33.710	Protests and Judicial Review of Sole-Source Procurements.
5.33.720	Protests and Judicial Review of Multi-Tiered Solicitations.
5.33.730	Protests and Judicial Review of Solicitation Documents and the Procurement Process.
5.33.740	Protests and Judicial Review of Contract Award.
5.33.750	Protests of Other Violations.
5.33.760	Review of Prequalification and Debarment Decisions.
5.33.770	Procurement Board of Appeals.
5.33.780	Powers of the Board.
5.33.790	Appeal to Board.

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- 5.33.900 Social Equity Contracting and Employment Programs.
- 5.33.920 Records Maintenance; Right to Audit Records.
- 5.33.930 Right to Inspect Plant or Place of Business.
- 5.33.940 Contract Cancellation, Contractor Termination Procedures.

5.33.010 Definitions.

(Amended by Ordinance Nos. 181547, 183445, 185898, 187373 and 187974, effective September 7, 2016.)

- A.** The following definitions apply to the City of Portland's Purchasing Authority, Policies and Rules as contained in this Chapter.
 - 1. Addendum or Addenda:** Additions or deletions to, material changes in, or general interest explanations of the City's Solicitation Documents.
 - 2. Advantageous:** In the City's best interests, as assessed according to the judgment of the City.
 - 3. Affected Person/Offeror:** A Person or Offeror whose ability to participate in a Procurement or Public Improvement Contract is adversely affected by the City.
 - 4. Amendment:** Additions or deletions to or material changes to a City Contract.
 - 5. Authorized Representative:** The owner of a sole proprietorship, a partner in a firm or partnership, or, a person authorized to bind a corporation's board of directors.
 - 6. Award:** The decision of the City to enter into a Contract with an Offeror.
 - 7. Bid:** A response to an Invitation to Bid.
 - 8. Bid or Proposal Bond/Bid or Proposal Security/Offer Security:** A means of securing execution of an Awarded Contract.
 - 9. Bidder:** An Offeror who submits a Bid in response to the City's Invitation to Bid.
 - 10. Chief Procurement Officer:** The individual, of their designee, in charge of the Procurement Services Division of the Office of Management and Finance.
 - 11. City:** The City of Portland, Oregon or designee.

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12. **Closing:** The date and time announced in the City’s Solicitation Document as the deadline for submitting Offers.
13. **Commercially Useful Function (CUF):** A function or service that the enterprise or business actually performs, for which a demand exists in the marketplace, and for which the enterprise or business receives payment that is proportionate to the work that the enterprise or business performs or that conforms with industry standards. CUF does not include acting as a broker to provide for other to perform work.
14. **Competitive Bidding:** A selection process that involves an advertised public notice, issuance of a Written Solicitation Document inviting Persons to submit Written, signed, and sealed Bids that are received in Procurement Services and publicly opened at a designated time and place.
15. **Competitive Negotiation:** A method of Contracting in which Proposal evaluation and Contract Award result from an open and competitive procedure, typically through the Request for Proposal process, in which evaluation criteria in addition to price are considered in Contractor selection.
16. **Competitive Range:** The number of Proposers the City will conduct discussions or negotiate with if the City intends to conduct discussions or negotiations in accordance with Chapter 5.33 or Chapter 5.34.
17. **Construction Manager/General Contractor (CM/GC):** An alternative contracting method, or a Person selected pursuant to that method, to perform a Public Improvement project. The method typically requires a Contractor to undertake design phase involvement, constructability reviews, value engineering, scheduling, estimating and acquiring subcontracting services, establishing a GMP to complete the Contract Work, acting as General Contractor, coordinating and managing the building process, and providing General Contractor expertise.
18. **Contract:** See definition for “Public Contract.”
19. **Contract Amount:** The total of the Awarded Bid or Proposal amount, including any approved alternates. The “original” Contract Amount is, depending on the context, the maximum amount that the City will pay for work performed pursuant to the Contract or an estimated amount when the amount is based on unit prices. The “final” Contract Amount is the amount that the City actually pays the Contractor after execution of change orders, Contract amendments, or variations in unit prices, which cause the original Contract price to increase or decrease.

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- 20. **Contract Execution:** Contract Execution occurs when the Contract is signed by any mark, word, or symbol, in ink, or using Electronic means by an Authorized Representative of an Offeror and the City.
- 21. **Contractor:** The Person with whom the City executes a Contract.
- 22. **Cost Estimate:** The City's most recent pre-solicitation, good faith assessment of anticipated Contract costs, consisting of either the estimate of an architect, engineer or other qualified professional, formal planning budgetary, or confidential cost calculation documents, where available.
- 23. **Days:** Calendar days, including weekdays, weekends and holidays, beginning at midnight and ending at midnight twenty-four hours later, unless otherwise specified by these rules or the Solicitation Document.
- 24. **Descriptive Literature:** Informational materials concerning available products or services submitted by Offerors in response to the City's Solicitation Document.
- 25. **Domestic Partner:** Any person who is registered with his or her employer as a domestic partner, or, in the absence of an employer-provided registry, is registered as a domestic partner with a governmental body pursuant to state or local law authorizing such registration and who is in fact a current domestic partner with the person with whom that person was registered. Any internal employer registry of domestic partnership must comply with criteria for domestic partnerships specified by rule by the Bureau.
- 26. **Electronic:** Any means of transmission of information by Electronic device, including but not limited to Electronic mail or Facsimile. A Facsimile or fax is a document that has been transmitted to the City over telephone lines and received by the City in a hard copy form by a device commonly known as a Facsimile machine.
- 27. **Electronic Advertisement:** A notice of the City's Solicitation Document or Request for Qualifications or information, or a request for price quotations, available over the Internet by:
 - a. the World Wide Web or some other Internet protocol; or
 - b. the City's Electronic Procurement System. An Electronic Advertisement may include a Solicitation Document.
- 28. **Electronic Offer:** A response to the City's Solicitation Document or request for price quotations submitted to the City via

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- a. the World Wide Web or some other Internet Protocol; or
 - b. the City’s Electronic Procurement System.
- 29. **Electronic Procurement System:** An information system that Persons may access through the Internet or that Persons may otherwise remotely access through a computer, that enables Persons to send Electronic Offers and the City to post Electronic Advertisements, receive Electronic Offers, and conduct other activities related to the City’s procurement of goods and services or construction services.
- 30. **Emergency:** Circumstances that:
 - a. could not have been reasonably foreseen;
 - b. create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and
 - c. require prompt execution of a Contract to remedy the condition.
- 31. **Equal Employment Opportunity (EEO):** An “Equal Employment Opportunity” Employer is one who does not engage in the discrimination prohibited by Federal law and who is registered as an EEO employer with the City of Portland.
- 32. **Equal Benefits (EB):** means the provision of the same or equivalent benefits to employees with spouses and employees with domestic partners, to spouses of employees and domestic partners of employees, and to dependents and family members of spouses and dependents and family members of domestic partners.
- 33. **Facsimile:** A document that has been transmitted to and received by the City in a format that is capable of being received by a device commonly known as a facsimile machine. A facsimile machine allows hard copy documents to be sent over telephone lines and be printed in another location.
- 34. **Goods:** Supplies, equipment, materials, personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, and combinations of any of the items identified in this definition.
- 35. **Goods and Services/Goods or Services:** Any combination of any of the items identified in the definitions of “goods” and “services”.

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- 36. **Invitation to Bid (ITB):** The Written document that invites offers from prospective contractors pursuant to either ORS 279B.055 or 279C.335.
- 37. **Life Cycle Costing:** A determination of the cost of a product for its estimated useful life, including without limitation acquisition costs, operation and maintenance costs, and disposal.
- 38. **Local Contract Review Board:** The Portland City Council, or designee.
- 39. **Nonresident Bidder:** A Bidder who is not a Resident Bidder.
- 40. **Offer:** A Written response to a Solicitation Document.
- 41. **Offeror:** A Person that submits an Offer.
- 42. **Opening:** The date, time and place announced in the Solicitation Document for the public Opening of Written, sealed Offers.
- 43. **Person:** An individual, corporation, business trust, estate, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity who has the legal capacity to enter into a Contract.
- 44. **Personal Services:** as used in these rules, means services performed under a Professional, Technical or Expert Services Contract governed by Chapter 5.68 or pursuant to ORS 279A.055.
- 45. **Prequalification:** Depending on the context, either the process followed by the City to determine the qualifications of an Offeror or the process to determine the suitability of particular Goods.
- 46. **Price Agreement:** A Contract for the Procurement of Goods or Services at a set price with:
 - a. No guarantee of a minimum or maximum purchase; or
 - b. An initial order or minimum purchase combined with a continuing Contractor obligation to provide Goods or Services, in which the City or other contracting agency does not guarantee a minimum or maximum additional purchase.
- 47. **Procurement:** The act of purchasing, leasing, renting or otherwise acquiring Goods or Services. Procurement includes each function and procedure undertaken or required to be undertaken by the City to enter into a Contract, administer a Contract and obtain the performance of a Contract under the State Public Contracting Code.

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- 48. **Procurement Services:** A division of the Bureau of Revenue and Financial Services in the City of Portland.
- 49. **Product Sample:** The exact goods, or a representative portion of the exact goods requested by a Solicitation Document.
- 50. **Proposal:** A Written response to a Request for Proposals.
- 51. **Proposer:** A Person who submits a Proposal in response to the City's Request for Proposals.
- 52. **Public Contract:** A sale or other disposal, or a purchase, lease, rental or other acquisition, by the City of personal property, services, including personal services, Public Improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement, but does not include "grants."
- 53. **Public Improvement:** A project for construction, reconstruction or major renovation on real property by or for the City. Public Improvements do not include projects for which no funds of the City are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection or Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement.
- 54. **Qualified Rehabilitation Facility (QRF):** A nonprofit community rehabilitation program or a vocational service provider whose purpose is to assist and encourage disabled individuals and which:
 - a. During the fiscal year employs disabled individuals for not less than 75 percent of the hours of direct labor required for the manufacture or provision of its products or services.
 - b. Shall be either a community rehabilitation program certified through the Oregon Vocational Rehabilitation Division or a vocational service provider certified through the Oregon Mental Health Division of the Department of Human Resources;
 - c. Meets the definition given in ORS 279.835(4); and
 - d. Shall be currently certified by the Oregon Department of Administrative Services (ODAS) as a QRF; i.e., is listed as a current certificate holder in the annual QRF Directory, published by ODAS.
- 55. **Repair and Maintenance:** Ordinary repairs and maintenance necessary to preserve a public improvement. Typically such repairs and maintenance do

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not prolong the lifespan of a public improvement nor increase its value beyond what was originally constructed.

- 56. **Request for Proposals (RFP):** All documents used for soliciting Proposals. In accordance with these rules, or when permitted by Chapter 5.34.
- 57. **Request for Qualifications (RFQ):** A Written document, issued by the City to prospective Contractors, that seeks a description of their experience and qualifications to perform certain identified Work that may or may not lead to the issuance of an RFP.
- 58. **Resident Bidder:** A Bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the Bid, has a business address in this state and has stated in the Bid whether the Bidder is a “Resident Bidder” as this is defined.
- 59. **Responsible Offeror, Bidder or Proposer:** A Person who has submitted an Offer, Bid or Proposal and who meets the standards set forth in Sections 5.33.500 or 5.34.500, as applicable, and who has not been debarred, disqualified, or who has not failed to prequalify when Prequalification is required by the Solicitation Document.
- 60. **Responsive Offer, Bid or Proposal:** An Offer, Bid or Proposal that substantially complies in all material respects with applicable Solicitation procedures and requirements and the Solicitation Document.
- 61. **Scope:** The range and attributes of the Goods or Services described in the applicable Procurement document.
- 62. **Services:** Services other than “personal” or “PTE” services covered by Chapter 5.68.
- 63. **Signature:** Any Written or Electronic mark, word or symbol that is made or adopted by a Person with the intent to be bound to a Contract.
- 64. **Signed:** As the context requires, the term “signed” means either that a Written document contains a Signature or that the act of making a Signature has occurred.
- 65. **Solicitation:** A request by the City for prospective Contractors to submit Offers.
- 66. **Solicitation Document:** An Invitation to Bid, Request for Proposals or other document issued to invite Offers from prospective Contractors pursuant to ORS Chapter 279B or 279C. All documents referenced by the

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Solicitation Document are included in, and part of, the Solicitation Document.

- 67. **Specification:** A description of the physical or functional characteristics, or of the nature of a supply, Services or construction item, including any requirement for inspecting, testing or preparing a supply, Services or construction item for delivery and quantities or qualities of materials to be furnished under a Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed.
- 68. **Subcontractor:** A Person, other than the Contractor's employee, hired by the Contractor to perform a portion of the Work required by the Contract.
- 69. **Work:** The furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item in a Contract or, in context, the entire Contract and the timely successful completion of all duties and obligations imposed by the Contract.
- 70. **Writing:** Letters, characters and symbols inscribed on paper by hand, print type or other method of impression, intended to represent or convey particular ideas or meanings. "Writing" when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters and symbols made in electronic form and intended to represent or convey particular ideas or meanings.
- 71. **Written:** Existing in Writing.

5.33.020 City Council as Local Contract Review Board.

(Amended by Ordinance Nos. 184403, 185065, 185898 and 187373, effective October 14, 2015.)

- A. Pursuant to ORS 279A.060, the City Council is designated as the Local Contract Review Board for the City. The City Council shall exercise all the powers and duties conferred upon it by State law, except to the extent that such powers and duties have been delegated by these rules, or by a separate ordinance, to others. In order to carry out its powers and duties, the City of Portland's Purchasing Authority, Policies and Rules, Chapter 5.33, and Chapter 5.34 are hereby adopted by City Council.
- B. The procedural rules of the City Council sitting as the Local Contract Review Board are the same as those regulating City Council as provided by Chapter 3.02.
- C. The Attorney General Model Public Contracting Rules do not apply to the City's Procurement of goods, services, and certain construction services. Instead, the rules contained in Chapter 5.33 apply to those Procurements. Similarly, the Attorney

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General Model Public Contracting rules for Construction do not apply, except with respect to CM/GC Procurements. Notwithstanding CM/GC Procurements, the Rules contained in Chapter 5.34 apply to the City's Public Improvements and construction services. It is the intent of these rules to permit the City to act to the full extent permitted by State law. To the extent that the rules adopted in Chapters 5.33 and 5.34 appear to give the City less authority than State law, then State law shall prevail and the City may act to the full extent permitted by State law.

- D.** The City Council reserves to itself the authority to authorize Contract amendments in excess of 25 percent for Contracts whose original Contract Amount was \$500,000 or more or whose total Contract price after an amendment would exceed \$500,000.
- E.** The City Council shall authorize all intergovernmental agreements by ordinance pursuant to ORS Chapter 190, except those to whom authority has been delegated pursuant to Subsection 5.33.040 C.

5.33.030 Application of Purchasing Code.

(Amended by Ordinance Nos. 181547, 183445, 185065 and 185898, effective February 20, 2013.)

- A.** The procurement methods stated in Chapter 5.33 are applicable to the purchase of Goods or Services, or both, but are not applicable to the following:
 - 1.** Contracts or agreements to which the State Purchasing Code, ORS Chapters 279A, 279B and 279C, does not apply;
 - 2.** Contracts between the City and:
 - a.** Another "contracting agency" as defined by ORS 279A.010;
 - b.** The Oregon Health and Science University;
 - c.** The Oregon State Bar;
 - d.** A governmental body of another state;
 - e.** The federal government;
 - f.** An American Indian tribe or an agency of an American Indian tribe;
 - g.** A nation, or a governmental body in a nation, other than the United States; or
 - h.** An intergovernmental entity formed between or among governmental bodies of this or another state, the federal

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government, an American Indian tribe or an agency of an American Indian tribe, a nation other than the United States or a governmental body in a nation other than the United States.

3. Contracts pursuant to 10 U.S.C. § 381 (relating to law enforcement equipment suitable for counter-drug activities through the Department of Defense), the Electronic Government Act of 2002 (relating to automated data processing equipment, including firmware, software, supplies, support equipment, and services from federal supply schedules), or other federal law that the City Council determines are similar to those Acts in effectuating or promoting transfers of property to the City;
4. Contracts, agreements or other documents entered into, issued or established in connection with:
 - a. The incurring of debt by a public body, including but not limited to the issuance of bonds, certificates of participation and other debt repayment obligations, and any associated Contracts, agreements or other documents, regardless of whether the obligations that the Contracts, agreements or other documents establish are general, special or limited;
 - b. The making of program loans and similar extensions or advances of funds, aid or assistance by a public body to a public or private body for the purpose of carrying out, promoting or sustaining activities or programs authorized by law; or
 - c. The investment of funds by a public body as authorized by law, and other financial transactions of a public body that by their character cannot practically be established under the competitive Contractor selection procedures of Sections 5.33.100 through 5.33.225;
5. Professional, technical and expert Contracts governed by Chapter 5.68, and any other Contract specifically designated as a Personal Service Contract by the City Council;
6. Grants, defined as follows:
 - a. An agreement under which:
 - (1) the City receives moneys, property or other assistance, including, but not limited to, federal assistance that is characterized by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities, or other assets;

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- (2) The assistance received by the City is from a grantor for the purpose of supporting or stimulating a program or activity of the City; and
 - (3) No substantial involvement by the grantor is anticipated in the program or activity other than involvements associated with monitoring compliance with grant conditions; or
 - b. An agreement under which:
 - (1) The City provides moneys, property or other assistance, including by not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets;
 - (2) The assistance is provided to a recipient for the purpose of supporting or stimulating a program or activity of the recipient; and
 - (3) No substantial involvement by the City is anticipated in the program or activity of the recipient other than involvement associated with monitoring compliance with the grant conditions.
- 7. Acquisitions or disposals of real property or interests in real property;
- 8. Sole source expenditures when rates are set by law or ordinance for purposes of these rules concerning source selection;
- 9. Revenue Generating Contracts: Contracts whose primary purpose is generating revenue and are typically Awarded to the Offeror proposing the most Advantageous or highest monetary Offer to the City, or both, except to the extent of the Chief Procurement Officer's authority as stated in Section 5.33.040. The City Council may designate a particular Contract as a revenue-generating Contract;
- 10. Contracts for Sale of Advertising in City Publications. The right to advertise in City publications may be sold without Competitive Bidding. The City may utilize this exclusion when it publishes material and wants to recoup part of the cost by selling advertising to be placed in that publication. The revenue generated from the sale of advertising shall be applied to the cost of the publication;

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11. Contracts for Public Improvements, which are governed by Chapter 5.34, unless expressly referenced in Chapter 5.33.

5.33.040 Authority of Chief Procurement Officer.

(Amended by Ordinance Nos. 181547, 183445, 184403, 185065, 185898, 187373 and 187974, effective September 7, 2016.)

- A. For Contracts covered by Chapters 5.33 and 5.34, the Chief Procurement Officer is authorized to:
 1. Advertise for Bids or Proposals for Goods and Services without specific authorization from City Council, when the anticipated amount is included within the current fiscal year budget and is \$500,000 or less.
 2. Award and execute Contracts for the purchase or lease of Goods and Services, without specific authorization by ordinance of City Council whenever the Contract Amount is \$500,000 or less.
 3. Award and execute Price Agreements for the purchase or lease of Goods and Services, including revenue producing services, if the yearly estimated cost to the City, or the yearly estimated revenue or value is \$500,000 or less.
 4. Recommend the Award of a Contract for Goods and Services, including revenue producing services by a report to City Council for Contracts in excess of \$500,000. If the City Council adopts the recommendation, it shall approve the Award by ordinance.
 5. Advertise for Bids or Proposals for Goods and Services when the proposed purchase is not included within the current fiscal year budget and the anticipated Contract Amount exceeds \$500,000 when City Council approves of the purchase by Ordinance. Thereafter, the Chief Procurement Officer may award and execute a Contract if the Contract Amount is \$500,000 or less. If the Contract Amount exceeds \$500,000 the Chief Procurement Officer shall recommend the Award of a Contract by report to City Council.
 6. Authorize and execute amendments for Contracts, Price Agreements and Intergovernmental Agreements involving the procurement of Goods and Services that were originally executed in accordance with Chapters 5.33 and 5.34 as follows:
 - a. Amendments not exceeding 25 percent of the original Contract Amount.
 - b. Amendments exceeding 25 percent of the original Contract Amount, provided that the amended Contract Amount does not exceed

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\$500,000 and the director of the bureau in whose behalf of the Contract was issued concurs.

- c. Execute amendments to Price Agreements if the yearly estimated cost to the City is \$500,000 or less.
 - d. Amendments whenever an ordinance approved by the City Council grants additional authority to the Chief Procurement Officer beyond that stated in these rules.
 7. Authorize final payment for a Procurement of Goods and Services after confirming that all Work is completed and accepted by the City, as follows:
 - a. Whenever the final Contract Amount does not exceed 25 percent of the original Contract Amount; or
 - b. Whenever the final Contract Amount exceeds 25 percent of the original Contract Amount, provided that the final Contract Amount is less than \$500,000 and the Director of the Bureau on whose behalf the Contract was issued concurs.
 8. Adopt forms, procedures, and administrative rules for all City purchases of Goods and Services regardless of amount. The City shall use the forms, procedures and administrative rules unless they conflict with the City Code.
 9. Establish a procedure providing appropriate financial control over the authorization provided by Sections 5.33.055 and 5.33.060.
 10. Revoke or place conditions on the authority of directors and officers to issue limited purchase orders obligating the City for purchase of materials or services not to exceed \$10,000, in the event of violations of these rules.
 11. Perform such other duties as directed by the Portland City Code, City Council or the Commissioner-in-Charge of Procurement Services.
 12. Delegate the Chief Procurement Officer's authority under this Chapter in accordance with City practices.
 13. Resolve protests of Contract Award decisions and other matters as required by City Code.
- B.** The Chief Procurement Officer is responsible for and shall make all purchases in accordance with State law, City Charter, and the City of Portland's Purchasing Authority, Policies and Rules, Chapters 5.33 and 5.34.

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- C.** In addition to the delegation of authority provided in Paragraph A. above, the Chief Procurement Officer is authorized to:
 - 1.** Award, execute and amend Intergovernmental Agreements as (IGAs), provided the cost to the City does not exceed \$5,000;
 - 2.** Award, execute and amend Revenue Generating Contracts; and
 - 3.** Award, execute and amend any other Contracts, Price Agreements and IGAs when authorized by an ordinance adopted by City Council.
- D.** Notwithstanding the grant of authority above, the Chief Procurement Officer may forward any contract or agreement to the City Council for approval.

5.33.050 Authority for Golf Concession Contracts.
(Repealed by Ordinance No. 187373, effective October 14, 2015.)

5.33.055 Authority of Appropriation Unit Managers.
(Repealed by Ordinance No. 187373, effective October 14, 2015.)

5.33.060 Authority of Directors.
(Amended by Ordinance Nos. 183445, 185898, 187373 and 187974, effective September 7, 2016.) Directors of Bureaus or Offices are authorized to:

- A.** Execute Contracts obligating the City for purchases of Goods and Services for use by their bureau in an amount not to exceed \$10,000 for a single transaction as specified in Section 5.33.180. Procurements shall not be artificially divided or fragmented so as to constitute Procurements under \$10,000.
- B.** Execute Contracts whenever an ordinance approved by the City Council grants additional authority to a Bureau Director beyond that stated in these rules.
- C.** Authorize the awarding of grants not to exceed \$5,000 when the proposed grant is included within the current fiscal year budget. Amendments to grants that increase the grant amount may occur only when the additional amount is included within the current fiscal year budget or as otherwise adopted by the City Council by ordinance.

5.33.065 Authority for Stormwater Improvements.
(Added by Ordinance No. 184403, effective February 2, 2011.) The Director of the Bureau of Environmental Services is authorized to execute contracts for stormwater improvements not to exceed \$200,000 for stormwater management improvement projects on private property when such projects are authorized as a Special Procurement. The Director of the Bureau of Environmental Services is also authorized to execute amendments to these agreements, provided the amendments do not cause the contract amount to exceed \$200,000.

5.33.070 Purchasing Goods, Services and Public Improvements from City Employees.
(Amended by Ordinance Nos. 181547, 183445, 185898 and 187373, effective October 14, 2015.)

- A.** Purchasing From City Employees. The Chief Procurement Officer, City Official or City employee shall not make any purchase of Goods and Services from any City employee, or any business with which a City employee is associated, except as follows:
 - 1.** When the purchase is expressly authorized by ordinance; or
 - 2.** During a state of Emergency as provided by Chapters 15.04 and 15.08; and when approved in Writing by the Mayor, or the person performing the Mayor's duties, under those Chapters.
- B.** "Business with which a City employee is associated" means any business in which the City employee is a director, officer or owner.
- C.** In any situation in which the Chief Procurement Officer believes that a purchase would cause an appearance of impropriety, regardless of whether the purchase is authorized by this or any other code provision, the Chief Procurement Officer may condition the proposed purchase on approval by Council.

5.33.075 Affirmative Action.
(Amended by Ordinance Nos. 184403 and 187974, effective September 7, 2016.)

- A.** Pursuant to ORS 279A.100, the City may limit competition on Contracts for Goods and Services, or on other Contracts with an estimated cost of \$50,000 or less to carry out affirmative action policies, in accordance with policies and procedures established by the City.
- B.** Pursuant to ORS 279A.105, the City may require a Contractor to Subcontract some part of a Contract to, or to obtain materials to be used in performing the Contract from:
 - 1.** A business enterprise that is certified under ORS 200.055 as an emerging small business; or
 - 2.** A business enterprise that is:
 - a.** Certified under ORS 200.055 as an emerging small business; and
 - b.** Is located in or draws its workforce from economically distressed areas, as designated by the Oregon Economic and Community Development Department (OECD); or

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- c. Owned or controlled by a disabled veteran, as defined in ORS 408.225.
- C. A Subcontractor certified under ORS 200.055 as an emerging small business is located in or draws its workforce from economically distressed areas if:
 - 1. Its principal place of business is located in an area designated as economically distressed by the OECDD pursuant to administrative rules adopted by the OECDD; or
 - 2. The Contractor certifies in Writing to the City that a substantial number of the Subcontractor's employees or Subcontractors that will manufacture the goods or complete the services under the Contract reside in an area designated as economically distressed by the OECDD pursuant to administrative rules adopted by OECDD. For the purposes of making the foregoing determination, the City shall determine in each particular instance what proportion of a Contractor's Subcontractor's employees or Subcontractors constitute a substantial number.
 - 3. The City shall include in each Solicitation Document a requirement that Offerors certify in their Offers in a form prescribed by the City, that the Offeror has not and will not discriminate against a Subcontractor in the Awarding of a subcontract because the Subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055.
- D. The City may sanction a Person from consideration of Award of the City's Contracts under ORS 200.065 or ORS 200.075 in accordance with these rules.

5.33.076 Equal Employment Opportunity.

(Added by Ordinance No. 187373, effective October 14, 2015.)

- A. It is unlawful to discriminate on the basis of race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation or source of income in programs, activities, services, benefits, and employment whether carried out by the City of Portland, directly or through a contractor or any other entity with whom the City of Portland arranges to carry out its programs and activities except as allowed by federal law, rules and regulations.
- B. Any person, vendor, contractor, or entity of any type must be registered with the City of Portland as an EEO Employer in order to be eligible to be awarded any Contract.
- C. Procurement Services has the authority to adopt rules, establish standards and procedures it deems necessary to effectively carry out this program

- D.** Contractors and Subcontractors shall provide all information requested by the City to assist it in performing its duties.
- E.** If the City receives a complaint filed by any person or entity that alleges prohibited discrimination by a Contractor or Subcontractor, or when information comes into its possession indicating that a Contractor or Subcontractor may have engaged in prohibited discrimination, the City may conduct an investigation to determine whether the complaint or the information is correct.

5.33.077 Equal Benefits.

(Added by Ordinance No. 187373, effective October 14, 2015.)

- A.** No contractor on a City Contract shall discriminate by policy or practice in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse, subject to the following exceptions:
- B.** Procurement Services has the authority to adopt rules, establish standards and procedures it deems necessary to effectively carry out this program in a manner, but not limited to the following:
 - 1.** Examine contractor's benefit programs;
 - 2.** Allow for remedial action after a finding of non-compliance;
 - 3.** Determine and impose appropriate sanctions or remedies by contractors including, but are not limited to:
 - a.** Disqualification of the contractor from bidding on or being awarded a City Contract for a period of up to 3 years; and
 - b.** Contractual remedies, including, but not limited to, termination of the Contract.
 - c.** Impose other appropriate contractual and civil remedies and sanctions for violations.
 - 4.** Impose other appropriate contractual and civil remedies and sanctions for violations.
- C.** The City shall not execute or award a Contract with a contractor unless such contractor has agreed not to discriminate in the provision of employee benefits as provided for in this Chapter.

5.33.080 Environmentally Preferable Procurement.

(Amended by Ordinance Nos. 181547, 183445, 185898 and 187373, effective October 14, 2015.)

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A. Definitions:

1. "Alternative Environmentally Preferable Paper" is paper with environmental attributes beyond those of the U.S. Environmental Protection Agency's (EPA) Comprehensive Procurement Guidelines (CPG). These attributes include paper that is unbleached or is bleached without the use of chlorine compounds, goes beyond the EPA CPG post-consumer recycled content standard, is not derived from genetically modified organisms, or is made with fibers that come from certified, well managed forests, agricultural residues, sustainably-produced tree-free crops, or recycled non-tree fibers.
2. "Biodegradable" means capable of being broken down, especially into innocuous products, by the action of living things such as microorganisms.
3. "Energy Star® compliant" products mean products that meet or exceed the U.S. Environmental Protection Agency's (EPA) Energy Star® criteria for energy efficiency.
4. "Environmentally Preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.
5. "Industrial Oil" means any compressor, turbine or bearing oil, hydraulic oil, metal-working oil or refrigeration oil.
6. "Life Cycle Analysis" means the comprehensive examination of a product's environmental and economic aspects and potential impacts throughout its lifetime, including raw material extraction, transportation, manufacturing, use, and disposal.
7. "Lubricating Oil" means any oil intended for use in an internal combustion crankcase, transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equipment or machinery powered by an internal combustion engine.
8. "Post-Consumer Waste," means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item. "Post-consumer waste" does not include manufacturing waste.
9. "Price Premium Payback Period" means the number of years it takes for the savings in operating costs to offset any additional upfront price of the

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product versus a lower price, less-energy efficient model. It is calculated by dividing the price premium by the annual savings in operating costs.

10. "Readily Biodegradable" shall be defined according to the Organization for Economic Cooperation and Development's (OECD) measurement guidelines.
11. "Reblended Latex Paint" or consolidated latex paint, contains 100 percent post-consumer content from good-quality surplus with no virgin materials such as resins and colorants added.
12. "Recyclable Product" means a product that, after its intended end use, can demonstrably be diverted from the solid waste stream for use as a raw material in the manufacture of another product, preferably higher value uses.
13. "Recycled Latex Paint," or reprocessed latex paint, means latex paint with a post-consumer recycled content level that at a minimum meets the requirements specified by the Environmental Protection Agency's (EPA) Recovered Materials Advisory Notice (RMAN) for reprocessed latex paint.
14. "Recycled Material" means any material that would otherwise be a useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.
15. "Recycled Oil" means used oil that has been prepared for reuse as a petroleum product by refining, reclaiming, reprocessing or other means provided that the preparation or use is operationally safe, environmentally sound and complies with all laws and regulations.
16. "Recycled Paper" means a paper product with not less than:
 - a. Fifty percent of its fiber weight consisting of secondary waste materials; or
 - b. Twenty-five percent of its fiber weight consisting of post-consumer waste.
17. "Recycled PETE" means post-consumer polyethylene terephthalate material.
18. "Recycled Product" means all materials, goods and supplies, not less than fifty percent of the total weight of which consists of secondary and post-consumer waste with not less than ten percent of its total weight consisting of post-consumer waste. "Recycled product" includes any product that

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could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form.

19. "Reusable Product" means a product, such as a washable food or beverage container or a refillable ballpoint pen, that can be used several times for an intended use before being discarded.
 20. "Secondary Waste Materials" means fragments of products or finished products of a manufacturing process that has converted a virgin resource into a commodity of real economic value. "Secondary waste materials" includes post-consumer waste. "Secondary waste materials" does not include excess virgin resources of the manufacturing process. For paper, "secondary waste materials" does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process.
 21. "Used Oil" means a petroleum-based oil which through use, storage or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.
 22. "Virgin Oil" means oil that has been refined from crude oil and that has not been used or contaminated with impurities.
 23. "VOC" (Volatile Organic Compound) means an organic compound characterized by a tendency to readily evaporate into the air, contributing to indoor air pollution and photochemical smog.
- B.** Environmentally Preferable Procurement General Policy. In developing plans, drawings, work statements, specifications, or other product descriptions, the City shall insure, to the maximum extent economically feasible, the purchase of environmentally preferable products or services that comply with the City's Sustainable City Principles. This includes, but is not limited to, products that are durable, recyclable, reusable, readily biodegradable, energy efficient, made from recycled materials, and nontoxic. In doing so, the City shall purchase products and services based on long-term environmental and operating costs, and find ways to include environmental and social costs in short-term prices. Furthermore, the City shall first seek to reuse, repair, or refurbish existing equipment and products prior to purchasing new, to the extent reuse is fiscally sound and complements other City safety and sustainability policies.
- C.** Recycled Materials and Products Price Preference.

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1. In accordance with ORS 279A.125, notwithstanding provisions of law requiring the City to award a contract to the lowest responsible bidder or best proposer or provider of a quotation, and subject to Subsection 5.33.080 C.2., the City shall give preference to the procurement of goods manufactured from recycled materials.
 2. In comparing goods from two or more Bidders or Proposers, and at least one Bidder or Proposer offers goods manufactured from recycled materials, and at least one Bidder or Proposer does not, the City shall select the Bidder or Proposer offering goods manufactured from recycled materials if each of the following conditions exists:
 - a. The recycled product is available;
 - b. The recycled product meets applicable standards;
 - c. The recycled product can be substituted for a comparable non-recycled product;
 - d. The recycled product's costs do not exceed the costs of non-recycled products by more than five percent, or higher if a written determination is made by the City and set forth in the Solicitation Document. For purposes of making the foregoing determination, the City shall consider the costs of the goods following any adjustments the City makes to the price of the goods for purposes of evaluation pursuant to Section 5.33.610; and
 - e. Offerors, when required in the Solicitation Document, certify in their submitted Offers the minimum, if not exact, percentage of post-consumer waste and total recovered materials content in the products offered.
- D. Purchasing Environmentally Preferable Paper & Related Equipment.**
1. The City shall procure recycled content paper and other alternative environmentally preferable paper according to the City's Sustainable Paper Use policy (Resolution No. 36146).
 2. In accordance with the City's Sustainable Paper Use Policy, the City shall procure printers, copiers, and fax machines that, at a minimum, have duplex capability.
- E. In accordance with ORS 279B.240 the City shall ensure that its procedures and specifications for the procurement of lubricating oil and industrial oil do not**

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exclude recycled oils and do not require oils to be manufactured from virgin materials.

- F.** Procurement practices regarding recyclable and reusable goods. The City shall ensure, to the maximum extent economically feasible, the procurement of goods that may be recycled or reused when discarded.
- G.** Purchasing Energy Efficient Products.
 - 1.** As available, the City shall procure products that meet or exceed Energy Star® criteria for energy efficiency. This applies to:
 - a.** any equipment that uses electricity, natural gas, or fuel oil; and
 - b.** products that indirectly impact energy use, such as, but not limited to, windows, doors and skylights.
 - 2.** City procurement language for such products described in Subsection 5.33.080 G.1. shall request from vendors:
 - a.** Evidence that the equipment meets or exceeds the Energy Star® criteria for energy efficiency; and
 - b.** Savings analyses including: energy (kWh/yr, therms/yr, gallons of gasoline/yr, etc.), operating costs (\$/yr), and the price premium payback (years).
 - 3.** Price Differential and Payback Period: While many Energy Star® compliant products are currently available for no price premium, should a price differential exist, the City will apply a simple life cycle cost analysis. Purchases where the price premium payback period is within 10 years or less shall be encouraged. Where the price premium payback period is longer than 10 years, Energy Star® compliant products may still be used; however, the City shall not be obligated to purchase and use Energy Star® compliant products in those circumstances.
- H.** Purchasing Interior/Exterior Architectural Paint Products.
 - 1.** All paint must be low-VOC by complying with the current standards set forth by the California South Coast Air Quality Management District Rule 1113 for Architectural Coatings.
 - 2.** Recycled or rebled latex paint with low-VOC properties, as demonstrated by periodic tests conducted by the manufacturer, shall be given preference and used whenever feasible to the extent that the price differential between the recycled or rebled and virgin latex paint does

not exceed the five percent price preference set forth in Subsection 5.33.080 C.

3. To reduce waste and support the recycled latex paint market, all surplus latex paint shall be recycled using a local latex paint recycling program. Surplus paint includes all latex paint in excess of quantities stored for touch-up purposes. Latex paint stored for touch-up purposes may not exceed 5 percent or 5 gallons, whichever is smaller, by volume, to the nearest gallon.

5.33.085 Preference for Goods Fabricated or Processed Within State or Services Performed Within State.

(Added by Ordinance No. 185898, effective February 20, 2013.) Notwithstanding provisions of law requiring the City to award a contract to the lowest responsible bidder or best proposer or provider of a quotation, a contracting agency that uses public funds to procurement goods or services for a public use under ORS Chapter 279B may give preference to procuring goods that are fabricated or processed entirely within this state, or services that are performed entirely within this state.

- A. If the goods or services cost is not more than 10 percent more than goods that are not fabricated or processed entirely within this state a preference may be given. If more than one bidder or proposer qualifies for the preference described in this Subsection, the City may give a further preference to a qualifying bidder or proposer that resides in or is headquartered in this state.
- B. The City may set a higher percentage than the percentage set forth above if the City, in a written determination to support the order, finds good cause to set the higher percentage and explains the City's reasons and evidence for the finding.
- C. This Section does not apply to emergency work, minor alterations, ordinary repairs or maintenance work for public improvements or to other construction contracts as described in ORS 279C.

5.33.090 Use of Price Agreements.

(Amended by Ordinance Nos. 183445 and 187373, effective October 14, 2015.) If the City Awards a Price Agreement or executes a requirements contract that will allow the City to purchase whatever quantity it needs from a Contractor, then City Bureaus shall make their purchases from that Contract unless the Chief Procurement Officer grants an exemption to that requirement. Price Agreements resulting from a participating agreement utilizing a cooperative agreement through another agency are exempt from this requirement.

5.33.100 Overview of Source Selection and Contractor Selection.

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A. The City shall Award a Contract for Goods and Services covered by this Code using any method authorized by State law or City Code. Such different methods are

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called methods of “source selection.” Source selection methods include Cooperative Procurements, Competitive Sealed Bidding, Competitive Sealed Proposals and small, intermediate, sole source, Emergency and Special Procurements.

- B.** State law requires the City to use the services of Qualified Rehabilitation Facilities (QRF's) in certain instances. When required, the City shall use a QRF pursuant to Section 5.33.110 before proceeding with a purchase through other methods of source selection.
- C.** Once the appropriate source selection method has been chosen, the City may consider the best process of selecting a Contractor within the source selection method it has chosen.
- D.** The City may employ methods of Contractor selection for the Procurement of Goods and Services by using any process authorized by State law, including multi-tiered processes as set forth in Subsection 5.33.210 B.6.d., including, but not limited to:
 - 1.** An Award or Awards based solely on the ranking of Proposals;
 - 2.** Discussions leading to best and final Offers in which the City may not disclose private discussions leading to best and final Offers;
 - 3.** Discussions leading to best and final Offers, in which the City may not disclose information derived from Proposals submitted by competing Proposers;
 - 4.** Serial negotiations, beginning with the highest ranked Proposer;
 - 5.** Competitive simultaneous negotiations;
 - 6.** Multiple-tiered competition designed to identify, at each level, a class of Proposers that fall within a Competitive Range or to otherwise eliminate from consideration a class of lower ranked Proposers;
 - 7.** A multi-step Request for Proposals requesting the submission of un-priced technical submittals, and then later issuing a Request for Proposals limited to the Proposers whose technical submittals the City had determined to be qualified under the criteria set forth in the initial Request for Proposals; or
 - 8.** Any combination of methods described in Subsections 5.33.100 D.1. - 7. or as otherwise adopted by the City Council by ordinance.
- E.** The methods of Contractor selection identified in Subsection 5.33.100 D. shall conform to the procedures identified in these rules.

- F.** The Chief Procurement Officer is authorized, but not required, to waive any nonconformity with the rules of Contractor selection if the Chief Procurement Officer determines that the defect was minor and likely would not have had an effect on the outcome of the selection process.

5.33.105 Feasibility and Cost Analysis.

(Added by Ordinance No. 183445; Amended by Ordinance No. 185065, effective January 1, 2012.)

- A.** For purposes of this rule, the term “bureau” means a department, bureau, office or other subdivision of the City of Portland.
- B.** Before conducting a procurement that pertains exclusively for services other than professional services, and which is estimated to exceed \$250,000, the bureau shall conduct an analysis to determine if it is feasible to use the City’s own personnel or resources to perform the same services. The City may determine that it is not feasible if:
- 1.** The bureau needing the services lacks the specialized capabilities, experience or technical or other expertise necessary to perform the services. In making this finding, the City shall compare the bureau’s capability, experience or expertise in the field most closely involved in performing the services with a potential contractor’s capability, experience or expertise in the same or a similar field; or
 - 2.** Special circumstances require the bureau to procure the services by contract. Special circumstances may include, but are not limited to, circumstances in which:
 - a.** The terms under which the bureau receives a grant or other funds for use in a procurement require the bureau to obtain services through an independent contractor;
 - b.** Other state or federal law requires the bureau to procure services through an independent contractor;
 - c.** The procurement is for services that are incidental to a contract for purchasing or leasing real or personal property, including service and maintenance agreements for equipment that is leased or rented;
 - d.** The bureau cannot accomplish policy, administrative or legal goals, including but not limited to avoiding conflicts of interest or ensuring independent or unbiased findings in cases when using the bureau’s existing personnel or persons the bureau could hire through a regular or ordinary process would not be suitable;

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- e. The procurement is for services to which the provisions of ORS 279B.080 (emergency procurements) apply;
 - f. The procurement is for services, the need for which is so urgent, temporary or occasional that attempting to perform the services with the bureau's own personnel or resources would cause a delay that would frustrate the purpose for obtaining the services; or
 - g. The services the bureau intends to procure will be completed within six months after the date on which the contract for the services is executed.
- C. If it is determined it is not feasible to acquire the services with the bureau's own personnel or resources, a written determination shall be made and kept in the City's procurement file. If it is determined it is feasible to acquire the services with the bureau's own personnel or resources, the bureau shall conduct a cost analysis as set forth in Subsections 5.33.105 D. – F. below.
- D. The bureau shall first estimate the bureau's cost of performing the services, including:
 - 1. Salary or wage and benefit costs for contracting agency employees who are directly involved in performing the services, including employees who inspect, supervise or monitor the performance of the services.
 - 2. Material costs, including costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies.
 - 3. Costs incurred in planning for, training for, starting up, implementing, transporting and delivering the services and costs related to stopping and dismantling a project or operation because the contracting agency intends to procure a limited quantity of services or procure the services within a defined or limited period of time.
 - 4. Miscellaneous costs related to performing the services. The contracting agency may not include in the cost analysis the contracting agency's indirect overhead costs for existing salaries or wages and benefits for administrators or for rent, equipment, utilities and materials except to the extent that the costs are attributable solely to performing the services and would not exist unless the contracting agency performs the services.
- E. After estimating the bureau's costs, the bureau shall estimate the cost a potential contractor would incur in performing the services. The bureau may estimate a contractor's potential costs by any reasonable means, including, but not limited to, past bids or current information provided by contractors performing the same or similar services. In the absence of information that can be reasonably and simply

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obtained without the expenditure of undue time and expense, a bureau may employ employing percentage markups for overhead and profit. No matter the method, the bureau's estimate should ensure it captures the following costs:

1. Average or actual salary or wage and benefit costs for contractors and employees who:
 - a. Work in the industry or business most closely involved in performing the services that the contracting agency intends to procure; and
 - b. Would be necessary and directly involved in performing the services or who would inspect, supervise or monitor the performance of the services;
 2. Material costs, including costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies; and
 3. Miscellaneous costs related to performing the services, including but not limited to reasonably foreseeable fluctuations in the costs for the items identified in this subsection over the expected duration of the procurement.
 4. Profit Included. Contracting Costs include the Authorized Agency's estimate of Contractor's profit in addition to the estimate of Contractor's costs under Subsection 5.33.105 E. If the Authorized Agency, in the reasonably near past, received Bids or Proposals for the performance of the Services under consideration, or reasonably comparable services, the Authorized Agency may consider the pricing offered in those Bids or Proposals in making its estimate. Similarly, the Authorized Agency may consider what it actually paid under a Contract for the same or similar services. For the purposes of these examples, the reasonably near past is limited to Contracts, Bids or Proposals entered into or received within the five (5) years preceding the date of the cost estimate. The Authorized Agency must take into account, when considering the pricing offered in previous Bids, Proposals, or Contracts, adjustments to the pricing in light of measures of market price adjustments that apply to the Services, such as the Consumer Price Indexes.
- F. After comparing the estimate of the bureau's costs with a potential contractor's costs, a bureau may proceed with the procurement only if the contracting agency would incur more cost in performing the services with the contracting agency's own personnel and resources than the contracting agency would incur in procuring the services from a contractor.

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1. Notwithstanding the fact that a potential contractors' cost may be less, the state legislature has decided that a bureau cannot proceed with the procurement if the sole reason the bureau's estimated costs are lower than a potential contractor's estimated costs is because the bureau's costs for salary or wage and benefit costs for the bureau's employees, as calculated in Subsection 5.33.105 D.1. above is greater than the average or actual salary or wage and benefits costs for contractors and employees, as calculated in Subsection 5.33.105 E.1. above.
2. A bureau may proceed with a procurement even if the bureau determines that the bureau would incur less cost in providing the services with the contracting agency's own personnel and resources if at the time the bureau intends to conduct a procurement, the bureau lacks personnel and resources that are necessary to perform the services within the time in which the services are required. If the contracting agency conducts a procurement under the conditions described in this paragraph, the contracting agency shall:
 - a. Keep a record of the cost analysis and findings that the contracting agency makes for each procurement the contracting agency conducts under this section, along with the basis for the contracting agency's decision to proceed with the procurement; and
 - b. Collect and provide copies of the records described in Subsection 5.33.105 F.2.a. each calendar quarter to the City Council.

5.33.110 Qualified Rehabilitation Facilities.

(Amended by Ordinance No. 185898, effective February 20, 2013.)

A. As used in Section 5.33.110:

1. "Price" means the cost to the City of the products and services under Contracts procured under the program created by ORS 279.835 to 279.850 as determined by this rule.
2. "Procurement List" means a listing of those nonprofit agencies for Disabled Individuals that currently are qualified to participate in the program created by ORS 279.835 to 279.850 and includes a list of the products and services offered by QRFs and determined by the State Procurement Office to be suitable for purchase by the City.
3. "Qualified Rehabilitation Facility" ("QRF") means an activity center or rehabilitation facility, certified as a community rehabilitation program or as a vocational service provider through the Oregon Department of Human

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Services, that the State Procurement Office has determined to be qualified to participate in the program created by ORS 279.835 to 279.850.

4. “QRF Contract” means a Contract entered into under the program created by ORS 279.835 to 279.850.
- B.** Policy: It is the policy of the City to encourage and assist Disabled Individuals to achieve maximum personal independence through useful and productive gainful employment by assuring an expanded and constant market for sheltered workshop and activity center products and services, thereby enhancing their dignity and capacity for self-support and minimizing their dependence on welfare and need for costly institutionalization. An essential element of this policy is to support sheltered employment to the fullest extent provided by law by contracting for needed Goods and services available from QRFs. The City shall identify contracting opportunities within the organization and Award appropriate Contracts to QRFs in accordance with this rule.
- C.** Procurements from QRFs
1. When the City intends to procure a product or service that is listed on the Procurement List, it shall procure that product or service, at the Price determined by the State Procurement Office, from a Qualified Rehabilitation Facility if the product or service is of Specifications appropriate to the City’s Procurement needs and is available within the time required by the City.
 2. The City shall enter into and renew QRF Contracts only for the specific products or services that are on the Procurement List.
 3. If a QRF is removed from the Procurement List, the City shall not Award or renew a QRF Contract, and the removal from the Procurement List shall constitute sufficient grounds for the City to terminate any outstanding QRF Contract.
 4. No placement of a product or service on the Procurement List shall act to displace a Contractor under an existing Contract with the City for the same product or service prior to the expiration or other termination of the Contractor’s Contract with the City. However, where a product or service is on the Procurement List, no existing Contract shall be renewed for such a product or service.
 5. If a QRF submits a Competitive Bid, Proposal, price quotation or other Offer in a competitive Procurement for a Contract, then regardless of whether the Offer was accepted, that QRF may not, at any time during the initial term of the Contract for which the QRF submitted a Bid, Proposal or

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Offer, make any claim to the City that the product or service that was the subject of the Offer is on the Procurement List. If, during the Solicitation process, a QRF claims the product or service that is the subject of the Procurement is on the Procurement List, then, if the product or service is determined to have been on the Procurement List at the time the Solicitation Document was issued, the Solicitation process shall be terminated so long as a Contract has not been fully executed at the time the claim is made.

D. Determination of Price/Changes to QRF Contracts

- 1.** When a product or service on the Procurement List is offered by more than one QRF, the City may purchase the required product or service from any QRF without competition between QRFs.
- 2.** The City may use the formal selection procedure similar to that described in Section 5.33.050 to select a QRF to provide a service on the Procurement list, provided that:
 - a.** The Solicitation shall not request any information concerning price and price shall not be a consideration in making the Award.
 - b.** The Solicitation shall not be advertised.
 - c.** Notice of the Solicitation may be given to those QRFs offering the service on the Procurement List.
 - d.** After selection of a QRF the price will be determined in accordance with Subsection 5.33.110 D.3.
- 3.** Price.
 - a.** Price for products or services where the Price is listed. For products or services on the Procurement List where the Price is listed, the Contract shall provide that the City will pay the Price that is listed.
 - b.** Price for services where the Price is not listed. For services for which no Price is listed on Procurement List, the City shall proceed as follows:
 - (1)** The City shall request that the QRF submit its proposed Price to the City based on the volume or Scope of the Work and Specifications provided by the City as prescribed in the proposed Contract between the QRF and the City. For janitorial and security services where a Fair Wage is required to be paid, the Specifications shall state the wage required to be paid.

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- E. The City shall not make material changes (changes that affect the cost of providing the products or services in more than a negligible manner) to the Specifications of

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a QRF Contract under ORS 279.835 to 279.850 unless the changes are in Writing and have been submitted to the State Procurement Office for a re-determination of Price. If the City wishes to make a material change to the Specifications from the most recent Solicitation for the product or service, the City shall notify the QRF in Writing of the specific changes in the Scope of Work or other conditions which will be required during the new Contract period. No agreement making a material change in the Specifications shall be executed until State Procurement Office re-determines the Price.

5.33.120 Sole-Source Procurements.

(Amended by Ordinance No. 183445, effective January 6, 2010.)

- A.** Generally. The City may Award a Contract without competition as a Sole Source Procurement if the Chief Procurement Officer or Council, depending on the amount of the Contract, makes a Written finding that:
 - 1.** Efficient utilization of existing Goods or Services requires the acquisition of compatible Goods or Services;
 - 2.** The Goods or Services required for the exchange of software or data with other public or private agencies are available from only one source;
 - 3.** The Goods or Services are for use in a pilot or an experimental project; or
 - 4.** Any other findings that support the conclusion that the Goods or Services are available from only one source.
- B.** Negotiation with a sole source Contractor is desirable. The City is entitled to negotiate with any sole source Contractor to obtain a favorable price, terms or conditions.
- C.** Public Notice. The City shall give notice of the determination that the Goods or Services or class of Goods or Services are available from only one source when the Contract is estimated to be greater than \$50,000 by publishing a notice on Procurement Services' website at least seven (7) Days before the Contract is Awarded.

5.33.130 Emergency Procurements.

(Amended by Ordinance Nos. 181547 and 183445, effective January 6, 2010.)

- A.** The City may Award a Contract as an Emergency Procurement without the use of competitive sealed Bidding or competitive sealed Proposals as authorized by ORS 279B.050(2) when the requirements of ORS 279B.080 and this rule are met.
- B.** The Council, or person authorizing the Emergency Procurement, shall document the nature of the Emergency and describe the method used for the selection of the

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particular Contractor. The City shall encourage competition for Emergency Procurements to the extent reasonable under the circumstances.

- C.** The authority to declare an Emergency and authorize an Emergency Procurement shall be as follows:
- 1.** The Chief Procurement Officer or designee may declare the existence of an Emergency and authorize the City or any of its bureaus to enter into an Emergency Procurement Contract under \$150,000.
 - 2.** The director of a City Office, Bureau or Department may declare the existence of an Emergency and authorize that Office, Bureau or Department to enter into an Emergency Procurement Contract under \$150,000 only if the Chief Procurement Officer or person to whom the powers of the Chief Procurement Officer have been delegated, is not available when the Procurement needs to be made.
 - 3.** A Commissioner-in-Charge of a City Office, Bureau or Department may declare the existence of an Emergency and authorize that Office, Bureau or Department to enter into an Emergency Procurement Contract not exceeding \$500,000.
 - 4.** A Commissioner-in-Charge of a City Office, Bureau or Department may declare the existence of an Emergency and authorize that Office, Bureau or Department to enter into an Emergency Procurement Contract exceeding \$500,000 subject to the following procedures:
 - a.** Following the declaration of Emergency the Commissioner shall immediately prepare an ordinance for approval of the Emergency Procurement Contract by the City Council at its next regularly scheduled session or as soon as possible thereafter. That Contract shall be added to the regular agenda of the Commissioner without the need for approval for inclusion on the agenda by other Commissioners.
 - b.** If the Council adopts the ordinance, the City will pay for the Work required by the Contract. If Council disapproves the ordinance, the City only will pay for Work performed prior to the date that the Council considered the ordinance for approval. If for any reason presentation of the ordinance to the Council is delayed, the City still will only be liable for Work performed prior to the time when the ordinance first was presented to the Council.
- D.** All documentation of Emergency Procurements shall be sent to the Chief Procurement Officer for record keeping purposes.

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- E.** All Emergency Procurement Contracts Awarded when there was no Emergency or reasonable perception of Emergency are void unless the Contract was otherwise valid under another portion of the City Code.
- F.** After the Award of an Emergency Procurement Contract, the City shall execute a Written Contract with the Contractor as soon as possible, and in no event later than 60 Days after the Award.
- G.** All such Contracts, whether or not signed by the Contractor, shall be deemed to contain a termination for convenience clause permitting the City to immediately terminate the Contract at its discretion and, unless the Contract was void, the City shall pay the Contractor only for Work performed prior to the date of termination plus the Contractor's unavoidable costs incurred as a result of the termination. In no event will the City pay for anticipated lost profits or consequential damages as a result of the termination.
- H.** For an emergency procurement of construction services that are not public improvements, the City shall ensure competition for a contract for the emergency work that is reasonable and appropriate under the emergency circumstances. In conducting the procurement, the City shall set a solicitation time period that the City determines to be reasonable under the emergency circumstances and may issue written or oral requests for offers or make direct appointments without competition in case of extreme necessity.

5.33.135 Declaration of State of Emergency or Disaster.

(Added by Ordinance No. 181547; amended by Ordinance No. 183345, effective January 6, 2010.)

- A.** When the Mayor or person designated to perform the duties of office of the Mayor ("Equivalent"), proclaims a State of Emergency or Disaster the Mayor or Equivalent may award emergency contracts for the acquisition of goods, services, construction services and public improvements for the purpose of responding to the State of Emergency or Disaster. This section does not eliminate the power of any individual otherwise authorized to award or execute contracts under other portions of the City Code.
- B.** The Proclamation of a Disaster or State of Emergency are instances of "extreme necessity" so that the Mayor or Equivalent is permitted to award contracts by direct appointment and without the necessity for competition. However, competition is permitted to the extent reasonable and appropriate under the circumstances. When a Proclamation of a State of Emergency or Disaster is issued, the City hereby waives the requirement of furnishing sufficient performance and payment bonds for any public improvement contracts or construction services contracts awarded pursuant to this Section when such bonds otherwise would be legally required.

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Nonetheless, any person authorized to award a contract may make a request for such bonds whenever it appears to be appropriate.

- C.** The Mayor or Equivalent may delegate the authority to award contracts, in whole or in part, to any appropriate person, to responds to the State of Emergency or Disaster .
- D.** A written contract is not required, but documentation of contracts awarded pursuant to this section shall be kept to the extent practicable under the circumstances.
- E.** All such Contracts, whether or not signed by the Contractor, shall be deemed to contain a termination for convenience clause permitting the City to immediately terminate the Contract at its discretion and, unless the Contract was illegal or void, the City shall pay the Contractor only for Work performed prior to the date of termination plus the Contractor's unavoidable costs incurred as a result of the termination. In no event will the City pay for anticipated lost profits or consequential damages as a result of the termination.
- F.** All documentation of Emergency Contracts shall be sent to the Chief Procurement Officer for record keeping purposes.
- G.** All Emergency Contracts Awarded when there was no Emergency or reasonable perception of Emergency are void unless the Contract was otherwise valid under another portion of the City's Purchasing Rules.
- H.** If an Emergency Contract is not in writing, the City shall execute a Written Contract with the Contractor as soon as possible thereafter as circumstances permit.

5.33.140 Cooperative Purchasing.

(Amended by Ordinance Nos. 181547 and 185898, effective February 20, 2013.)

- A.** The City may participate in, sponsor, conduct or administer Joint Cooperative Procurements to establish Contracts or Price Agreements for Goods or Services, as defined in these rules, that use source selection methods substantially equivalent to those set forth in Sections 5.33.200, 5.33.210 or 5.33.220.
- B.** The City may participate in, sponsor, conduct or administer Permissive Cooperative Procurements to establish Contracts or Price Agreements for the acquisition of Goods or Services, as defined in these rules, that use source selection methods substantially equivalent to those set forth in Sections 5.33.200 or 5.33.210.
- C.** The City may participate in, sponsor, conduct or administer Interstate Cooperative Procurements to establish Contracts or Price Agreements for the acquisition of Goods or Services, as defined in these rules, that use source selection methods substantially equivalent to those set forth in Sections 5.33.200 or 5.33.210.

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- D.** A Solicitation and Award process uses source selection methods substantially equivalent to those identified in Sections 5.33.200, 5.33.210 or 5.33.220 if the Solicitation and Award process:
- 1.** Calls for Award of a Contract on the basis of a lowest Responsible Bidder or a lowest and best Bidder determination in the case of Competitive Bids, on the basis of a determination of the Proposer whose Proposal is most Advantageous based on evaluation factors set forth in the Request for Proposals in the case of competitive Proposals;
 - 2.** Does not permit the application of any geographic preference that is more favorable to Bidders or Proposers who reside in the jurisdiction or locality favored by the preference than the preferences provided in ORS 279A.120(2); and
 - 3.** Uses reasonably clear and precise Specifications that promote suitability for the purposes intended and that reasonably encourage competition.
- E.** The City shall determine, in Writing, whether the Solicitation and Award process for an Original Contract arising out of a Cooperative Procurement is substantially equivalent to those identified in Sections 5.33.200, 5.33.210 or 5.33.220 in accordance with Section 5.33.140.
- F.** Protests. Protests regarding the use of all types of Cooperative Procurements shall be governed by the applicable provisions of Section 5.33.700 et seq.
- G.** For purposes of Sections 5.33.140 through 5.33.170 the following definitions are applicable:
- 1.** “Administering Contracting Agency” means a governmental body in this state or in another jurisdiction that solicits and establishes the original Contract for Procurement of goods, services or Public Improvements in a Cooperative Procurement.
 - 2.** “Cooperative Procurement” means a Procurement conducted on behalf of more than one governmental body. “Cooperative Procurement” does not include an agreement formed among only governmental bodies under ORS chapter 190 or by a statute, charter provision, ordinance or other authority for establishing agreements between or among governmental bodies or agencies or tribal governing bodies or agencies.
 - 3.** “Cooperative Procurement Group” means a group of governmental bodies joined through an intergovernmental agreement for the purposes of facilitating Cooperative Procurements.

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4. “Interstate Cooperative Procurement” means a permissive Cooperative Procurement in which the Administering Contracting Agency is a governmental body, domestic or foreign, that is authorized under the governmental body’s laws, rules or regulations to enter into Contracts and in which one or more of the participating governmental bodies are located outside this state.
5. “Joint Cooperative Procurement” means a Cooperative Procurement in which the participating governmental bodies or the Cooperative Procurement group and the bodies’ or group’s Contract requirements or estimated Contract requirements for Price Agreements are identified.
6. “Original Contract” means the initial Contract or Price Agreement solicited and Awarded during a Cooperative Procurement by an Administering Contracting Agency.
7. “Permissive Cooperative Procurement” means a Cooperative Procurement in which the Purchasing Contracting Agencies are not identified.
8. “Purchasing Contracting Agency” means a governmental body that procures goods, services or Public Improvements from a Contractor based on the Original Contract established by an Administering Contracting Agency.

5.33.145 Rules on all types of Cooperative Procurements.

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A. If the City is the Administering Contracting Agency, then:
 1. It may charge a fair and reasonable fee to purchasing Contract agencies that represent the excess costs of administering the Contract in light of the Purchasing Contracting Agencies use of that Contract; and
 2. Determine whether the purchasing Contract agency must enter into a Written agreement with it.
- B. If the City is a Purchasing Contracting Agency it is authorized to pay a fee to the Administering Contracting Agency that the Chief Procurement Officer determines is fair and reasonable in light of all the circumstances surrounding the Procurement, including the savings that may be obtained if a Cooperative Procurement is used, the cost of the Procurement in relationship to the fee, and other factors as may be considered. If a fee is paid, it will be borne by the Bureau or portion of the City on whose behalf the Procurement is being made.

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- C. Cooperative procurements are subject to the requirements of Section 5.33.105 in regard to service contracts in excess of \$250,000.

5.33.150 Joint Cooperative Procurements.

(Amended by Ordinance Nos. 181547 and 185898, effective February 20, 2013.)

- A. A Joint Cooperative Procurement is a Cooperative Procurement in which the governmental bodies or the Cooperative Procurement Group and the bodies' or Group's Contract requirements or estimated Contract requirements for Price Agreements are identified in the Solicitation Document.
- B. A Joint Cooperative Procurement is valid only if:
 - 1. The conditions of Subsection 5.33.140 B. are met;
 - 2. The Administering Contracting Agency's Solicitation and the Original Contract or Price Agreement identifies the Cooperative Procurement group or each participating Purchasing Contracting Agency and specifies the estimated Contract requirements; and
 - 3. No material change is made in the terms, conditions or prices of the Contract between the Contractor and the Purchasing Contracting Agency from the terms, conditions and prices of the Original Contract between the Contractor and the Administering Contracting Agency.
- C. A Joint Cooperative Procurement may not be a Permissive Cooperative Procurement.

5.33.160 Permissive Cooperative Procurements.

(Amended by Ordinance Nos. 185065, 185898 and 187373, effective October 14, 2015.)

- A. A Permissive Cooperative Procurement is a Cooperative Procurement in which the Purchasing Contracting Agencies are not identified in the Solicitation Document.
- B. The City may enter into a Permissive Cooperative Procurement if:
 - 1. The conditions of Subsection 5.33.140 B. are met;
 - 2. The Administering Contracting Agency's Solicitation and Award process for the original Contract allows other governmental bodies to establish contracts or price agreements under the terms, conditions and prices of the original contract;
 - 3. The Contractor agrees to extend the terms, conditions and prices of the original contract to the Purchasing Contractor Agency; and

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4. No material change is made in the terms, conditions or prices of the contract or price agreement between the Contractor the Purchasing Contracting Agency from the terms, conditions and prices of the original contract between the Contractor and the Administering Contracting Agency.
- C. If the City wishes to enter into a Contract or Price Agreement arising out of a Permissive Cooperative Procurement it must publish notice of its intent to do so if it is estimated that the City will spend in excess of \$250,000, on Goods and Services acquired under the Contract or Price Agreement.
- D. For purposes of determining whether the City must give notice of intent to establish a Contract through a Permissive Cooperative Procurement, as required by ORS 279A.215(2)(a), the estimated amount of procurement will exceed \$250,000 if:
1. The City's Contract or Price Agreement arising out of the Permissive Cooperative Procurement expressly provides that the City will make payments over the term of the Contract or Price Agreement that will, in aggregate, exceed \$250,000, whether or not the total amount or value of the payments is expressly stated;
 2. The City's Contract or Price Agreement arising out of the Permissive Cooperative Procurement expressly provides for payment, whether in a fixed amount or up to a stated maximum amount, that exceeds \$250,000; or
 3. The City reasonably contemplates, based on historical or other data available to the Purchasing Contracting Agency, that the total payments it will make for Goods or Services under the Contract or Price Agreement will, in aggregate, exceed \$250,000 over the anticipated duration of the Contract or Price Agreement.
- E. The notice of intent required by this rule shall contain the following information:
1. A description of the Procurement;
 2. An estimated amount of the Procurement;
 3. The name of the Administering Contracting Agency; and
 4. A time, place and date by which comments must be submitted to the City regarding the intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement;
- F. Time: The City shall advertise the notice in the same manner as provided in Subsection 5.33.300 A. The City shall give the notice required by this rule no fewer than seven (7) Days before the deadline for submitting comments regarding

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its intention to establish a Contract or Price Agreement through a Permissive Cooperative Procurement.

- G.** An Administering Contracting Agency that intends to establish a Contract or Price Agreement arising out of the Permissive Cooperative Procurement it administers may satisfy the notice requirements set forth in ORS 279A.215(2)(a) by including the information required by Subsection 5.33.160 D., in the Solicitation Document related to the Permissive Cooperative Procurement, and including instructions in the Solicitation Document to potential Offerors describing how they may submit comments in response to the Administering Contracting Agency's intent to establish a Contract or Price Agreement through the Permissive Cooperative Procurement. The content and timing of such notice shall comply in all respects with ORS 279A.215(2), ORS 279A.215(3) and these Rules.
- H.** If the City receives comments on the intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement, the City shall make a Written determination that establishing a Contract or Price Agreement is in the best interest of the City before executing the Contract or using the Price Agreement.

5.33.170 Interstate Cooperative Procurements.

(Amended by Ordinance Nos. 181547 and 185898, effective February 20, 2013.)

- A.** An Interstate Cooperative Procurement is a Permissive Cooperative Procurement in which the Administering Contracting Agency is a governmental body, domestic or foreign, that is authorized under the governmental body's laws, rule or regulations to enter into Contracts and in which one or more of the participating governmental bodies are located outside the State of Oregon.
- B.** The City may procure Goods and Services through an Interstate Cooperative Procurement if:

 - 1.** The Conditions of Subsection 5.33.140 B. are met;
 - 2.** The Administering Contracting Agency's Solicitation and the Original Contract allows other governmental bodies to establish Contracts or Price Agreements under the terms, conditions and prices of the Original Contract; and
 - 3.** The Administering Contracting Agency permits the Contractor to extend the use of the terms, conditions and prices of the Original Contract to the Purchasing Contracting Agency; and
 - 4.** The City:

 - a.** was listed in the Solicitation of the Administering Contract Agency as a party that may establish Contracts or Price Agreements under

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the terms, conditions and prices of the Original Contract and the Solicitation was advertised in Oregon, or

- b. is a member of a Cooperative Procurement Group and the Group was listed in the Solicitation of the Administering Contracting Agency as a party that may establish Contracts or Price Agreements under the terms, conditions and prices of the Original Contract and the Solicitation was advertised in Oregon; or

- c. publishes a Notice of intent to establish a Contract or Price Agreement in the manner required by Subsection 5.33.170 C. below.

C. Notice of Intent. If the City is required by this rule to publish a notice of intent to establish a Contract or Price Agreement through an Interstate Cooperative Procurement, the notice shall include:

1. A description of the proposed Procurement;
2. An estimated amount of the proposed Procurement;
3. The name of the Administering Contracting Agency; and
4. A time, place and date by which comments must be submitted to the City regarding its intent to establish a Contract or Price Agreement through an Interstate Cooperative Procurement.

D. The City shall give public notice at least seven (7) Days before the deadline for submission of comments regarding its intent to establish a Contract or Price Agreement through an Interstate Cooperative Procurement.

E. If the City receives comments within seven (7) Days after publication of its notice, the City shall make a Written determination that establishing a Contract or Price Agreement through an Interstate Cooperative Procurement is in the best interest of the City and provide a copy of the Written determination to any vendor that submitted comments before a Contract or Price Agreement may be established.

5.33.180 Small Procurements.

(Amended by Ordinance Nos. 183445 and 187974, effective September 7, 2016.)

- A.** For Procurements of Goods and Services not exceeding \$10,000 the City may Award a Contract as a Small Procurement pursuant to ORS 279B.065 and this rule. The City may choose any method of selecting such Contractors, including, but not limited to, offering the Contract to only one firm or conducting a competition for the Contract.

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- B.** State law prohibits a Procurement from being artificially divided or fragmented so as to constitute a small Procurement under this section.
- C.** Notwithstanding any other provisions of the City Code, small Procurements shall not be amended beyond \$10,000 without prior approval of the Chief Procurement Officer before the additional Goods or Services are provided.

5.33.190 Intermediate Procurements.

- A.** Generally. For Procurements of Goods and Services not exceeding \$150,000, the City may Award a Contract as an Intermediate Procurement pursuant to ORS 279B.070. A Procurement shall not be artificially divided or fragmented so as to constitute an intermediate Procurement under this section.
 - 1.** Oral Price Quotations: For Procurement of Goods and Services not exceeding \$50,000, the City may Award a Contract after seeking three oral price quotations.
 - 2.** Written Price Quotations: For Procurements of Goods or Services anticipated to exceed \$50,000 but not exceeding \$150,000, the City may Award a Contract after seeking three Written price quotations.
- B.** For all intermediate Procurements, the City shall seek at least three informally solicited competitive price quotations or competitive Proposals from prospective Contractors, and shall keep Written records of the sources of the quotations or Proposals received. If three quotations or Proposals are not reasonably available, the City may proceed with the Procurement but only after making a Written record of the effort made to obtain the quotations or Proposals.
- C.** Negotiations: The City may negotiate with an Offeror to clarify its price quotation or Proposal or to effect modifications that will make the price quotation or Proposal acceptable or more Advantageous to the City, provided that all Offerors contacted are offered the same opportunity in order to compete on the same basis.

5.33.200 Competitive Sealed Bidding.

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A.** The City may procure Goods and Services by Competitive Sealed Bidding as set forth in ORS 279B.055. An Invitation to Bid (ITB) is used to initiate a competitive sealed Bid Solicitation and shall contain the information required by Subsection 5.33.200 B. Public Notice of the Competitive Sealed Bidding Solicitation shall be provided as required by Section 5.33.300.
- B.** Invitation to Bid. The ITB shall include the following:
 - 1.** General Information.

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- a.** A time and date by which the Bids must be received and a place at which the Bids must be submitted;
- b.** The name and title of the person designated for the receipt of Bids and the person designated by the City as the contact person for the Procurement, if different;
- c.** A Procurement description;
- d.** A time, date, and place that Prequalification applications, if any, must be filed and the classes of Work, if any, for which Bidders must be prequalified in accordance with ORS 279B.100 and Section 5.33.510;
- e.** A statement that the City may cancel the Procurement or reject any or all Bids in accordance with ORS 279B.100 and Section 5.33.645;
- f.** A statement that requires the Contractor or Subcontractor to possess an asbestos abatement license, if required under ORS 468A.710;
- g.** All Contractual terms and conditions applicable to the Procurement;
- h.** Notice of any pre-Offer conference as follows:
 - (1)** The time, date and location of any pre-Offer conference; and
 - (2)** Whether attendance at the conference will be mandatory or voluntary; and
 - (3)** That statements made by the City's representatives at the conference or elsewhere are not binding upon the City unless confirmed by Written Addendum;
- i.** The form and submission of Offers and any other special information, e.g., whether Offers may be submitted by Electronic means;
- j.** The scheduled Closing;
- k.** The office where the Specifications for the Goods or Services may be reviewed;
- l.** A statement that each Bidder to an ITB must identify whether the Bidder is a "Resident Bidder," as defined in Subsection 5.33.010 A.55.;

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- m. Bidder's certification of nondiscrimination in obtaining required Subcontractors in accordance with ORS 279A.110(4). (See Section 5.33.075); and
 - n. How the City will notify Offerors of Addenda and how the City will make Addenda available. See Section 5.33.430; and
 - o. That Bidders may be required to obtain a Business License and may be required to be EEO certified.
2. City Need to Purchase. The character of the Goods or Services the City is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. The City's description of its need to purchase must:
 - a. Identify the scope of the work to be performed under the resulting contract, if the City awards one;
 - b. Outline the anticipated duties of the Contractor under any resulting contract;
 - c. Establish the expectations for the contractor's performance of any resulting contract;
 - d. Unless the City, for Good Cause specifies otherwise, the scope of work must require the contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the City is purchasing.
3. Evaluation process.
 - a. The anticipated Solicitation schedule, deadlines, protest process, and evaluation process, if any;
 - b. Evaluation criteria, including the relative value applicable to each criterion, that the City will use to determine the Responsible Bidder with the lowest Responsive Bid and the evaluation criteria the City will use to determine acceptability of any Goods or Services to be purchased;
 - c. If the City intends to Award Contracts to more than one Bidder, the City must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award. The criteria shall require the City to purchase the lowest priced goods, services or personal service available from the multiple Contracts; and

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- d. The City shall set forth objective evaluation criteria in the Solicitation Document in accordance with the requirements of ORS 279B.055(6)(a). Evaluation criteria need not be precise predictors of actual future costs, but to the extent possible, such evaluation factors shall be reasonable estimates based on information the City has available concerning future use.
 4. Preference for Goods manufactured from Recycled Materials under Section 5.33.080 and ORS 279A.125;
 5. Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the Contract, either in whole or in part, without the City's prior Written consent. Unless otherwise agreed by the City in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the City consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the City for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the City otherwise agrees in Writing.
 6. All Contractual terms and conditions in the form of Contract provisions the City determines are applicable to the Procurement. As required by state law, the contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:
 - a. The City's reduction or withholding of payment under the Contract;
 - b. The City's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the statement of work or to meet the performance standards established by the resulting Contract; and
 - c. The City's rights, which the City may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contractor or applicable law.
- C. Good Cause. For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards, and may include an explanation of circumstances that support a finding that the requirement

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would unreasonably limit competition or is not in the best interest of the City. The City shall document in the Procurement file the basis for the determination of Good Cause for specification otherwise. The City will have Good Cause to specify otherwise under the following circumstances:

1. The purpose to which the Goods or Services will be used does not justify a requirement that the Contractor meet the highest prevalent standards in performing the contract;
2. Imposing express technical, standard, dimensional, or mathematical specifications will better ensure that the Goods or services will be compatible with or will operate efficiently or effectively with components, equipment, parts, Services or information technology including hardware, Services or software with which the Goods or Services will be used, integrated, or coordinated.
3. The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evaluation of products, performance techniques, scientific developments, that a reliable highest prevalent standard does not exist or has not been developed.
4. Any other circumstances in which City's interest in achieving economy, efficiency, compatibility or availability in the procurement of the Goods or Services reasonably outweighs the City's practical need for the highest prevalent standard if the applicable or closed industry or business that supplies the Goods or Services to be delivered under the resulting Contract.

5.33.205 Multi-Step Sealed Bidding.

(Amended by Ordinance Nos. 185065 and 185898, effective February 20, 2013.)

- A. General. The City may use multi-step Competitive Sealed Bidding pursuant to ORS 279B.055(12).
- B. Phased Process. Multi-step Bidding is a phased Procurement process which seeks necessary information or un-priced submittals in phase one combined with regular competitive sealed Bidding, inviting Offerors who submitted technically eligible submittals in phase one, to submit competitive sealed price Bids in phase two. The Contract must be Awarded to the lowest Responsible Bidder.
- C. Public Notice. When the City uses multi-step sealed Bids for Contracts over \$150,000, Public Notice for phase one shall be given in accordance with Section 5.33.300. Public Notice is not required for phase two. However, the City shall give notice of subsequent phases to all Bidders and inform Bidders of the right to protest Addenda issued after the initial Closing pursuant to Section 5.33.430 and inform

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Bidders excluded from the subsequent phases of the right, if any, to protest their exclusion pursuant to Section 5.33.720.

- D.** Procedures Generally. In addition to the procedures set forth in Sections 5.33.300 through 5.33.340, the City shall use the procedures set forth in this rule for multi-step Bidding and in the Invitation to Bid.
- E.** Procedure for Phase One of Multi-Step Sealed Bidding.
 - 1.** Form. The City shall initiate multi-step sealed Bidding by issuing an Invitation to Bid in the form required for competitive sealed Bids except as provided in this rule. In addition to the requirements of Subsection 5.33.200 B., the multi-step Invitation to Bid must state:
 - a.** That the solicitation is a multi-step sealed Bid Procurement and describe the process the City will use to conduct the Procurement;
 - b.** That the City requests un-priced submittals and that the City will consider priced Bids only in phase two and only from those Bidders whose un-priced submittals are found eligible in phase one;
 - c.** Whether Bidders must submit priced Bids at the same time as un-priced submittals and, if so, that Bidders must submit the priced Bids in a separate sealed envelope; and
 - d.** The criteria to be used in the evaluation of un-priced submittals;
 - 2.** Evaluation. The City shall evaluate un-priced submittals in accordance with the criteria set forth in the Invitation to Bid.
- F.** Revisions to Solicitation Specifications. After Closing of phase one, the City may issue Addenda that modify the Specifications for the Goods or Services being procured or that modify other terms and conditions of the Invitation to Bid. The City shall provide such Addenda to all Bidders who initially submitted un-priced technical Bids. The City may then require Bidders to submit revised un-priced technical Bids.
- G.** Procedure for Phase Two.
 - 1.** After the completion of Phase One, if the City does not cancel the Solicitation, the City shall invite each eligible Bidder to submit a priced Bid.
 - 2.** Conduct. Phase Two shall be conducted as any other competitive sealed Bid Procurement except:
 - a.** as specifically set forth in this rule or the Invitation to Bid; and

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- b.** no public notice need be given of the invitation to submit priced Bids because such notice was previously given.

5.33.210 Competitive Sealed Proposals.

(Amended by Ordinance Nos. 183445, 185065 and 185898, effective February 20, 2013.)

- A.** The City may procure Goods and Services by Competitive Sealed Proposals as set forth in ORS 279B.060 and this rule. The City shall use a Request for Proposal to initiate a competitive sealed Proposal Solicitation. The Request for Proposal must contain the information required by ORS 279B.060(2) and Paragraph B. of this rule. The City shall provide Public Notice of the Competitive Sealed Proposal Solicitation as provided in Section 5.33.300.
- B.** Mandatory provisions in RFP Solicitation Documents. The RFP must include the following:
 - 1.** General Information.
 - a.** A time, date and location when the sealed Proposals must be submitted and received;
 - b.** The name and title of the person designated for the receipt of Proposals and the person designated by the City as the contact person for the Procurement, if different;
 - c.** A Procurement description;
 - d.** A time, date, and place that Prequalification applications, if any, must be filed and the classes of Work, if any, for which Bidders must be prequalified in accordance with ORS 279B.100 and Section 5.33.510;
 - e.** A statement that the City may cancel the Procurement or reject any or all Proposals in accordance with ORS 279B.100 and Section 5.33.645;
 - f.** A statement that requires the Contractor or Subcontractor to possess an asbestos abatement license, if required under ORS 468A.710;
 - g.** All Contractual terms and conditions applicable to the Procurement, including warranties and bonding requirements, if necessary. If the City intends to allow discussions or negotiations regarding terms and conditions it must either specify the terms and conditions subject to negotiation or the subject matter reasonably related to the terms and conditions that it will negotiate;

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- h.** Notice of any pre-Offer conference as follows:
 - (1)** The time, date and location of any pre-Offer conference; and
 - (2)** Whether attendance at the conference will be mandatory or voluntary; and
 - (3)** That statements made by the City's representatives at the conference or elsewhere are not binding upon the City unless confirmed by Written Addendum;
 - i.** The form and submission of Offers and any other special information, (e.g., whether Offers may be submitted by Electronic means);
 - j.** The scheduled Closing;
 - k.** The location where the Specifications for the Goods or Services may be reviewed;
 - l.** Contractor's certification of nondiscrimination in obtaining required Subcontractors in accordance with Section 5.33.075; and
 - m.** How the City will notify Offerors of Addenda and how the City will make Addenda available.
- 2.** City Need to Purchase. The character of the Goods or Services the City is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. As required by ORS 279B.060(2)(c) the City's description of its need to purchase must:
- a.** Identify the scope of the work to be performed under the resulting Contract, if the City awards one;
 - b.** Outline the anticipated duties of the Contractor under any resulting Contract;
 - c.** Establish the expectations for the Contractor's performance of any resulting contract; and
 - d.** Unless the contractor under any resulting Contract will provide architectural, engineering, photogrammetric mapping, transportation, planning or land surveying services, or related services that are subject to ORS 289C.100 to 279C.125, or the City for Good Cause specifies otherwise, the scope of work must require

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the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the City is purchasing.

3. Proposal and Evaluation process.
 - a. The anticipated Solicitation schedule, deadlines, protest process, and evaluation process, if any;
 - b. The City shall set forth selection criteria in the Solicitation Document in accordance with the requirements of Section 5.33.210. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall be reasonable estimates based on information available to the City;
 - c. If the City's solicitation process calls for the City to establish a Competitive Range, the City shall generally describe, in the Solicitation Document, the criteria or parameters the City will apply to determine the Competitive Range. The City may increase or decrease the number of Proposers in the Competitive Range in accordance with Subsection 5.33.211 F.1.b.
4. Applicable preferences, including those described in ORS 279A.120, ORS 279A.125(2) and ORS 279A.128 and Sections 5.33.080 and 5.33.085.
5. All Contractual terms and conditions in the form of Contract provisions the City determines are applicable to the Procurement. The City's determination of contractual terms and conditions that are applicable to the Procurement may take into consideration, as authorized by ORS 279B.060(3), those contractual terms and conditions the City will not include in the Request for Proposal because the City either will reserve them for negotiation, or will request Proposers to offer or suggest those terms or conditions.
6. As required by ORS 279B.060(2)(h), the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting contract. Those consequences may include, but are not limited to:
 - a. The City's reduction or withholding of payment under the Contract;
 - b. The City's right to require the contractor to perform, at the contractor's expense, any additional work necessary to perform the statement of work or to meet the performance standards established by the resulting Contract; and

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- c. The City's rights, which the City may assert individually or in combination, to declare a default of the resulting contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contractor or applicable law.
- 7. The City may include the applicable contract terms and conditions in the form of Contract provisions, or legal concepts to be included in the resulting Contract. Further, the City may specify that it will include or use Proposers' terms and conditions that have been pre-negotiated, but the City may only include those terms and conditions in the resulting Contract to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The City shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest filed by the Proposer.
- 8. For multiple Award Contracts the City may enter into Contracts with different terms and conditions with each Contractor to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The City shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest filed by the Proposer.
- C. Good Cause. For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services under the Contract, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the City. The City shall document in the Procurement file the basis for the determination of Good Cause for specifying otherwise. The City will have Good Cause to specify otherwise when the City determines:
 - 1. The purpose to which the Goods or Services will be used does not justify a requirement that the Contractor meet the highest prevalent standards in performing the contract;
 - 2. Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with or will operate efficiently or effectively with components, equipment, parts, Services or information technology including hardware, Services or software with which the Goods or Services will be used, integrated, or coordinated;
 - 3. The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evaluation of

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products, performance techniques, scientific developments, that a reliable highest prevalent standard does not exist or has not been developed.

4. That other circumstances exist in which City's interest in achieving economy, efficiency, compatibility or availability in the procurement of the Goods or Services reasonably outweighs the City's practical need for the highest prevalent standard if the applicable or closest industry or business that supplies the Goods or Services to be delivered under the resulting Contract.

5.33.211 Procedures for Competitive Range, Multi-Tiered and Multi-Step Proposals. (Amended by Ordinance Nos. 183445, 185065 and 185898, effective February 20, 2013.)

- A. Generally. The City may use any combination of the methods of Contractor selection as set forth in ORS 279B.060 and this rule to procure Goods and Services. In addition to the procedures set forth in Sections 5.33.210 through 5.33.211 for methods of Contractor selection, the City may provide for a multi-tiered, or multi-step selection process that permits award to the highest ranked Proposer at any time or step, calls for the establishment of a Competitive Range or permits either serial or competitive simultaneous discussions with one or more Proposers. The City may use one or more or any combination of the procedures set forth in this rule for Competitive Range, multi-tiered and multi-step Proposals.
- B. ORS 279B.060(3)(d), (e) and (8) authorize the City to use methods of Contractor selection that include, but are not limited to multi-tiered or multi-step processes that embrace:
 1. The evaluation of Proposals only, including the evaluations of serial Proposals (a series of more than one Proposal from each Proposer that remains eligible in the competition at the particular tier of the competition;
 2. The use of Proposals in connection with discussions with Proposers that lead to best and final Offers;
 3. The use of Proposals in connection with serial negotiations with Proposers that lead to best and final Offers or to the Award of a Contract.
 4. The use of Proposals in connection with competitive negotiations with Proposers that lead to best and final Offers or to the Award of a Contract; and
 5. The use of Proposals in multi-tiered competition designed to identify, at each stage of the competition, a class of Proposers that fall within a Competitive Range of Proposers that have a reasonable chance of being determined the most Advantageous Proposer or, in multiple-award situations, a reasonable chance of being determined an awardee of a Public

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Contract. Multi-tiered and multistep competitions may use any combination or series of Proposals, discussions, negotiations, demonstrations, offers, or other means of soliciting information from Proposers that bear on the selection of a Contractor or Contractors. In multi-tiered and multi-step competitions, the City may use these means of soliciting information from prospective Proposers in any sequence or order, as determined in the discretion of the City.

- C. When the City's Request for Proposals prescribes a multi-tiered or multi-step Contractor selection process, the City nevertheless may, at the completion of any stage in the competition and on determining the Most Advantageous Proposers (or, in multiple-award situations, on determining the awardees of the public Contracts), award a Contract (or Contracts) and conclude the Procurement without proceeding to subsequent stages. The City also may, at any time, cancel the Procurement pursuant to ORS 279B.100 and these Rules.
- D. Exclusion Protest. The City may provide before the notice of an intent to Award an opportunity for a Proposer to protest exclusion from the Competitive Range or from subsequent phases of multi-tiered or multi-step sealed Proposals as set forth in Section 5.33.720.
- E. Award Protest. A City shall provide an opportunity to protest its intent to Award a Contract pursuant to ORS 279B.410 and Section 5.33.740. An Affected Offeror may protest, for any of the bases set forth in Section 5.33.720, its exclusion from the Competitive Range or any phase of a multi-tiered from any stage of multi-tiered or multi-step sealed Proposal process, or may protest an Addendum issued following initial Closing, if the City did not previously provide Proposers the opportunity to protest the exclusion or Addendum. The failure to protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the City.
- F. Competitive Range. When the City's Solicitation process conducted pursuant to Section 5.33.210 calls for the City to establish a Competitive Range at any stage in the Procurement process, the City may do so as follows:
 - 1. Determining Competitive Range.
 - a. The City may establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria in the Request for Proposals, the City may determine and rank the Proposers in the Competitive Range. Notwithstanding the foregoing, however, in instances in which the City determines that a single Proposer has a reasonable chance of being determined the most Advantageous Proposer, the City need

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not determine or rank Proposers in the Competitive Range. In addition, the City may establish a Competitive Range of all Proposers to enter into discussions to correct deficiencies in Proposals.

- b.** The City may establish the number of Proposers in the Competitive Range in light of whether the City's evaluation of Proposals identifies a number of Proposers who have a reasonable chance of being determined the most Advantageous Proposer, or whether the evaluation establishes a natural break in the scores of Proposers that indicates that a particular number of Proposers are closely competitive, or have a reasonable chance of being determined the most Advantageous Proposer.

- 2.** **Protesting Competitive Range.** The City shall provide Written notice to all Proposers identifying Proposers in the Competitive Range. The City may provide an opportunity for Proposers excluded from the Competitive Range to protest the City evaluation and determination of the Competitive Range in accordance with Section 5.33.720.

G. Discussions.

- 1.** The City may initiate oral or Written discussions with all "eligible Proposers" on the subject matter within the general scope of the Request for Proposals.

- a.** In conducting discussions, the City:

- (1)** Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;
- (2)** May disclose other eligible Proposers' Proposals or discussions only in accordance with ORS 279B.060(8)(b) or (c);
- (3)** May adjust the evaluation of a Proposal as a result of a discussion under this section discussions. The conditions, terms, or price of the Proposal may be altered or otherwise changed during the course of the discussions provided the changes are within the Scope of the Request for Proposals.

- b.** At any time during the time allowed for discussions, the City may:

- (1)** Continue discussions with a particular eligible Proposer;

- (2) Terminate discussions with a particular eligible Proposer and continue discussions with other eligible Proposers; or
- (3) Conclude discussions with all remaining eligible Proposers and provide to the then-eligible Proposers, notice pursuant to Subsection 5.33.211 J. requesting best and final Offers.

H. Negotiations.

- 1. The City may commence serial negotiations with the highest-ranked eligible Proposer or commence simultaneous negotiations with all eligible Proposers:

- a. The City may negotiate:

- (1) The statement of work;
 - (2) The Contract Price as it is affected by negotiating the statement of work other terms and conditions authorized for negotiation in the Request for Proposals or Addenda thereto; and
 - (3) Any other terms and conditions reasonably related to those authorized for negotiation in the Request for Proposals or Addenda thereto. Proposers shall not submit for negotiation, and the City shall not accept, alternative terms and conditions that are not reasonably related to those authorized for negotiation in the Request for Proposals.

I. Terminating Negotiations. At any time during discussions or negotiations that the City conducts under this rule the City may terminate discussions or negotiations with the highest-ranked Proposer, or the eligible Proposer with whom it is currently discussing or negotiating, if the City reasonably believes that:

- 1. The eligible Proposer is not discussing or negotiating in good faith; or
- 2. Further discussions or negotiations with the eligible Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.
- 3. Continuing Serial Negotiations. If the City is conducting serial negotiations and the City terminates negotiations with an eligible Proposer, the City may then commence negotiations with the next highest scoring eligible Proposer in the Competitive Range, and continue the sequential process described in Subsection 5.33.211 H. until the City has either:

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- a. Determined to Award the Contract to the Proposer with whom it is currently discussing or negotiating; or
 - b. Decided to cancel the Procurement pursuant to ORS 279B.100.
 - 4. Competitive Simultaneous Negotiations. If the City chooses to conduct Competitive Negotiations, the City may negotiate simultaneously with competing Proposers. The City:
 - a. Shall treat all Proposers fairly and shall not favor any Proposer over another;
 - b. May disclose other Proposers' Proposals or the substance of negotiations with other Proposers only if the City notifies all of the Proposers with whom the City will engage in negotiations of the City's intent to disclose before engaging in negotiations with any Proposer.
 - 5. Any oral modification of a Proposal resulting from negotiations under this Section must be reduced to Writing by the Proposer.
- J. Best and Final Offers. If best and final Offers are required, the City shall establish a common date and time by which eligible Proposers must submit best and final Offers. If the City is dissatisfied with the best and final Offers the City may make a Written determination that it is in the City's best interest to conduct additional discussions, negotiations or change the City's requirements and require another submission of best and final Offers. The City shall inform all eligible Proposers that if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offer will be construed as their best and final Offers. The City shall evaluate Offers as modified by the best and final Offer. The City shall conduct the evaluations as described in Section 5.33.610. The City may not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.
- K. Multi-step Sealed Proposals. The City may procure Goods and Services by using multi-step Competitive Sealed Proposals pursuant to ORS 279B.060 (8)(b)(g).

The use of multi-step Proposals is a phased process that seeks necessary information, or un-priced technical Proposals, in phase one and in the second phase, invites Proposers who submitted technically qualified Proposals, to submit competitive sealed price Proposals on the technical Proposals. The City must award the Contract to the Responsible Proposer submitting the most Advantageous Proposal in accordance with the terms of the Solicitation Document applicable to the second phase.

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1. **Public Notice.** Whenever the City uses multi-step sealed Proposals, the City shall give public notice for phase one in accordance with Section 5.33.300. Public notice is not required for phase two. However, the City shall give notice of the subsequent phases to all Proposers and inform any Proposers excluded from the subsequent phases of the right, if any, to protest exclusion pursuant to Section 5.33.720.
2. **Procedure for Phase One of Multi-Step Sealed Proposals.** The City must initiate a multi-step sealed Proposals procurement by issuing a Request for Proposal in the form and manner required for competitive sealed Proposals except as provided by this rule. In addition to the requirements set forth in Section 5.33.210, the multi-step Request for Proposal must state:
 - a. that un-priced technical Proposals are requested;
 - b. that the Solicitation is a multi-step sealed Proposal Procurement, and that, in the second phase, priced Proposals will be accepted only from those Proposers whose un-priced technical Proposals are found qualified in phase one;
 - c. the criteria for the evaluation of un-priced technical Proposals; and
 - d. that the Goods or Services being procured shall be furnished generally in accordance with the Proposer's technical Proposal as found to be finally qualified and shall meet the requirements of the Request for Proposals.
3. **Addenda to the Request for Proposals.** After receipt of un-priced technical Proposals, Addenda to the Request for Proposal shall be distributed only to Proposers who submitted un-priced technical Proposals.
4. **Receipt and Handling of Un-priced Technical Proposals.** Un-priced technical Proposals need not be opened publicly.
5. **Evaluation of Un-Priced Technical Proposals.** The un-priced technical Proposals submitted by Proposers shall be evaluated solely in accordance with the criteria set forth in the Request for Proposals.
6. **Discussion of Un-priced Technical Proposals.** The City may seek clarification of a technical Proposal of any Proposer who submits a qualified, or potentially qualified, technical Proposal. During the course of such discussions, the City shall not disclose any information derived from one un-priced technical Proposal to any other Proposer.

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7. Methods of Contractor Selection for Phase One. In conducting phase one, the City may employ any combination of the methods of Contractor selection that call for the establishment of a Competitive Range or include discussions, negotiations or best and final Offers as set forth in this rule Section 5.33.211.
8. Procedure for Phase Two. On the completion of phase one, the City shall invite each qualified Proposer to submit price Proposals.
 - a. Phase two shall be conducted as any other competitive sealed Procurement except as set forth in this rule.

5.33.215 Negotiations, Discussions within the Competitive Range for Multi-Tiered or Multi-step Proposals.

(Repealed by Ordinance No. 185065, effective January 1, 2012.)

5.33.217 Multi-Step Sealed Proposals.

(Repealed by Ordinance No. 185065, effective January 1, 2012.)

5.33.220 Special Procurements.

(Amended by Ordinance Nos. 181547, 183445, 184403, 184404, 185065, 185898 and 187373, effective October 14, 2015.)

- A. The City may Award a Contract as a Special Procurement pursuant to the requirements of this section, which permits class Special Procurements. Such Procurements allow the City to enter into a series of Contracts over time pursuant to the authorization provided in regard to the Special Procurement and without necessarily following the requirements of Competitive Sealed Bidding, Competitive Sealed Proposals or Intermediate Procurements.
- B. For purposes of Section 5.33.220 the following definitions are applicable:
 1. “Class Special Procurement” means a contracting procedure that differs from the procedures described in Sections 5.33.180, 5.33.190, 5.33.200 and 5.33.210 and is for the purpose of entering into a series of contracts over time or for multiple projects.
 2. “Contract-Specific Special Procurement” means a contracting procedure that differs from the procedures described in Sections 5.33.180, 5.33.190, 5.33.200 and 5.33.210 and is for the purpose of entering into a single Contract or a number of related Contracts on a one-time basis or for a single project.
 3. “Special Procurement” means, unless the context requires otherwise, a class special Procurement, a contract-specific special Procurement or both.

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- C.** The City Council, acting as the Local Contract Review Board may approve a special procurement if it finds that the use of a special procurement or an alternative procedure prescribed by the Council:
- 1.** Is unlikely to encourage favoritism in the award of public contracts or to substantially diminish competition for public contracts; and
 - 2.** Is reasonably excepted to result in substantial cost savings to the City or to the public; or
 - 3.** Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with the requirements that are applicable under ORS 279B.055, 279B.060, 279B.070 or under the City Rule found in Chapter 5.33.
- D.** The City Council declares the following as classes of Special Procurements:
- 1.** Manufacturer Direct Supplies: The City may purchase goods directly from a manufacturer if the cost from the manufacturer is the same or less than the cost the manufacturer charges to its distributor(s).
 - 2.** Advertisements: Except as provided by City Charter Section 8-101, the City may purchase advertising in newspapers and Written publications, web-based Internet sites and other electronic formats.
 - 3.** Copyrighted Materials: The City may purchase copyrighted materials where there is only one known supplier available for such goods. This includes, but is not limited to, new books, workbooks, periodicals, subscriptions, curriculum materials, reference materials, audio and visual media, and non-mass marketed software from a particular publisher or its designated distributor.
 - 4.** Financial Products: The City may directly purchase financial products such as bond insurance, surety bonds for City bond reserves and liquidity facilities such as letters of lines of credit. The City may pay fees associated with such transactions, including, but not limited to, registrar, paying agent, and escrow agent fees and fees associated with outstanding debt issues.
 - 5.** Employee Benefit Contracts: Contracts relating to employee benefits may be Awarded directly to a Contractor after the City obtains a consultant pursuant to Chapter 5.68 to conduct a competitive process to acquire such contractors. Such contracts include administrators of employee Flexible Spending Account Administration and Medical Claims Third Party Administration. The City will hire a consultant to advise it on firms available to provide the Work and the consultant is authorized to solicit

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firms pursuant to a Request for Proposal process as well as assist the City in placing advertisements in specific publications likely to reach the attention of such contractors. The City may then negotiate or enter into the Contract that appears most Advantageous to the City without further advertisement or issuance of its own Request for Proposals.

6. Insurance Contracts: Contracts for insurance, may be Awarded directly to an insurer after the City obtains Proposals from an insurance consultant. The consultant shall be selected pursuant to Chapter 5.68. Among the services to be provided by the consultant is the securing of competitive Proposals from insurance carriers for all coverages for which the insurance consultant is given responsibility and advice to the City about the costs and benefits of the various Proposals. The City may then negotiate or enter into the insurance Contract that appears most Advantageous to the City without advertisement or issuance of its own Request for Proposals.
7. Purchase of Used Personal Property or Equipment: The City may directly purchase used personal property and equipment. Used property and used equipment is property or equipment that has been placed in use by a previous owner or user for a period of time, and which is recognized in the relevant trade or industry, if there is one, as qualifying the personal property or equipment as “used”. Used personal property or equipment generally does not include property or equipment if the City was the previous user, whether under a lease, as part of a demonstration, trial or pilot project or similar arrangement.
8. Hazardous Material Removal and Oil Clean-up. The City may directly purchase services to remove or clean up hazardous material or oil from any vendor when ordered to do so by the Oregon Department of Environmental Quality pursuant to its authority under ORS Chapter 466. In doing so, the following conditions apply:
 - a. To the extent reasonable under the circumstances, encourage competition by attempting to obtain informal price quotations or Proposals from potential suppliers of Goods and Services;
 - b. The Bureau responsible for managing or coordinating the clean-up shall submit a Written description of the circumstances that require it and a copy of the DEQ order for the cleanup to the Procurement Services together with a requisition authorizing the Contract.
 - c. Procurement Services shall record whether there was time for competition, and, if so, the measures taken to encourage competition, the amount of the price quotations obtained, if any, and the reason for selecting the Contractor to whom Award is made; and

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- d. The timeline for cleanup does not permit the use of intermediate Procurement procedures.
9. Amendments to Contracts and Price Agreements: The City may execute Contract amendments, as follows:
 - a. An original valid Contract exists between the parties;
 - b. Unit prices or “add alternates” were provided in the Solicitation Document that established the cost basis for the additional Work or product or in a lump sum Contract the Contractor has provided an estimate of the additional cost which has been verified by the Bureau seeking the amendment; and
 - c. The Solicitation Document provided for such amendments; or
 - d. Emergency: The original Contract was let pursuant to a declaration of Emergency, in accordance with Section 5.33.130; or
 - e. Unplanned Environmental Cleanup: The additional Work is required by reason of existing regulations or ordinances of federal, state or local agencies, dealing with the prevention of environmental pollution and the preservation of natural resources, that affect performance of the original Contract and such regulations or ordinances either were not cited in the original Contract or were enacted or amended after submission of the successful Bid or Proposal.
10. Renegotiations of Existing Contracts with Incumbent Contractors.
 - a. Authorization. The City may renegotiate and amend existing Contracts with incumbent Contractors only if it is in the best interest of the City and has the approval of the Chief Procurement Officer prior to negotiation.
 - b. Process and Criteria. The City may renegotiate various items of the Contract, including but not limited to: price, term, delivery and shipping, order size, item substitutions, warranties, discounts, on-line ordering systems, price adjustments, product availability, product quality, and reporting requirements. The City must meet the following conditions in its Renegotiations with incumbent Contractors:
 - (1) Favorable Result. The City must determine that, with all things considered, the renegotiated Contract is at least as

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favorable to the City as the Original Contract and document this in the Procurement File. For example, the City and the Contractor may adjust terms and conditions within the Original Contract to meet different needs;

- (2) Within the Scope. The Supplies and Services provided under the renegotiated Contract must be reasonably related to the Original Contract's Solicitation. For example, the City may accept functionally equivalent substitutes for any Supplies and Services in the Original Contract's Solicitation.
- (3) Optional Term or Condition. If a Contractor offered to the City during the original Solicitation a term or condition that was rejected at that time, the City may not renegotiate for a lower price based on this rejected term or condition as a mandatory term or condition in the renegotiated Contract. If, however, a Contractor offers a lower price pursuant to a rejected term or condition without additional consideration from the City and as only an option to the City, then the City may accept the option of a lower price under the rejected term or condition. For example, if the City initially rejected a Contractor's proposed condition that the price required a minimum order, any renegotiated Contract may not mandate this condition; but the City may agree to the option to order lesser amounts or receive a reduced price based upon a minimum order; and
- (4) Market. In order to avoid encouraging favoritism or diminishing competition, the City may research the accepted competitive practices and expectations of Offerors within the market for the specific Contract(s) or Classes of Contracts to be renegotiated (Market Norm). If the City researches the Market Norm, then the City must document its results in the Procurement File. Based upon this information, the City shall confirm that, if the City follows the Market Norm, favoritism is not likely to be encouraged, competition is not likely to be diminished, and substantial cost savings may be realized. Under no condition may the City accept or follow any Market Norm that likely encourages favoritism or diminishes competition, even if it is accepted or expected in the market.

- 11. Reverse Auctions, pursuant to the process established in Section 5.33.350.

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12. Software and Hardware Maintenance, Licenses, Subscriptions and Upgrades. The City may directly enter into a Contract or renew existing Contracts for information technology hardware or software maintenance, licenses, subscriptions and upgrades without Competitive Solicitation where the maintenance, upgrades, subscriptions and licenses are either available from only one source or, if available from more than one provider, are obtained from the City's current provider in order to utilize the pre-existing knowledge of the vendor regarding the specifics of the City's hardware or software system. The City shall document in the Procurement File the facts that justify either that maintenance, license(s), subscriptions and upgrades were available from only one source or, if from more than one source, from the current vendor.
13. Equipment Maintenance, Repair and Overhaul. The City may enter into a Contract for equipment maintenance, repair and/or overhaul without competitive bidding and without obtaining competitive quotations if the extent of repair services, parts, maintenance or overhaul is unknown and cost cannot be determined without preliminary dismantling or testing.
14. Price-regulated goods and services, utilities and utility related services. The City may directly purchase, without a competitive solicitation process, utility services, repair, equipment and/or maintenance work, where the rate or price for such goods and services is established by federal, state, or local regulatory authority or when the services can be provided only by a specific utility.
15. Goods, Services or Equipment Required by a Federal Grant Agreements. The City may directly purchase, without a competitive solicitation process, goods, services or equipment when they are required to be purchased from a specific source or when a specific brand name is required and no competition is otherwise available.
16. Membership Dues. The City may directly purchase, without a competitive solicitation process, dues or memberships in professional or community organizations for the benefit of the City.
17. US Postal Service. The City may directly purchase without a competitive solicitation process, permits and postage meters, pre-stamped postcards, establish on-going postage accounts, etc. from the US Postal Service.
18. Services related to Legal Advice. The City may directly purchase, without a competitive solicitation process, services related to the provision of legal advice to the City:

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- a. When a contractor, such as a court reporter or copy service, has been selected by another person and the City must bear a portion of the cost in order to receive the benefit of the contractor's work, such as deposition transcripts or photocopies; or
 - b. When the contractor, including, but not limited to a mediator, arbitrator, referee or court appointed individual, is selected either by a court, or by joint agreement between the City and another person or persons, in an effort to resolve a claim or dispute that has been or will be asserted by or against the City, regardless of whether litigation has been filed.
 19. Seminar, Training Registration and Conference Fees. The City may directly purchase, without a competitive solicitation process, seminar registrations and training session fees for attendance at seminars, conferences and training courses hosted by outside entities.
 20. Event Sponsorship Agreements. The City may directly pay to sponsor an event, whether or not the City receives goods or services in return for its payment.
 21. Stormwater Improvements. The City may enter into a Contract for stormwater improvements or watershed restoration, or both, without obtaining competitive solicitations if all or a significant portion of the improvements or restoration that the City is funding will be performed
 - a. on private property; and
 - b. by the property owner or a contractor hired by the property owner.
- E. Notice. The City shall give public notice of the City Council's approval of an Individual or Class Special Procurement on its website as provided in Subsection 5.33.300 A.3. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement. The City shall give such public notice of the approval of a Special Procurement at least seven (7) Days before Award of the Contract. If the Special Procurement leads to a Solicitation Document, then the City will post a Notice of Intent to Award the contract pursuant to Section 5.33.650.
- F. If the City plans to conduct a competitive special Procurement, it shall award the contract to the Offeror the City determines to be the most advantageous to the City and thereafter give notice of intent to Award to all prequalified Offerors who sought the Award of a Contract in the manner provided for competitive sealed Bids.

5.33.300 Public Notice of Solicitation for Contracts over \$150,000.

(Amended by Ordinance Nos. 183445, 185898 and 187373, effective October 14, 2015.)

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- A.** Notice and Solicitation Fee. The City shall furnish public notice of every Solicitation Document in accordance with Subsection 5.33.300 B. The City may give additional notice using any method it determines appropriate to foster and promote competition, including:
1. Mailing notice of the availability of Solicitation Document to Persons that have expressed an interest in the City's Solicitations; or
 2. Placing Notice on the Oregon Department of Administrative Services' Electronic Procurement System known as "ORPIN" (Oregon Procurement Information Network) or a successor Electronic system; or
 3. Place Notice on the City's Internet Web site.
- B.** Advertising. The City shall advertise every notice of a Solicitation Document as follows:
1. The City shall publish the advertisement for Offers in accordance with the requirements of ORS 279B.055(4)(a) and (b) and 279B.060(5); or
 2. Because the City finds that it would be cost effective to Electronically post notice of Bids and Proposals, the City may publish the advertisement for Offers by Electronic Advertisement in accordance with the requirements established by Section 5.33.340.
 3. Content. All advertisements for Offers shall set forth:
 - a. Where, when how and for how long the Solicitation Document may be obtained.
 - b. A general description of the Goods or Services to be acquired;
 - c. The interval between the first date of notice of the Solicitation Document given in accordance with Subsection 5.33.300 B. and Closing which shall not be less than fourteen (14) Days for an Invitation to Bid and 21 Days for a Request for Proposals, unless the City determines that shorter interval is in the public's interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of notice of the Solicitation Document given in accordance with Subsection 5.33.300 B. and Closing be less than seven (7) Days as set forth in Section 5.33.200. The City shall document the specific reasons for the shorter public notice period in the Procurement file;

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- d.** The date that Persons must file applications for Prequalification if Prequalification is a requirement and the class or classes of Goods or Services for which Persons must be prequalified;
 - e.** The office where Contract terms, conditions and Specifications may be reviewed;
 - f.** The name and title of the person designated for the receipt of Bids and the person designated by the City as the contact person for the Procurement, if different;
 - g.** The scheduled Opening; and
 - h.** Any other information the City deems appropriate.
- C.** Posting Advertisement for Offers. The City shall post a copy of each advertisement for Offers at Procurement Services. An Offeror may obtain a copy of the advertisement for Offers upon request.
- D.** The City may charge a fee or require a deposit for the Solicitation Document.
- E.** The City shall provide potential Offerors notice of any Addendum to a Solicitation Document in accordance with Section 5.33.430.

5.33.310 Specifications and Brand Names.

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A.** Specification content is in the sole discretion of the City of Portland.
- B.** The City may consult with technical experts, suppliers, prospective Contractors and representative of the industries with which the City will Contract. The City shall take reasonable measure to ensure that no person who prepares or assists in the preparation of Solicitation Documents, Specifications, plans or Scopes of Work (collectively, “documents”), and that no business with which the person is associated realizes a material competitive advantage in a Procurement that arises from the City’s use of those documents.
- C.** A “brand name or equal” Specification may be used when it is Advantageous to the City. The brand name describes the standard of quality, performance, functionality and other characteristics of the product needed by the City. The City’s determination of what constitutes a product that is equal or superior to the product specified is final. Unless otherwise specified, the use of a brand name shall mean “brand name or equal.”
- D.** A “brand name” Specification may be used requiring a Contractor to provide a specific brand only if the Chief Procurement Officer, or designee, makes a Written

determination finding that the brand name will meet one or more of the following needs:

1. The use of a brand name Specification is unlikely to encourage favoritism in the Awarding of a Contract or substantially diminish competition for Contracts; or
 2. The use of a brand name Specification would result in a substantial cost savings to the City; or
 3. There is only one manufacturer or seller of the product of the quality, performance or functionality required; or
 4. Efficient utilization of existing goods requires the acquisition of compatible Goods or Services.
- E. The City's use of a brand name specification is subject to protest and review only as provided in Section 5.33.730.

5.33.320 Bids or Proposals are Offers.

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- A. Offer and Acceptance. A Bid, Proposal or Price Quotation is an Offer to enter into a Contract. The Offer is a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the City's acceptance for the period specified in Section 5.33.495. The City's Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.
- B. Responsive Offer. The City may Award a Contract only to a Responsible Offeror with a Responsive Offer.
- C. Contingent Offers. Except to the extent an Offeror is authorized to propose certain terms and conditions pursuant to Section 5.33.211 a Proposer shall not make its Offer contingent upon the City's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.
- D. Offeror's Acknowledgment. By signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits alternative terms under Section 5.33.215, the Proposal includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the City in Writing.

5.33.330 Facsimile Bids and Proposals.

(Amended by Ordinance No. 183445, effective January 6, 2010.)

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- A.** City Authorization. The Chief Procurement Officer may authorize Offerors to submit Facsimile Offers. If the City determines that a Bid or Proposal Security is or will be required, the City should not authorize Facsimile Offers unless the City has another method for receipt of such security. Prior to authorization, the City must determine whether the City's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time and establish administrative procedures and controls:
1. For receiving, identifying, recording, and safeguarding Facsimile Offers, and
 2. To ensure timely delivery of Offers to the location of Opening; and
 3. To preserve the "sealed" requirement of competitive Procurement.
- B.** Provisions To Be Included in Solicitation Document. In addition to all other requirements, if the City authorizes a Facsimile Offer, the City will include in the Solicitation Document provisions substantially similar to the following:
1. A "Facsimile Offer," as used in this Solicitation, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the City via a Facsimile machine.
 2. Offerors may submit Facsimile Offers in response to the Solicitation. The entire response must arrive at the place and by the time specified in this Solicitation Document.
 3. That Offerors must Sign their Facsimile Offers.
 4. The City reserves the right to Award the Contract solely on the Facsimile Offer. However, upon the City's request the apparently successful Offeror shall promptly submit its complete original Signed Offer.
 5. The data and compatibility characteristics of the City's receiving Facsimile machine as follows:
 - a. Telephone number;
 - b. Compatibility characteristics, e.g., make and model number, receiving speed and communications protocol.
 6. The City is not responsible for any failure attributable to the transmission or receipt of the Facsimile Offer including, but not limited to the following:
 - a. Receipt of garbled or incomplete documents.

- b.** Availability or condition of the receiving Facsimile machine.
- c.** Incompatibility between the sending and receiving Facsimile machine.
- d.** Delay in transmission or receipt of documents.
- e.** Failure of the Offeror to properly identify the Offer documents.
- f.** Illegibility of Offer documents.
- g.** Security and confidentiality of data.

5.33.340 Electronic Procurement.

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A.** The City may conduct all phases of a Procurement, including without limitation the posting of Electronic Advertisements and the receipt of Electronic Offers, by Electronic methods if and to the extent the City specifies in a Solicitation Document, a request for quotes, or any other Written instructions on how to participate in the Procurement.
- B.** The City shall open an Electronic Offer in accordance with Electronic security measures in effect at the City at the time of its receipt of the Electronic Offer. Unless the City provides procedures for the secure receipt of Electronic Offers, the Person submitting the Electronic Offer assumes the risk of premature disclosure due to submission in unsealed form.
- C.** The City's use of Electronic Signatures shall be consistent with applicable statutes and rules. The Chief Procurement Officer may limit the use of Electronic methods of conducting a Procurement as Advantageous to the City.
- D.** If the City determines that Bid or Proposal Security is or will be required, the Chief Procurement Officer will not authorize Electronic Offers unless the City has another method for receipt of such security.
- E.** Rules Governing Electronic Procurements. The City shall conduct all portions of an Electronic Procurement in accordance with these rules, unless otherwise set forth in this rule.
- F.** Preliminary Matters. As a condition of participation in an Electronic Procurement the Chief Procurement Officer may require potential Contractors to register with the City before the date and time on which the City will first accept Offers, to agree to the terms, conditions, or other requirements of a Solicitation Document, or to agree to terms and conditions governing the Procurement, such as procedures that

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the City may use to attribute, authenticate or verify the accuracy of an Electronic Offer, or the actions that constitute an Electronic Signature.

- G.** Offer Process. The Chief Procurement Officer may specify that Persons must submit an Electronic Offer by a particular date and time, or that Persons may submit multiple Electronic Offers during a period of time established in the Electronic Advertisement. When the Chief Procurement Officer specifies that Persons may submit multiple Electronic Offers during a specified period of time, the City must designate a time and date on which Persons may begin to submit Electronic Offers, and a time and date after which Persons may no longer submit Electronic Offers. The date and time after which Persons may no longer submit Electronic Offers need not be specified by a particular date and time, but may be specified by a description of the conditions that, when they occur, will establish the date and time after which Persons may no longer submit Electronic Offers. When the City will accept Electronic Offers for a period of time, then at the designated date and time that the City will first receive Electronic Offers, the City must begin to accept “real time” Electronic Offers on the City’s Electronic Procurement System, and shall continue to accept Electronic Offers in accordance with Subsection 5.33.340 H.2. until the date and time specified by the City, after which the City will no longer accept Electronic Offers.
- H.** Receipt of Electronic Offers.
- 1.** When the City conducts an Electronic Procurement that provides that all Electronic Offers must be submitted by a particular date and time, the City shall receive the Electronic Offers in accordance with these rules.
 - 2.** When the City specifies that Persons may submit multiple Offers during a period of time, the City shall accept Electronic Offers, and Persons may submit Electronic Offers, in accordance with the following:
 - a.** Following receipt of the first Electronic Offer after the Day and time the City first receives Electronic Offers the City shall post on the City’s Electronic Procurement System, and updated on a real time basis, the lowest Electronic Offer price or the highest ranking Electronic Offer. At any time before the date and time after which the City will no longer receive Electronic Offers, a Person may revise its Electronic Offer, except that a Person may not lower its price unless that price is below the then lowest Electronic Offer.
 - b.** A Person may not increase the price set forth in an Electronic Offer after the Day and time that the City first accepts Electronic Offers.
 - c.** A Person may withdraw an Electronic Offer only in compliance with these rules. If a Person withdraws an Electronic Offer, it may not

later submit an Electronic Offer at a price higher than that set forth in the withdrawn Electronic Offer.

- I. Failure of the E-Procurement System. In the event of a failure of the City's Electronic Procurement System that interferes with the ability of Persons to submit Electronic Offers, protest or to otherwise participate in the Procurement, the City may cancel the Procurement in accordance with Section 5.33.660, or may extend the date and time for receipt of Electronic Offers by providing notice of the extension immediately after the Electronic Procurement System becomes available.

5.33.350 Reverse Auctions.

- A. Conditions for use. When the City determines that online Solicitation is an Advantageous Procurement method, a Contract may be entered into by competitive online Bidding, subject to the provisions of Competitive Sealed Bidding or Competitive Sealed Proposals.
- B. Offer process. The Solicitation must designate both an Opening date and time and a Closing date and time. The Closing date and time need not be a fixed point in time, but may remain dependant on a variable specified in the Solicitation. At the Opening date and time, the City must begin accepting real time Electronic Offers. The Solicitation must remain open until the Closing date and time. The City may require Offerors to register before the Opening date and time and, as a part of that registration, to agree to the terms, conditions, or other requirements of the Solicitation. Following receipt of the first Offer after the Opening date and time, the lowest Offer price or, if Proposals are accepted, the ranking of each Proposer, must be posted Electronically to the Internet and updated on a real time basis. At any time before the Closing date and time, an Offeror may lower the price of its Offer or revise its Proposal except that after Opening date and time, an Offeror may not lower its price unless that price is below the then lowest Offer. Offer prices may not be increased after Opening. Except for Offer prices, Offers may be modified only as otherwise allowed by these rules or the Solicitation Document. An Offer may be withdrawn only in compliance with these rules. If an Offer is withdrawn, no later Offer submitted by the same Offeror may be for a higher price. If the lowest Responsive Offer is withdrawn after the Closing date and time, the City may cancel the Solicitation or reopen the Solicitation to all pre-existing Offerors by giving notice to all pre-existing Offerors of both the new Opening date and time and the new Closing date and time. Notice that Electronic Solicitation will be reopened must be given as specified in the Solicitation Document.
- C. Failure of the Electronic Procurement System. In the event of a failure of the Electronic Procurement System that interferes with the ability of Offerors to submit Offers, protest, or to otherwise meet the requirements of the Procurement, the City may cancel the Solicitation or may extend the Solicitation by providing notice of the extension immediately after the System becomes available.

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5.33.360 Contract Conditions

Every Contract shall contain the conditions required by ORS 279B.220, 225, 230 and 235.

5.33.400 Offer Preparation.

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- A.** Instructions. An Offeror shall submit and Sign its Offer in accordance with the Solicitation Document. Unless otherwise instructed, or unless Electronic Offers are permitted, signatures shall be in ink. An Offeror shall initial and submit any correction or erasure to its Offer prior to the Opening in accordance with the requirements for submitting an Offer under the Solicitation Document.
- B.** Forms. An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.
- C.** Documents. An Offeror shall provide the City with all documents and Descriptive Literature required under the Solicitation Document. If the Solicitation Document instructs Offerors not to include documents or literature, such as warranty provisions, the City is entitled to disregard those documents in determining whether the Offer is responsive to the City's request.
- D.** Electronic Submissions. If the Solicitation Document permitted Electronic Offers under Section 5.33.340 an Offeror may submit its Offer Electronically. The City shall not consider Electronic Offers unless authorized by the Solicitation Document.

5.33.410 Bid or Proposal Security.

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A.** Offer Security, not to exceed 10 percent of the Offer, is not required for Contracts other than Public Improvement Contracts unless the Chief Procurement Officer determines otherwise. If required, the purpose of Offer Security is to guarantee acceptance of the Award of the Contract. This requirement shall be stated in the Solicitation Document.
- B.** The Chief Procurement Officer may require Offer Security from any Offeror, even if the City has exempted a class of Solicitations from Offer Security.
- C.** The Offer Security shall be forfeited if the Offeror fails to execute the Contract promptly and properly after the City has Awarded the Contract, unless the Chief Procurement Officer determines forfeiture is not in the City's best interest.
- D.** The City shall not use Offer Security to discourage competition.
- E.** Return of Offer Security. The Offer Security of all unsuccessful Offerors shall be returned or released after a Contract has been executed and evidence of insurance

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and a performance bond provided (if insurance or performance bond is required by the Solicitation Document), or after all Offers have been rejected. The City may return the Offer Security of unsuccessful Offerors after Opening, but prior to Award, if the return does not prejudice Contract Award and provided that the security of at least the two lowest Bidders, or the two highest scoring Proposers, is retained pending the Award and execution of a Contract.

- F.** Form of Bid or Proposal security. The City may accept only the following forms of Bid or Proposal security:
- 1.** A surety bond, signed by the surety's authorized Attorney in Fact, that is authorized to do business in the State of Oregon and is duly listed in the United States Treasury list as published in the Federal Register, or is otherwise approved by the City Attorney. The surety company's seal shall be affixed to the bond and a Power of Attorney for the Attorney in Fact shall be submitted. The City Attorney has the authority to waive the requirement of corporate seal; or
 - 2.** A signed irrevocable letter of credit issued by an insured institution as defined in ORS 706.008(12); or
 - 3.** Cashier's check or Offeror's certified check; or
 - 4.** An annual surety bond filed with the City (except for Public Improvement Contracts) that meets all the requirements of Subsection 5.33.410 F.1. above.

5.33.420 Pre-Offer Conferences.

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A.** Purpose. The City may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the Solicitation requirements, obtain information, or to conduct site inspections.
- B.** Required Attendance. The City may require attendance at the pre-Offer conference as a condition for making an Offer. A prospective Offeror who fails to attend a mandatory conference is not eligible to make an Offer. If an Offer is made it will be rejected as nonresponsive.
- C.** Scheduled Time. If the City holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.

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- D.** Statements Not Binding. Statements made by a City representative at the pre-Offer conference or elsewhere about the proposed Contract or Solicitation Document do not change the Solicitation Document unless Procurement Services confirms such statements with a Written Addendum to the Solicitation Document.
- E.** City Announcement. The City must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with Section 5.33.300.

5.33.430 Addenda to Solicitation Document.

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A.** Issuance; Receipt. A Solicitation Document may be changed only by a Written Addendum. An Offeror shall provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the City otherwise specifies in the Addenda or Solicitation Document. If an Offeror submits an Offer and the Solicitation Document states that the Offeror is bound by all Addenda published in accordance with these rules, then the Offeror shall be bound to the terms contained in all Addenda so issued.
- B.** Notice and Distribution. The City shall notify prospective Offerors of Addenda consistent with the standards of Notice set forth in Section 5.33.300. The Solicitation Document shall specify how the City will provide notice of Addenda and how the City will make the Addenda available. For example, the City may state: “City will not mail notice of Addenda, but will publish notice of any Addenda on City’s Web site. Addenda may be downloaded off the City’s Web site. Offerors should frequently check the City’s Web site until Closing, i.e., at least once weekly until the week of Closing and at least once daily during the week of the Closing.”
- C.** Timelines; Extensions.
 - 1.** The City shall issue Addenda within a reasonable time to allow prospective Offerors to consider the information contained in the Addenda in preparing their Offers. The City should extend the Closing if the Chief Procurement Officer determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent that the Chief Procurement Officer determines that the public interest requires it, the City shall not issue an Addendum less than 72 hours before the Closing unless the Addendum also extends the Closing. For purposes of computing this time, the Addendum shall be deemed issued to occur when it is first posted on the City’s web site or upon mailing, whichever is applicable. If both occur, the notification is complete when the first of these two events occur.
 - 2.** Notwithstanding Subsection 5.33.430 C.1., an Addendum that modifies the evaluation criteria, selection process or procedure for any tier of competition under a multi-step sealed Bid or a multi-tiered or multi-step

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sealed Proposal issued in accordance with Sections 5.33.205 and 5.33.210 through 5.33.211 must be issued no fewer than five (5) Days before the beginning of that tier or step of competition, unless the City determines that a shorter period is sufficient to allow Offerors to prepare for that tier or step of competition. The City shall document the factors it considered in making that determination, which may include, without limitation, the Scope of the changes to the Solicitation Document, the location of the remaining eligible Proposers, or whether shortening the period between issuing an Addendum and the beginning of the next tier or step of competition favors or disfavors any particular Proposer or Proposers.

- D.** Request for Change or Protest. Unless a different deadline is set forth in the Addendum, an Offeror must submit a Written request for change or protest to the Addendum, as provided in Section 5.33.730, by the close of the City's next business Day after issuance of the Addendum. The City shall consider only an Offeror's request for change or protest to the Addendum; the City shall not consider a request for change or protest to matters not added or modified by the Addendum. Notwithstanding any provision of this paragraph, the City is not required to provide a protest period for Addenda issued during a multi-tier or multi-step Procurement process conducted pursuant to Sections 5.33.200 or 5.33.210.

5.33.440 Request for Clarification or Change.

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A.** Time for submission of request for change. Unless otherwise provided in the Solicitation Document, an Offeror shall deliver any request for change of the Solicitation Document, Specifications or Contract provisions to the City in Writing within seven (7) Days prior to Bid or Proposal Closing. Requests for change in regard to Addenda shall be submitted in accordance within the time permitted by Subsection 5.33.430 D.
- B.** Any request for change shall include a detailed statement of the legal and factual reasons for the request for change; any proposed changes to Specifications or Contract provisions; and a description of any prejudice to the Offeror; and, a statement of the form of relief requested. No request for change of the content of the Solicitation Document, Specifications or Contract provisions shall be considered after the deadline established for submitting such request. The City shall notify the Offeror if the City entirely rejects the request. If the City agrees with the request, in whole or in part, the City shall either issue an Addendum reflecting the change or cancel the Solicitation.
- C.** Extension of Closing date. If any request for change is timely received in accordance with these rules the Closing may be extended by the Chief Procurement Officer if it is determined that an extension is necessary to allow consideration of the request or issuance of any Addendum to the Solicitation Document.

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- D.** Identification of request for change. Envelopes containing requests for change or protests of the Solicitation Document, Specifications or Contract provisions shall be marked with the following information:

 - 1.** Solicitation Specification or Contract Provision Request for Change; and
 - 2.** Solicitation Document Number or Other Identification.
- E.** A Proposer may request a change to add alternate terms and conditions for negotiation if the Solicitation Document permits negotiation. In this circumstance, the request for change procedure shall be governed by the Solicitation Document and Subsection 5.33.211 H.
- F.** Clarification. Prior to the deadline for submitting a request for change, an Offeror may request in Writing that the City clarify any provision of the Solicitation Document or Contract. The City's clarification, whether oral or in Writing, does not change the Solicitation Document or Contract and is not binding on the City unless the City amends the Solicitation Document or Contract by Written Addendum.

5.33.450 Offeror Submission.

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A.** Product Samples and Descriptive Literature. Product Samples or Descriptive Literature may be required if it is necessary or desirable to evaluate the quality, features or characteristics of the offered items. The City will dispose of Product Samples, return, or make available for return, Product Samples to the Offeror in accordance with the Solicitation Document.
- B.** Identification of Offers.

 - 1.** To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the City, whichever is applicable. If the City permits Electronic Offers in the Solicitation Document, the Offeror may submit and identify Electronic Offers in accordance with the Solicitation Document.
 - 2.** The City is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.
 - 3.** Receipt of Offers. The Offeror is responsible for ensuring the City receives its Offer at Procurement Services prior to the stated Closing time for Offers, regardless of the method used to submit or transmit the Offer. Offers not so received are late as provided in Section 5.33.480 and shall be returned unopened. If a late Offer is opened inadvertently, the procedure provided

by Section 5.33.480 shall apply except the submission shall be returned to the Offeror.

5.33.460 Pre-Closing Modification or Withdrawal of Offers.

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A.** Modifications. An Offeror may modify its Offer in Writing prior to the Closing. Unless otherwise provided in the Solicitation Document, any modifications shall be prepared on the Offeror's letterhead, signed by an Authorized Representative of the Offeror, state that the new document supersedes or modifies the prior Offer and be submitted in a sealed envelope, appropriately marked. The City may accept modifications Electronically only if it has authorized Electronic submittal of the Offer in the Solicitation document. The Offeror shall mark the submitted modification as follows:
1. Offer Modification; and
 2. Solicitation Number or other identification as specified in the Solicitation Document.
- B.** Withdrawals:
1. An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an Authorized Representative of the Offeror, delivered to the location specified in the Solicitation Document or to Procurement Services if no location is specified, and received by the specific location or to Procurement Services, as appropriate, prior to the time and date set for Closing.
 2. The Offeror or Authorized Representative of the Offeror may withdraw its Offer in person prior to the Closing, upon presentation of appropriate identification and satisfactory evidence of authority. Because of the chance for error or misidentification, the City reserves the right to reject a purported withdrawal if in the judgment of the City, sufficient identification is not provided.
 3. The City may release an unopened Offer withdrawn under Subsection 5.33.460 B.1. to the Offeror or its Authorized Representative, after voiding any date and time stamp mark or otherwise by appropriately marking the envelope in which the Offer was received.
 4. The Offeror shall mark the Written request to withdraw an Offer as follows:
 - a. Offer Withdrawal; and

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- b. Solicitation Number or other identification as specified in the Solicitation Document.
- c. Documentation. The City shall include all documents relating to the modification or withdrawal of Offers in the appropriate Solicitation file.

5.33.470 Receipt, Opening, and Recording of Offers.

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A. Receipt. Procurement Services shall Electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Offer or modification shall not be opened, but shall be stored in a secure place until Opening. If an Offer or modification is inadvertently opened prior to the Opening, the City shall reseal and store the opened Offer or modification for Opening. That action shall be documented and placed in the appropriate Solicitation file. (e.g. “City inadvertently opened the Offer due to improper identification of the Offer.”)
- B. Opening and recording. Offers shall be opened publicly, including any modifications made to the Offer pursuant to Section 5.33.460.

 - 1. In the case of Invitations to Bid, to the extent practicable, the name of each Bidder shall be read aloud as well as the Bid price(s), and such other information as the City considers appropriate.
 - 2. In the case of Requests for Proposals, the City will not read Proposals aloud, but will only disclose the name of each Proposer.
- C. Availability. After Opening, Offers will be available for public inspection except for those portions of an Offer that the Offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501(2); ORS 646.461 to 646.475.

 - 1. To the extent such designation is not in accordance with applicable law, the City shall make those portions available for public inspection. The Offeror shall separate information designated as confidential from other non-confidential information at the time of submitting its Offer.
 - 2. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and shall be publicly available regardless of an Offeror’s designation to the contrary. The Chief Procurement Officer may determine the appropriate charge to be paid for copies made pursuant to public records requests and may request payment for such copies before they are released.

3. Notwithstanding anything contrary above, the City is not required to disclose the contents of Proposals until after the City posts a Notice of Intend to Award pursuant to Section 5.33.650.

5.33.480 Late Offers, Late Withdrawals and Late Modifications.
(Amended by Ordinance No. 183445, effective January 6, 2010.)

- A. Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. The City shall not consider late Offers, withdrawals or modifications
- B. For manual submissions of Offers, Procurement Services' time clock shall be the clock of record and the date and time imprint of that clock on an Offer shall determine the timeliness of the submission. Late manual submissions shall be returned to the Offeror unopened with a copy of the envelope containing the Bureau's time stamp on the Offer retained for the Solicitation file
- C. For Electronic submissions, when permitted, the time shown by the City as to the date of arrival of the Electronic submission shall determine the timeliness of the submission. Late Electronic submissions shall be deleted from the City's files, returned Electronically to the Offeror and the time of the submission and the time of return shall be documented in the Solicitation file.
- D. For Facsimile submissions, when permitted, the time recorded at the top of the last page of the submission shall determine the timeliness of the submission. Late Facsimile transmissions shall be returned to the Offeror after keeping a copy of the last page of the transmission for the Solicitation file.
- E. Failure to properly return or dispose of a late submission does not mean an Offer or submission arrived on time.

5.33.490 Mistakes.

- A. General. To protect the integrity of the competitive Solicitation process and to assure fair treatment of Offerors, the City should carefully consider whether to permit a waiver, correction or withdrawal of an Offer for certain mistakes.
- B. Treatment of Mistakes. Errors in judgment do not permit an Offeror to correct or withdraw an Offer. Mistakes that constitute a minor informality may be waived or corrected. Mistakes that constitute clerical errors may be corrected or withdrawn in the City's discretion pursuant to this rule.
- C. City notification. If the City believes the Offer contains a mistake the City shall notify the Offeror, note the apparent mistake and request that the Offeror verify the

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Offer in writing, or by electronic transmission within one business day after notification.

- D.** Failure of Offeror to Respond. If the Offeror fails to respond within one business day after notification of the apparent mistake, the City shall consider the Offer as submitted unless the amount of the Offer is so far out of line with the amounts of other bids received, or with the amount estimated by the City, or there are other indications of error so clear, as to reasonably justify the conclusion or that acceptance of the Offer would be unfair to the Offeror or to other bona fide Offerors, in which case the City shall be entitled to reject the Offer. The City may extend the time for response for good cause shown.
- E.** Verification. If the Offeror verifies its Offer, the City must consider the Offer as originally submitted. However, in fairness to other Offerors, verification does not preclude the City from rejecting the Offer if it is clear that a mistake has been made and the City determines the intended Offer is not evident.
- F.** Minor Informality. If the Offeror verifies its Offer, and the City sees no reason for rejection, the City may waive or permit the Offeror to correct a mistake that constitutes a minor informality. A minor informality is a matter of form, rather than substance, that is evident on the face of the Offer and which can be corrected or waived without prejudice to the public or other Offerors. Examples of a minor informality include a failure to:

 - 1. Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;
 - 2. Sign the Offer in the designated block, provided, however, that a Signature appears elsewhere in the Offer that evidences the Offeror's intent to be bound; or
 - 3. Acknowledge receipt of an Addendum to the Solicitation Document, provided it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms.
- G.** Clerical Mistakes. If the Offeror does not verify its Offer, but contends a clerical mistake caused a different Offer than intended to be submitted, or verifies the Offer but contends a clerical mistake should be corrected within a portion of the Offer, the City may in its discretion permit correction if the conditions of this section are met.

 - 1. Only clerical mistakes can be corrected. A clerical mistake is not a mistake of judgment. Examples of clerical mistakes include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors,

misplacement of a decimal point, and instances in which the intended correct price is evident by simple arithmetic calculations.

2. If correction of the Offer would result in displacement of one or more lower Offers submitted by other Offerors, the correction is permitted if, and only if, both the existence of the mistake and the Offer actually intended are ascertainable from the Solicitation Document and the Offer itself.
3. If correction of the Offer would not result in the displacement of one or more lower Offers submitted by other Offerors, correction may be permitted if the Offeror provides the City with clear and convincing supporting evidence of the mistake and intended Offer within two business days after the City's initial notification of the mistake. The City may extend the time for response for good cause shown.
 - a. Supporting evidence shall include all pertinent evidence, such as the Offeror's file copy of its Offer, the original worksheets and other data used in preparing the Offer, subcontractors' quotations, if any, and any other evidence that establishes the existence of a clerical mistake, the manner in which it occurred and the Offer actually intended.
 - b. The closer the corrected Offer is to the next lowest Offer the greater the need for the City to be sure that it has clear and convincing evidence that permits a correction to ensure the integrity of the competitive process.

5.33.495 Time for City Acceptance.

- A. An Offeror's Offer is a Firm Offer, irrevocable, valid and binding on the Offeror for not less than 30 Days from Closing unless otherwise specified in the Solicitation Document. After 30 Days the Offer shall lapse unless extended. The extension may occur after the expiration of the 30-Day period.
- B. An Offer may be extended beyond 30 Days if the Offeror and the City so agree. If agreement is reached the time period for extension shall be reduced to Writing and the Offer will remain valid, irrevocable and binding on the Offeror for the agreed-upon extension period.

5.33.500 Responsibility of Offerors.

(Amended by Ordinance Nos. 183445, 185898 and 187373, effective October 14, 2015.)

- A. Contracts shall be Awarded only to Responsible Offerors. Pursuant to ORS 279B.110, the City shall consider whether the Offeror has:

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1. Available the appropriate financial, material, equipment, facility and personnel resources and expertise, necessary to indicate the capability of the prospective Offeror to meet all Contractual responsibilities;
2. Has completed previous contracts of a similar nature with a satisfactory record of performance. A “satisfactory record of performance” means that to the extent the costs associated with and time available to perform a previous contract were within the Offer’s control, the Offeror stayed within the time and budget allotted for the Procurement and otherwise performed the contract in a satisfactory manner. The City should carefully scrutinize an Offeror’s records of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror’s performance, the City should determine whether the Offeror’s deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The City may review the Offeror’s performance on both private and public contracts in determining the Offeror’s record of contract performance. The City shall document the record of performance of a prospective Offeror if the City finds the prospective Offeror non-Responsible under this Paragraph;
3. A satisfactory record of integrity. An Offeror may lack integrity if the City determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to the City. The City may find an Offeror non-Responsible based on lack of integrity of any Person having influence or control over the Offeror (such as key employees of the Offeror has the authority to significantly influence the Offeror’s performance of the Contractor or a parent company, predecessor or successor Person.) The standards for Debarment under ORS 279B.130 may be used to determine an Offeror’s integrity. The City may find an Offeror non-Responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror’s performance of a contract or subcontract. The City shall document the record of integrity of a prospective Offeror if the City finds the prospective Offeror non-Responsible under this Paragraph;
4. Qualified legally to Contract with the City. Procurement Services may determine that such an Offeror is not legally qualified if:
 - a. The Offeror does not have a business license tax account with the City; or
 - b. The Offeror failed to make payments required by Title 7 of the City Code and has failed to make appropriate payment arrangements with the Revenue Division of the Bureau of Revenue and Financial

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Services within seven (7) Days of the receipt of a Bid or Proposal, unless the City waives that requirement and decides to pursue collection through retention of Contract funds, or through other means; or

- c. The Offeror failed to submit a signed affidavit that attests, under penalty of perjury, that the Offeror has complied with the tax laws of the State of Oregon and the City of Portland.

5.33.505 Qualified Products Lists.

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A. City Bureaus may develop and maintain a qualified products list when it is necessary or desirable to test or examine goods before initiating a Procurement. “Goods” includes products that have associated or incidental service components, such as supplier warranty obligations or maintenance service programs.

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2. Any potential Contractor, seller, or supplier, even though not solicited, may offer its goods for consideration.
- C. The determination of whether a particular good satisfies the Bureau's needs is entirely within the Bureau's sole discretion.

5.33.510 Prequalification of Prospective Offerors; Pre-Negotiation of Contract Terms and Conditions.

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A. The City may Prequalify prospective Offerors as follows:
 1. The Chief Procurement Officer shall determine the types of forms, the method of submitting applications and the information required to be a prequalified Offeror for Goods or Services.
 2. Prospective Offerors shall submit the application on the form required by the Chief Procurement Officer.
 3. Upon receipt of the application, the City shall investigate the prospective Offeror as necessary to determine whether the Prequalification should be granted.
 4. If an early Prequalification decision is requested, the City shall make that decision in less than 30 Days, if practicable.
 5. The Chief Procurement Officer shall notify prospective Offerors whether or not they have been prequalified. If a prospective Offeror is not prequalified, the Chief Procurement Officer shall specify which of the standards of responsibility listed in Section 5.33.500 the prospective Offeror failed to meet.
- B. If the City determines that a prequalified Offeror is no longer qualified the Chief Procurement Officer may revoke or revise the Prequalification upon reasonable notice, except that a revocation or revision is invalid as to any Contract for which an advertisement for Bids or Proposals has already been issued.
- C. Notwithstanding the prohibition against revocation of Prequalification generally in ORS 279B.120(3), the City may determine that a prequalified Offeror is not Responsible for any given Contract prior to Contract Award.
- D. The City may pre-negotiate some of all Contract terms and conditions including prospective Proposer Contract forms such as license agreements, maintenance and support agreements, or similar documents for use in future Procurements. Such pre-negotiation of Contract terms and conditions (including prospective Proposer forms) may be part of the prequalification process of a Proposer in Subsection A.

or the pre-negotiation may be a separate process and not part of a prequalification process. Unless required as part of the prequalification process, the failure of the City and the prospective Proposer to reach agreement on pre-negotiated Contract terms and conditions does not prohibit the prospective Proposer from responding to Procurements. The City may agree to different pre-negotiated Contract terms and conditions with different prospective Proposers. When the City has pre-negotiated different terms and conditions with Proposers or when permitted, Proposers offer different terms and conditions, the City may consider the terms and conditions in the Proposal evaluation process.

5.33.530 Debarment of Prospective Offerors.

(Amended by Ordinance Nos. 181547 and 185898, effective February 20, 2013.)

- A.** The City may Debar prospective Offerors pursuant to ORS 279B.130 and this rule.
- B.** The City may debar a prospective Offeror from consideration for City Contracts for a period up to three (3) years if:
 - 1.** The Offeror has been convicted of a criminal offense as an incident in obtaining or attempting to obtain a public or private Contract or Subcontract or in the performance of such Contractor or Subcontract;
 - 2.** The Offeror has been convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the Offeror's responsibility as a Contractor;
 - 3.** The Offeror has been convicted under state or federal antitrust statutes;
 - 4.** The Offeror has committed a violation of a Contract provision that is regarded by the City or the Construction Contractors Board to be so serious to justify disqualification. A violation may include, but is not limited to, a failure to perform the terms of a Contract or an unsatisfactory performance in accordance with the terms of the Contract. However, a failure to perform or an unsatisfactory performance caused by acts beyond the control of the Contractor may not be considered to be a basis for debarment; or
 - 5.** The Offeror does not carry workers' compensation or unemployment insurance as required by Oregon Law.
- C.** The City may debar a prospective Offeror as follows:

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1. Issue a Written decision that states the reasons for the action taken and informs the Offeror of the appeal rights under ORS 279B.435 and Section 5.33.760; and
 2. Mail or immediately furnish a copy of the decision to the debarred Offeror.
- D.** Notwithstanding the limitation on the term for Debarment in ORS 279B.130(1)(b) and this rule, the City may determine that a previously Debarred Bidder or Proposer is not Responsible for a given Contract prior to Contract Award.
- E.** Imputed Knowledge. The City may attribute improper conduct of a Person or its affiliate having a Contract with a prospective Offeror to the prospective Offeror for purposes of debarment where the impropriety occurred in connection with the Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.
- F.** Limited participation. The City may allow a Debarred Person to participate in solicitations and Contracts on limited basis during the Debarment period upon Written determination that participation is Advantageous to the City. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

5.33.540 Disadvantaged, Minority, Woman, Service-Disabled Veteran or Emerging Small Business Enterprise Prohibited Conduct; Sanctions; Appeals.

(Replaced by Ordinance No. 187974, effective September 7, 2016.)

- A.** If the City determines at any time during the term of a contract that a contractor to which the City awarded the contract on the basis described in ORS 279A.107 (1), or a subcontractor to which the contractor awarded a subcontract in connection with the contract on the basis described in ORS 279A.107 (1), is no longer certified, the City may:
1. Terminate the contract;
 2. Require the contractor to terminate the subcontract; or
 3. Exercise any of the remedies for breach of contract that are reserved in the contract.
- B.** Notwithstanding the scope of ORS 200.055 et seq., Section 5.33.540 applies to all projects, including, but not limited to, contracts, loans, grants, development agreements, and any other City-owned, City-sponsored or City-funded project.
- C.** The City may investigate complaints alleging one or more of the following violations of ORS 200.065:

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1. Fraudulently obtaining or retaining certification as a disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprise;
 2. Attempting to fraudulently obtain or retain certification as a disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprise;
 3. Aiding another person to fraudulently obtain or retain certification as a disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprise;
 4. Aiding another person to attempt to fraudulently obtain or retain certification as a disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprise; or
 5. Knowingly making a false claim that any person is qualified for certification or is certified under ORS 200.055 (Certification of disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprises) for the purpose of gaining a contract or subcontract or other benefit.
- D.** When the City investigates a complaint that a person has violated ORS 200.065, the City may require any additional information, and through the City Attorney's Office, administer oaths, take depositions and issue subpoenas to compel witnesses to attend and to produce books, papers, records, memoranda or other information necessary for the City to complete its investigation. If a person fails to comply with any subpoena that the City issues under its investigation. If a person fails to comply with any subpoena that the City issues under ORS 200.065 or refuses to testify on any matter on which a person may lawfully be interrogated, the City shall follow the procedure provided in ORS 183.440 to compel compliance.
- E.** The City may issue the following sanctions against any person for violating ORS 200.065:
1. Withholding payment;
 2. Suspending or terminating a public contract;
 3. Impose a civil penalty not to exceed 10 percent of the contract or subcontract price or \$5,000, whichever is less, for each violation; and
 4. Disqualifying for up to 3 years from submitting a bid or proposal for, or receiving an award of, a public contract.
- F.** The City may also disqualify any person from bidding or participating in a public contract for a period of up to 3 years;

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1. Who under oath during the course of an investigation admits to violating ORS 200.065(1) or (2); or
 2. Upon notice of a finding of fraudulent certification by the Oregon Business Development Department or other public contracting agency.
- G.** Any bidder, proposer, contractor or subcontractor on a City contract that knowingly commits any of the following acts shall have its right to submit a bid or proposal for, or receive an award of, a City contract in the future suspended under ORS 200.075:
1. Entering into any agreement to represent that a disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise certified under ORS 200.055 will perform work or supply material under a public improvement contract without the knowledge and consent of the disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise.
 2. Exercising or permitting another bidder, proposer, contractor or subcontractor to exercise management and decision making control over the internal operations of a disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise other than the bidder's, proposer's, contractor's or subcontractor's own business enterprise. As used in this paragraph, "internal operations" does not include normal scheduling, coordination, execution or performance as a subcontractor on a public contract.
 3. Using a disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise to perform a public contract or subcontract or to supply material under a public contract to meet an established goal or requirement if the disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprise does not perform a Commercially Useful Function in carrying out its responsibilities and obligations under the public contract.
 4. Failing to perform a Commercially Useful Function in performing a public contract or subcontract or in supplying material to a contractor or subcontractor that is performing a public contract if the bidder, proposer, contractor or subcontractor is presented as a certified disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise to meet an established goal or requirement.
- H.** The suspension shall be one year for a first violation, 3 years for a second violation and 5 years for a third violation. Each violation must remain on record for 5 years. After 5 years the City may not consider the violation in reviewing future violations.

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- I.** Prior to suspending, disqualifying or otherwise sanctioning a person under Section 5.33.540, the City shall provide written notice to the person of a proposed sanction under ORS 200.065 or ORS 200.075, served personally or by registered or certified mail, return receipt requested. This notice shall include:
 - 1.** That the City intends to sanction;
 - 2.** The effective date and period of the sanction, if applicable;
 - 3.** The reason(s) for the sanction; and
 - 4.** That the person has the right to request a hearing before the Code Hearings Officer in accordance with Section 3.130.020.
- J.** The hearing shall be conducted in accordance with Chapter 22.10 and any administrative rules governing appeals to the Code Hearings Officer.

5.33.610 Offer Evaluation and Award.

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A.** General. If a Contract is Awarded, the City shall Award the Contract to the Responsible Offeror submitting the lowest, Responsive Bid. The City may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.
- B.** Multiple Items. An Invitation to Bid or Request for Proposal may call for pricing of multiple items of similar or related type with Award based on individual line item, group total of certain items, a “market basket” of items representative of the total requirement, or grand total of all items.
- C.** All or none Offers. All or none Bids or Proposals may be accepted if the evaluation shows an all or none Award to be the lowest cost of those submitted.
- D.** Clarification of Offers. After Opening, discussions may be conducted with apparent Responsive Offerors for the purpose of clarification to assure full understanding of the Offer. All Offers, in the City’s sole judgment, needing clarification shall be accorded such an opportunity. Clarification of any Offer must be documented in Writing by City and shall be included in the file.
- E.** Multiple Awards - Bids. If a Solicitation permits the Award of multiple Contracts, the City shall specify the criteria it shall use to choose from the multiple Contracts when purchasing Goods and Services. The criteria shall require the City to purchase the lowest priced goods or services available from the multiple Contracts. Multiple Awards shall not be made if a single Award will meet the City’s needs without sacrifice of economy or service. A multiple Award may be made if Award to two or more Offerors of similar products is necessary for adequate availability, delivery,

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and service or product compatibility. Awards may not be made for the purpose of dividing the Solicitation, or to allow for user preference unrelated to utility or economy. A notice to potential Offeror that multiple Contracts may be Awarded for any Solicitation shall not preclude the Award of a single Contract for such Solicitation.

- F.** Multiple Awards – Proposals. If a Solicitation permits the Award of multiple Contracts, the City shall specify the criteria it shall use to choose from the multiple Contracts when purchasing Goods and Services. The criteria shall require the City to procure the goods or services that are most Advantageous to the City available from the multiple Contracts. Multiple Awards shall not be made if a single Award will meet the City’s needs without sacrifice of economy or service. A multiple Award may be made if Award to two or more Offerors of similar Goods or Services is necessary for adequate availability, delivery, and service or product compatibility. Multiple Awards may not be made for the purpose of dividing the Solicitation, or to allow for user preference unrelated to obtaining the most Advantageous Contract. A notice to potential Offeror that multiple Contracts may be Awarded for any Solicitation shall not preclude the Award of a single Contract for such Solicitation.
- G.** Partial Awards. If after evaluation of competitive Offers, the City finds that a qualified Offer has been received for only parts of the requirements of the Solicitation:

 - 1. A Contract may be Awarded for the parts of the Solicitation for which qualified Offers have been received.
 - 2. All Offers may be rejected and a new Invitation to Bid or Request for Proposals on the same or revised terms, conditions and Specifications may be issued.
- H.** City Evaluation. The City shall evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The City shall not evaluate an Offer using any other requirement or criterion.
- I.** Evaluation of Bids. The City shall evaluate Bids as set forth in ORS 279B.055(6)(a).

 - 1. In evaluating Bids, the City shall apply the Contract preferences set forth in Sections 5.33.625 through 5.33.635.
 - 2. Low, Tied Offers. Low, tied Offers shall be resolved pursuant to Section 5.33.625.

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- J.** Evaluation of Proposals. The City shall evaluate Proposals as set forth in 279B.060(6) and Section 5.33.210 and in the event of low, tied Proposals, in accordance with Section 5.33.625.
- K.** Recycled Materials. In determining the most Advantageous Responsive Proposal the City shall give preference for recycled materials as set forth in ORS 279A.125 and Section 5.33.635.

5.33.620 Negotiation With Offerors Prohibited.

The City shall not negotiate with any Offeror in regard to the acquisition of Goods and Services if the Procurement was pursuant to an Invitation to Bid. This rule does not prevent the City from seeking a clarification of an Offer, provided the clarification does not change the Offer. This rule does not prohibit negotiation with a Proposer in response to a Request for Proposals provided the requirements of these rules have been met.

5.33.625 Contract Preferences.

(Amended by Ordinance Nos. 185065 and 185898, effective February 20, 2013.)

- A.** Award When Offers Identical. Under ORS 279A.120, when the City receives Offers identical in price, fitness, availability and quality, and chooses to Award a Contract, the City shall Award the Contract based on the following order of precedence:
 - 1.** The City shall Award the Contract to the Offeror among those submitting identical Offers who is offering Goods or Services, or both, are manufactured, produced or to be performed in Oregon.
 - 2.** If two or more Offerors submit identical Offers, and they all offer Goods or Services, or both, manufactured or produced in Oregon, the City shall Award the Contract by drawing lots among the identical Offers offering Goods or Services that are manufactured, produced or to be performed in Oregon. The City shall provide to the Offerors who submitted the identical Offers notice of the date, time and location of the drawing of lots and an opportunity for those Offerors to be present when the lots are drawn.
 - 3.** If the City receives identical Offers, and none of the identical Offers offer Goods or Services, or both, that are manufactured, produced or to be performed in Oregon, then the City shall Award the Contract by drawing lots among the identical Offerors. The City shall provide to the Offerors that submitted the identical Offers notice of the date, time and location of the drawing of lots and an opportunity to be present when the lots are drawn.
- B.** Determining if Offers are Identical. The City shall consider Offers identical in price, fitness, availability and quality as follows:

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1. Bids received in response to an Invitation to Bid issued under Section 5.33.200 or ORS 279C.335 are identical in price, fitness, availability and quality if the Bids are Responsive, and offer the Goods or Services described in the Invitation to Bid at the same price.
 2. Proposals received in response to a Request for Proposals issued under Section 5.33.210, are identical in price, fitness, availability and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposals.
 3. Proposals received in response to a Special Procurement conducted pursuant to Section 5.33.220 are identical in price, fitness, availability and quality if, after completing the Contracting procedure approved by the City if the City determines, in Writing, that two or more Proposals are equally Advantageous to the City.
 4. Offers received in response to an intermediate Procurement conducted pursuant to ORS 279B.070 are identical if the Offers equally best serve the interests of the City in accordance with ORS 279B.070(4).
- C.** Determining if Goods or Services are Manufactured or Produced in Oregon. In applying Subsection 5.33.625 A., the City shall determine whether a Contract is predominantly for Goods or Services are manufactured, produced or performed in Oregon. The City may request in a Solicitation Document, following Closing, or at any other time determined appropriate by the City, any information the City may need to determine if the Goods or Services are manufactured or produced in Oregon. The City may use any reasonable criteria to determine if Goods or Services are manufactured or produced in Oregon, provided that the criteria reasonably relate to that determination, and provided that the same criteria apply equally to each Offeror.
- D.** Procedure for Drawing Lots. When this Rule calls for the drawing of lots, the City shall draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of selection, and that does not allow the person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.
- E.** Discretionary Preference and Award. Under ORS 279A.128, the City may provide, in a Solicitation Document for Goods or Services, a specified percentage preference of not more than ten percent for Goods fabricated or processed entirely in Oregon or Services performed entirely in Oregon. When the City provides for a preference under this Section, and more than one Offeror qualifies for the preference, the City may give a further preference to a qualifying Offeror that resides in or is headquartered in Oregon. The City may establish a preference percentage higher than ten percent if the Chief Procurement Officer makes a written determination

that good cause exists to establish the higher percentage and explains the City's reasons and evidence of good cause. The City may not apply the preferences described in this Paragraph in a Procurement for emergency work, minor alterations, ordinary repairs or maintenance of public improvements, or construction work that is described in ORS 279C.320.

5.33.630 Reciprocal Preferences.

(Amended by Ordinance Nos. 181547 and 185898, effective February 20, 2013.)

- A.** When evaluating Bids pursuant to Section 5.33.610, the City shall add a percentage increase to the Bid of a Nonresident Bidder equal to the percentage, if any, of the preference that would be given to that Bidder in the state in which the Bidder resides.
- B.** The City shall rely on the list prepared and maintained by the Oregon Department of Administrative Services pursuant to ORS 279A.120(4) to determine both:
 - 1.** whether the Nonresident Bidder's state gives preference to in-state Bidders, and
 - 2.** the amount of such preference.

5.33.635 Contract Preferences: Recycled Materials.

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- A.** Notwithstanding provisions of law requiring the City to Award a Contract to the lowest Responsible Bidder or best Proposer or provider of a quotation, and subject to Subsection 5.33.635 B., the City shall give preference to the Procurement of goods manufactured from recycled materials.
- B.** In comparing goods from two or more Bidders or Proposers, and at least one Bidder or Proposer offers goods manufactured from recycled materials, and at least one Bidder or Proposer does not, the City shall select the Bidder or Proposer offering goods manufactured from recycled materials if each of the following four (4) conditions exists:
 - 1.** The recycled product is available;
 - 2.** The recycled product meets applicable standards;
 - 3.** The recycled product can be substituted for a comparable non-recycled product; and
 - 4.** The recycled product's costs do not exceed the costs of non-recycled products by more than five (5) percent, or a higher percentage if a Written determination is made by the City and set forth in the Solicitation

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Document. For purposes of making the foregoing determination, the City shall consider the costs of the goods following any adjustments the City makes to the price of the goods for purposes of evaluation pursuant to Section 5.33.610.

- C. For the purposes of this Section, the City shall determine if goods are manufactured from recycled materials in accordance with standards established by the City.

5.33.640 Rejection of all or part of an Offer.

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A. Investigation. The City may, but is not required to, seek clarification of an Offer to determine whether it is responsive and make such investigation as necessary to determine whether an Offeror is responsible. The investigation may include:
 - 1. An inquiry into the responsibility of the Offeror's proposed Subcontractor and suppliers;
 - 2. Requiring an Offeror to demonstrate its financial ability to perform the Contract. In exercising this right, the City shall notify the apparent successful Offeror in Writing to submit such documentation as the City deems necessary to complete a thorough evaluation of the Offeror's financial ability;
 - 3. Obtaining any credit report information that the City deems necessary to investigate and evaluate whether the Offeror is financially responsible. By submitting an Offer, the Offeror authorizes the City to investigate its credit, to obtain credit reports and to cooperate in the event that credit information is requested by the City.
 - 4. Any action necessary to ascertain whether the Offeror is responsible.
- B. Grounds for Rejection.
 - 1. The City may reject any Offer upon finding that to accept the Offer may impair the integrity of the Solicitation process or that rejecting the Offer is in the public interest.
 - 2. The City may reject any Offer, in whole or in part, when rejection is in the best interest of the City as determined by the City. If so, the reasons for rejection shall be made part of the Solicitation file.
 - 3. The City shall reject an Offer as nonresponsive upon the City's finding that the Offer:

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- a.** is contingent upon the City's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;
 - b.** takes exception to terms and conditions (including Specifications);
 - c.** attempts to prevent public disclosure of matters in contravention of the terms and conditions of Solicitation Document or in contravention of applicable law;
 - d.** offers Goods or Services that fail to meet the Specifications of the Solicitation Document;
 - e.** is late;
 - f.** is not in substantial compliance with the Solicitation Documents;
 - g.** is not in substantial compliance with all prescribed public Solicitation procedures;
 - h.** contains a deviation that, if the Offer was accepted, would give the Offeror a substantial advantage or benefit not shared by other Offerors; or
 - i.** has failed to comply with the programs adopted pursuant to PCC Section 5.33.900.
- 4.** The City shall reject an Offer upon the City's finding that the Offeror:
 - a.** Has not been prequalified under ORS 279B.120 and the City required mandatory Prequalification;
 - b.** Has been debarred as set forth in ORS 279B.130;
 - c.** Has not met the requirements of ORS 279A.105 regarding subcontracting to emerging small businesses when required to do so by the City;
 - d.** Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;
 - e.** Has failed to provide the certification of nondiscrimination required by Subsection 5.33.640 D.; or
 - f.** Is not a Responsible contractor pursuant to Section 5.33.500 and state law.

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- C.** Form of Business. For purposes of this rule, the City may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring an ownership interest of the Person to determine application of this rule or to apply the Debarment provisions of ORS 279B.130.
- D.** Certification of Non-Discrimination. The Offeror shall certify and deliver to the City the Written certification required by Subsection 5.33.075 B.3.

5.33.645 Rejection of All Offers.

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- A.** Rejection. The City may reject all Offers for good cause upon the City's Written finding it is in the public interest to do so. The City shall notify all Offerors of the rejection of all Offers, along with the good cause justification and finding.
- B.** Criteria. The City may reject all Offers upon a Written finding that:
 - 1.** The content of or an error in the Solicitation Document, or the Solicitation process unnecessarily restricted competition for the Contract;
 - 2.** The price, quality or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;
 - 3.** Misconduct, error, or ambiguous, conflicting or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;
 - 4.** Causes other than legitimate market forces threaten the integrity of the competitive Solicitation process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;
 - 5.** The City cancels the Solicitation in accordance with Section 5.33.660; or
 - 6.** Any other circumstance indicating that Awarding the Contract would not be in the public interest.

5.33.650 Notice of Intent to Award.

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- A.** Applicability: This section applies to Awards of a Contract, except for small Procurements pursuant to Section 5.33.180, intermediate Procurements pursuant to Section 5.33.190, sole source Procurements pursuant to Section 5.33.120,

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Emergency Procurements pursuant to Section 5.33.130 or a Special Procurement pursuant to Section 5.33.220.

- B.** Notice: The City shall provide Written notice of Intent to Award a Contract to all Offerors. If the Solicitation was posted by Electronic means, however, the City may post the Intent to Award Electronically in the same manner as the Solicitation. The Notice shall be posted at least seven (7) Days before the Award of a Contract, unless the City determines that circumstances require prompt execution of the Contract. The City shall document the specific reasons for the shorter notice period in the Solicitation file.
- C.** The City's Award shall not be final until the latest of the following three (3) dates:
 - 1.** Seven (7) Days after the date of notice of intent to Award, unless the Solicitation Document provided a different period for protest of Contract Award. For purposes of this section, the Day on which the Notice is posted from which the seven Days shall begin to run shall not be included, but the last Day of the period shall be included;
 - 2.** The City provides a Written response to all timely-filed protests that denies the protest and affirms the Award; or
 - 3.** Upon the conclusion of any appeal pursuant to Section 5.33.740.

5.33.660 Cancellation, delay or suspension of Solicitation.

- A.** Cancellation in the Public Interest. Prior to Opening, the City may cancel a Solicitation or Procurement described in a Solicitation may be canceled in whole or in part prior to Contract Execution when cancellation is in the best interest of the City as determined by the City.
- B.** Delay or Suspension. Any Solicitation or Procurement desired in a Solicitation may be delayed or suspended when the delay or suspension is in the best interest of the City as determined by the City.
- C.** Costs. The City is not liable to any Offeror for costs, expenses or losses caused by the cancellation, delay or suspension.
- D.** Notice. If the City cancels, delays or suspends a Solicitation prior to Opening, the City shall provide notice of cancellation in the same manner that the City initially provided notice of the Solicitation. Such notice of cancellation shall:
 - 1.** Identify the Solicitation;
 - 2.** Briefly explain the reason for cancellation; and

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3. If appropriate, explain that an opportunity will be given to compete on any Re-Solicitation.
- E. Notice of Cancellation After Opening. If the City cancels a Procurement or Solicitation after Opening, the City shall provide Written notice of Cancellation to all Offerors who submitted Offers.

5.33.670 Disposition of Offers if Solicitation Canceled.

(Amended by Ordinance No. 184403, effective February 2, 2011.)

- A. Prior to Offer Opening. If the City cancels a Solicitation prior to Offer Opening, the City will return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the City will open the Offer to determine the source and then return it to the Offeror.
- B. After Offer Opening. If the City rejects all Offers, the City will retain all such Offers as part of the City's Solicitation file. If a Request for Proposals is cancelled after Proposals are received, the City may return a Proposal to the Proposer that submitted it. The City shall keep a list of returned Proposals in the Solicitation file.

5.33.675 Documentation of Award.

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- A. Basis of Award. After Award, the City shall make a record showing the basis for determining the successful Offeror part of the City's Solicitation file.
- B. Contents of Award Record. The City's record shall include
 1. Bids.
 - a. Completed Bid tabulation sheet; and
 - b. Written justification for any rejection of lower Bids.
 2. Proposals.
 - a. The completed evaluation of the Proposals;
 - b. Written justification for any rejection of higher scoring Proposals or for failing to meet mandatory requirements of the Request for Proposal; and
 - c. If the City permitted negotiations in accordance with Section 5.33.211, the City's completed evaluation of the initial Proposals and the City's completed evaluation of final Proposals.

5.33.685 Availability of Award Decisions.

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- A.** Contract Documents. To the extent required, the City shall deliver to the successful Offeror, a Signed purchase order, Price Agreement, or other Contract document(s), as applicable.
- B.** Notification to Unsuccessful Offerors. A Person may obtain tabulations of Awarded Bids or evaluation summaries of Proposals for a minimal charge, in person or by submitting to the City a Written request accompanied by payment. Such request shall provide the Solicitation Document number and enclose a self-addressed, stamped envelope.
- C.** Availability of Solicitation Files. Subject to Section 5.33.200 and ORS 279B.060 the City shall make completed Solicitation files available for public review at the City.
- D.** The City may withhold from disclosure to the public materials included in a Proposal that are exempt or conditionally exempt from disclosure under ORS 192.501 or ORS 192.502 including trade secrets, as defined in ORS 192.501 and information submitted to a public body in confidence, as described in ORS 192.502.
- E.** Copies from Solicitation Files. Subject to Section 5.33.200 and ORS 279B.060 any Person may obtain copies of material from Solicitation files upon payment of a reasonable copying charge.

5.33.690 Performance and Payment Security; Waiver.

(Amended by Ordinance No. 183445, effective January 6, 2010.)

- A.** Public Contracts. The Chief Procurement Officer has discretion to require the submission of a performance bond, a payment bond, or both in regard to any contracts subject to this Chapter in any amount not to exceed the Contract Price. If so, the requirement shall be expressly set forth in the Solicitation Document.
- B.** Requirement for Surety Bond. If required, the City shall accept only a performance bond and payment bond furnished by a surety company authorized to do business in Oregon and who is duly listed in the United States Treasury List as published in the Federal Register or is otherwise approved by the City Attorney each in the amount of 100 percent of the Contract price unless otherwise specified in the Solicitation Document or such substitute security is approved by the City Attorney's office. The surety bond shall have the company's sealed affixed to it, be signed by the surety's Attorney in Fact, and have attached the Power of Attorney for the Attorney in Fact. The City Attorney may waive the requirement of the corporate seal.

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- C.** Time for Submission. The apparent successful Offeror must furnish the required performance and payment security within 10 Days after notification by the City. If the Offeror fails to furnish the performance security as requested, the City may reject the Offer and Award the Contract to the Responsible Bidder with the next lowest Responsive Bid or the Responsible Proposer with the next highest-scoring Responsive Proposal, and, at the City's discretion, the Offeror shall forfeit its Bid or Proposal Security.

5.33.695 Notification to State of Nonresident Contractor.

If the Contract Price exceeds \$10,000 and the Contractor is a Nonresident Contractor, the Contractor shall promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Contract Price, terms of payment, Contract duration and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report shall be forwarded to the City. The City shall satisfy itself that the above requirements have been complied with before it issues final payment on the Contract.

5.33.700 Protests and Judicial Review of Special Procurements.

(Amended by Ordinance Nos. 183445, 184403 and 185898, effective February 20, 2013.)

- A.** An Affected Person may protest the City's approval of a Special Procurement or a class Special Procurement.
- B.** Method of Protest
 - 1.** Time: A Written protest of the City's approval shall be provided to the Chief Procurement Officer not later than seven (7) Days after the approval of the Special Procurement or class Special Procurement unless a different time period is provided in the Notice. The Chief Procurement Officer shall not consider a protest submitted after the timeline established for submitting such protest under this rule.
 - 2.** Contents. The Written protest must include:
 - a.** Sufficient information to identify the Request that is the subject of the protest;
 - b.** A detailed statement of all the legal and factual grounds for the protest;
 - c.** Evidence or supporting documentation that supports the grounds on which the protest is based;
 - d.** A description of the resulting harm to the Affected Person; and
 - e.** The relief requested.

- C.** Required City Response. The City shall take the following actions, as appropriate:
1. The City shall inform the Affected Person in Writing if the protest was not timely filed;
 2. The City shall inform the Affected Person if it failed to meet the requirements of Subsection 5.33.700 B.2. and the reasons for that failure;
 3. If the protest was timely filed and provides the information required by Subsection 5.33.700 B.2., the City shall issue a decision in Writing and provide that decision to the Affected Person within a reasonable period of time unless a Written determination is made by the City that circumstances exist that require a shorter time limit.
 4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.
- D.** Optional City Response: In addition to the requirements of Subsection 5.33.700 C., the Chief Procurement Officer may do any of the following:
1. Agree with the protest and take any corrective action necessary;
 2. Issue a Written response to the protest and provide that decision to the Affected Person;
 3. Refer the protest and any response to the Board of Appeals for decision;
 4. Refer the protest and any response to the City Council for decision; or
 5. Take any other action that is in the best interest of the City while giving full consideration to the merits of the protest.
- E.** Judicial Review.
1. An Affected Person may not seek judicial review of the City Council's approval of a Special Procurement or Class Special Procurement unless it has complied fully with the Protest requirements of this section and exercised all administrative appeal rights.
 2. Judicial review is not available if the Request is denied by the City Council, Board of Appeals or is withdrawn by the Chief Procurement Officer.

5.33.710 Protests and Judicial Review of Sole-Source Procurements.
(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

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- A.** An Affected Person may protest the determination that the Goods or Services or class of Goods or Services should be procured from only one source.
- B.** Method of Protest
 - 1.** Time: A Written protest of the Chief Procurement Officer's Determination shall be provided to the Chief Procurement Officer within seven (7) Days whenever the City posts a notice that it will make a sole source purchase. The Chief Procurement Officer shall not consider a protest submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the Notice of Intent to make a Sole Source purchase.
 - 2.** Contents:
 - a.** Sufficient information to identify the Solicitation that is the subject of the protest;
 - b.** A detailed statement of all the legal and factual grounds for the protest;
 - c.** Evidence or supporting documentation that supports the grounds on which the protest is based;
 - d.** A description of the resulting harm to the Affected Person; and
 - e.** The relief requested.
- C.** Required City Response. The City shall take the following actions, as appropriate:
 - 1.** The City shall inform the Affected Person in Writing if the protest was not timely filed;
 - 2.** The City shall inform the Affected Person if it failed to meet the requirements of Subsection 5.33.710 B.2. and the reasons for that failure;
 - 3.** If the protest was timely filed and provides the information required by Subsection 5.33.710 B.2., the City shall issue a decision in Writing and provide that decision to the Affected Person within a reasonable period of time unless a Written determination is made by the City that circumstances exist that require a shorter time limit.
 - 4.** If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.

- D.** Optional City Response: In addition to the requirements of Subsection 5.33.710 C., the Chief Procurement Officer may do any of the following:
1. Agree with the protest and take any corrective action necessary;
 2. Issue a Written response to the protest and provide that decision to the Affected Person;
 3. Refer the protest and any response to the Board of Appeals for decision;
 4. Refer the protest and any response to the City Council for decision; or
 5. Take any other action that is in the best interest of the City while giving full consideration to the merits of the protest.
- E.** Judicial Review. An Affected Person may not seek judicial review of the City Council's approval of a Sole Source Procurement unless it has complied fully with the protest requirements of this section and has exercised all administrative appeal rights. Judicial review is not available if the City elects not to make a Sole Source Procurement.

5.33.720 Protests and Judicial Review of Multi-Tiered Solicitations.

(Amended by Ordinance Nos. 183445, 185898 and 187373, effective October 14, 2015.)

- A.** Interested Offerors may file a Written protest of the Specifications, Contract terms and conditions, pursuant to Section 5.33.730.
- B.** Affected Persons may protest in one of two ways:
1. If no other protest remedies are provided in the Solicitation Document, Affected Persons can file a Written protest to the Award within seven (7) Days after the issuance of the Notice of Intent to Award pursuant to Section 5.33.740 if the meet the requirements of Subsection 5.33.720 C. below.
 2. If expressly required or permitted by the Solicitation Document, Affected Persons must file a Written protest after being excluded from the Competitive Range or after being excluded from any subsequent stages of a Procurement.
- C.** Basis of Protest. An Affected Person may protest its exclusion from the Competitive Range or from subsequent stages of a Procurement only if:
1. The Affected Person is Responsible and submitted a Responsive Offer;
 2. The City made a mistake that, if corrected, would have made the Affected Person eligible to participate in the next stage of the Procurement.

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3. In the case of a competitive request for proposal, the exercise of judgment used by the Evaluation Committee members in scoring written proposals and oral interviews, including the use of outside expertise, if that judgment was biased or not exercised in good faith. The unbiased, good faith judgment of Evaluation is not grounds for protest. The unbiased, good faith judgment of Evaluation Committee members will not be a basis for sustaining a protest.

D. Method of Protest:

1. Time: If the Solicitation document permits or requires protests prior to the City's issuance of a Notice of Intent to Award, an Affected Person must submit a Written protest specifying its basis within seven (7) Days after the Affected Person was excluded from participating further in the Procurement.
2. Contents: The protest must include the following information:
 - a. Sufficient information to identify the errors that led to the Affected Person's exclusion from the Competitive Range or from subsequent stages of a Procurement;
 - b. A detailed statement of all the legal and factual grounds for the protest;
 - c. Evidence or supporting documentation that supports the grounds on which the protest is based;
 - d. A description of the resulting harm to the Affected Person; and
 - e. The relief requested.

E. Required City Response. The City shall take the following actions, as appropriate:

1. The City shall inform the Affected Person in Writing if the protest was not timely filed;
2. The City shall inform the Affected Person if it failed to meet the requirements of Subsection 5.33.720 D.2. and the reasons for that failure;
3. If the protest was timely filed and provides the information required by Subsection 5.33.720 D.2., the City shall issue a decision in Writing and provide that decision to the Affected Person within a reasonable period of time unless a Written determination is made by the City that circumstances exist that require a shorter time limit.

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4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.
- F.** Optional City Response: In addition to the requirements of Subsection 5.33.720 E., the Chief Procurement Officer may do any of the following:
1. Agree with the protest and take any corrective action necessary;
 2. Issue a Written response to the protest and provide that decision to the Affected Person;
 3. Refer the protest and any response to the Board of Appeals for decision;
 4. Refer the protest and any response to the City Council for decision; or
 5. Take any other action that is in the best interest of the City while giving full consideration to the merits of the protest.
- G.** Judicial Review. An Affected Person may not seek judicial review unless it has complied fully with the protest requirements of this section and has exercised all administrative appeal rights. Judicial review is not available if the City elects not to make a Procurement.

5.33.730 Protests and Judicial Review of Solicitation Documents and the Procurement Process.

(Amended by Ordinance Nos. 183445, 184403 and 185898, effective February 20, 2013.)

- A.** An Affected Person may protest the Procurement process or the Solicitation Document for Offers solicited pursuant to Competitive Sealed Bidding pursuant to Section 5.33.200, Competitive Sealed Proposals pursuant to Section 5.33.210, a Special Procurement, or a Class Special Procurement pursuant to Section 5.33.220. Prior to submitting a protest, an Affected Person may seek clarification of any provision of the Solicitation Document. Any clarification by the City is binding only if the City amends the Solicitation Document by Addendum.
- B.** Method of Protest
1. Time: A Written protest of the City's posting of a solicitation document shall be provided to the Chief Procurement Officer within seven (7) Days after a Solicitation Document is advertised. The Chief Procurement Officer shall not consider a protest submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the Solicitation Document. A Written Protest of any Addendum shall be submitted by the close of the next business day after issuance of the Addendum.

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2. Contents: The protest must include the following information:
 - a. Sufficient information to identify the Solicitation that is the subject of the protest;
 - b. A detailed statement of all the legal and factual grounds for the protest;
 - c. Evidence or supporting documentation that supports the grounds on which the protest is based;
 - d. A description of the resulting harm to the Affected Person; and
 - e. The relief requested.
- C. Required City Response.
 1. The City shall inform the Affected Person in Writing if the protest was not timely filed;
 2. The City shall inform the Affected Person if it failed to meet the requirements of Subsection 5.33.730 B.2. and the reasons for that failure;
 3. If the protest was timely filed and provides the information required by Subsection 5.33.730 B.2. above, the Chief Procurement Officer shall issue a decision in Writing and provide that decision to the Affected Person no less than three (3) business days before Offers are due, unless a Written determination is made by the City that circumstances exist that require a shorter time limit.
 4. The Chief Procurement Officer's response shall inform the Affected Person if the decision is final or whether the Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council. When the decision is final, the Affected Person must seek judicial review before the Opening of Bids, Proposals or Offers.
 5. If the City receives a protest from an Affected Person in accordance with this rule, the City may extend Closing if the City determines an extension is necessary to consider the protest and to issue an Addendum to the Solicitation Document.
- D. Optional City Response: In addition to the requirements of Subsection 5.33.730 C. above, the Chief Procurement Officer may do any of the following:
 1. Agree with the protest and make any necessary corrections to the Solicitation Document or Procurement process;

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2. Issue a Written response to the protest and provide that decision to the Affected Person;
 3. Refer the protest and any response to the Board of Appeals;
 4. Refer the protest and any response to the City Council for decision; or
 5. Any other action that is in the best interest of the City while giving full consideration to the merits of the protest.
- E.** Judicial Review. An Affected Person may not seek judicial review unless it has complied fully with the protest requirements of this section and exercised all administrative appeal rights. Judicial review is not available if the City withdraws the Solicitation Document that was the subject of the protest.

5.33.740 Protests and Judicial Review of Contract Award.

(Amended by Ordinance Nos. 183445, 184403 and 185898, effective February 20, 2013.)

- A.** An Affected Person may protest the Award of a Contract, or the intent to Award a Contract resulting from a Competitive Sealed Bid or Competitive Sealed Proposal, whichever occurs first, if:
1. The Affected Person would be eligible to be Awarded the Contract in the event that the protest was successful; and
 2. The reason for the protest is that:
 - a. All lower Bids, higher ranked Proposals or other more Advantageous Offers are nonresponsive;
 - b. The City failed to conduct the evaluation of Offers in accordance with the criteria or processes described in the Solicitation Document;
 - c. The City abused its discretion in rejecting the Affected Person's Offer as nonresponsive; or
 - d. The City's evaluation of the Offers was in violation of these rules, ORS Chapter 279B or ORS Chapter 279A.
- B.** Method of Protest.
1. Time: A Written protest of the Chief Procurement Officer's Award shall be provided to the Chief Procurement Officer within seven (7) Days after the Award of a Contract, or issuance of the Notice of Intent to Award the Contract, whichever occurs first. The Chief Procurement Officer shall not

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consider a protest submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the Solicitation Document or Notice of Intent to Award.

- 2.** Contents: The protest must include the following information:
 - a.** Sufficient information to identify the Award that is the subject of the protest;
 - b.** A detailed statement of all the legal and factual grounds for the protest as described in Subsections 5.33.740 A.2.a. - d. above;
 - c.** Evidence or supporting documentation that supports the grounds on which the protest is based;
 - d.** A description of the resulting harm to the Affected Person; and
 - e.** The relief requested.
- C.** Required City Response. The City shall take the following actions, as appropriate:
 - 1.** The City shall inform the Affected Person in Writing if the protest was not timely filed;
 - 2.** The City shall inform the Affected Person if it failed to meet the requirements of Subsection 5.33.740 B.2. and the reasons for that failure;
 - 3.** If the protest was timely filed and provides the information required by Subsection 5.33.740 B.2. above, the City shall issue a decision in Writing and provide that decision to the Affected Person within a reasonable time of the receipt of the protest.
 - 4.** If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.
- D.** Optional City Response: In addition to the requirements of Subsection 5.33.740 C. above, the Chief Procurement Officer may do any of the following:
 - 1.** Agree with the protest and issue a revised Notice of Intent to Award or take any other corrective action that may be necessary to ensure that the Contract is Awarded to the appropriate Offeror;
 - 2.** Issue a Written response to the protest and provide that decision to the Affected Person;

3. Refer the protest and any response to the Board of Appeals for decision;
 4. Refer the protest and any response to the City Council for decision; or
 5. Take any other action that is in the best interest of the City while giving full consideration to the merits of the protest.
- E. Judicial Review.** An Affected Person may not seek judicial review of the Intent to Award a Contract unless it has complied fully with the protest requirements of this section. Judicial review is not available if the City elects not to make an Award.

5.33.750 Protests of Other Violations.

(Amended by Ordinance Nos. 181547, 183445, 185898 and 187373, effective October 14, 2015.) Any violation of ORS Chapter 279A or 279B, except 279B.400 to 279B.425, by the City, for which no administrative remedy is otherwise provided by this Code, is subject to the following:

- A.** A protest by an Affected Person may be made under this section only if a Contract is about to be Awarded or has been Awarded and:
1. An alleged violation of ORS 279A or 279B, except 279B.400 to 279B.425, has occurred in the Procurement process and violation has resulted or will result in the unlawful Award of a Contract or the unlawful failure to Award the Contract;
 2. The alleged violation deprived the Affected Person of the Award of the Contract or the opportunity to compete for the Award of the Contract;
 3. The Affected Person would have been a Responsible Bidder, Proposer or Offeror qualified to receive the Award of the Contract;
 4. The Affected Person gave Written notice to the City describing the alleged violation no later than ten (10) Days after the date on which the alleged violation occurred and in no event more than ten (10) Days after the date of the execution of the Contract;
 5. If the alleged violation is of ORS 279A, then it is one for which no judicial review is provided by another section of ORS Chapter 279A or 279B. If the alleged violation is of 279B, except 279B.400 to 279B.425, then it is one for which no judicial review is provided by another section of ORS Chapter 279B.
- B. Method of Protest.**
1. **Time:** A Written protest of the Chief Procurement Officer's Award shall be provided to the Chief Procurement Officer no later than ten (10) Days

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after the date on which the alleged violation occurred and in no event later than ten (10) Days after the date of the execution of the Contract. The Chief Procurement Officer shall not consider a protest submitted after the timeline established for submitting such protest under this rule and shall not consider a protest under this section if a right to protest is elsewhere provided by this Code.

2. Contents: The protest must include the following information:
 - a. Sufficient information to identify the Procurement or Solicitation that is the subject of the protest;
 - b. A detailed statement of the alleged violation and all the legal and factual grounds for the protest;
 - c. Evidence or supporting documentation that supports the grounds on which the protest is based;
 - d. A description of the resulting harm to the Affected Person; and
 - e. The relief requested.

C. Required City Response. The City shall take the following actions, as appropriate:

1. The City shall inform the Affected Person in Writing if the protest was not timely filed;
2. The City shall inform the Affected Person if it failed to meet the requirements of Subsection 5.33.750 B.2. and the reasons for that failure;
3. If the protest was timely filed and provides the information required by Subsection 5.33.750 B.2. above, the City shall issue a decision in Writing and provide that decision to the Affected Person within a reasonable period of time unless a Written determination is made by the City that circumstances exist that require a shorter time limit.
4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.

D. Optional City Response: In addition to the requirements of Subsection 5.33.750 C., the Chief Procurement Officer may do any of the following:

1. Agree with the protest and take any corrective action necessary;

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2. Issue a Written response to the protest and provide that decision to the Affected Person;
 3. Refer the protest and any response to the Board of Appeals for decision;
 4. Refer the protest and any response to the City Council for decision; or
 5. Take any other action that is in the best interest of the City while giving full consideration to the merits of the protest
- E. Judicial Review. An Affected Person may not seek judicial review of the City's decision unless it has complied with the Protest requirements of this section and exercised all administrative appeal rights.

5.33.760 Review of Prequalification and Debarment Decisions.

(Amended by Ordinance No. 183445, effective January 6, 2010.)

- A. The denial, revocation or revision of a Prequalification decision or a decision to debar a prospective Offeror must be appealed in Writing to the City within three (3) business days after receipt of the City's notice.
- B. The City Council delegates its authority to the Chief Procurement Officer for the purposes of receiving notice that a Person has appealed. Upon receipt of the notice the Chief Procurement Officer shall notify the Person appealing of a time and place of a hearing designed to consider the appeal within 30 Days or a date mutually agreed upon by both parties.
- C. The City Council delegates its authority to conduct a hearing to the Chief Procurement Officer. The Chief Procurement Officer may subdelegate the authority to conduct a hearing to any person the Chief Procurement Officer deems appropriate, including the Board of Appeals.

5.33.770 Procurement Board of Appeals.

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A. Purpose. The purpose of this rule is to provide for the prompt, effective and efficient resolution of appeals and protests of Affected Persons in regard to City decisions when such matters are referred to it by the Chief Procurement Officer or when authorized or required by this Chapter.
- B. Board Created. Pursuant to Portland City Charter Section 2-103, City Council hereby creates the Procurement Board of Appeals for the purposes described above.
- C. Jurisdiction of Board. The Procurement Board of Appeals shall hear and resolve protests and appeals arising from City decisions arising under this Chapter only when such matters are referred to it by the Chief Procurement Officer.

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D. Composition of Board.

- 1.** The Procurement Board of Appeals shall consist of three members. A quorum shall consist of three members.
- 2.** The members of the Board shall be:
 - a.** A representative from the public purchasing sector;
 - b.** The City Engineer or designee;
 - c.** A member of the general public with affiliation to the purchasing industry.
- 3.** The public members shall be appointed by the Mayor, subject to confirmation by City Council and shall serve for a period of up to two years, which may be extended by the Chief Procurement Officer.
- 4.** A member of the board shall serve as chairperson.

E. Compensation. All members of the Board shall serve without pay, except that they may receive their regular salaries during time spent on Board matters.

F. Vacancies. A vacancy on the Board shall be filled as soon as possible in accordance with the procedures described above.

G. Procedure and Rules. The Chief Procurement Officer shall establish administrative rules of procedure for the Board and the Board shall follow that procedure for all matters heard by the Board.

H. Staff. Procurement Services shall provide staff and appropriate assistance for the Board.

5.33.780 Powers of the Board.

(Amended by Ordinance No. 183445, effective January 6, 2010.)

- A.** The Board shall be responsible for reviewing the decisions of the City arising under this Chapter. In regard to appeals of decisions regarding Prequalification or disqualification of Bidders or Proposers, the Board shall comply with Oregon state law and these rules.
- B.** The Board shall consider only those matters that were raised by the Affected Person in its protest to the Chief Procurement Officer.
- C.** The Board shall not consider the appeal of any Affected Person who did not file a timely appeal.

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- D.** The Board shall hear appeals based on administrative rules of procedure established by the Chief Procurement Officer. The administrative rules shall provide for notice and prompt hearing of appeals and protests, record-making, right to counsel and other procedural matters.
- E.** Following completion of a hearing, the Board shall prepare a Written decision that shall be mailed to all parties to the hearing by certified mail, return receipt requested.

5.33.790 Appeal to Board.

(Amended by Ordinance Nos.183445 and 185898, effective February 20, 2013.)

- A.** Time. Any request for hearing by the Board shall be received by the Chief Procurement Officer no more than seven (7) Days from the date of the Chief Procurement Officer's decision unless a different timeline is provided in the Solicitation Document. The request shall be delivered to Procurement Services, Attn: Chief Procurement Officer and marked "Request for Hearing by the Procurement Board of Appeals."
- B.** Contents. The request shall set forth the specific reasons for requesting a hearing by City Council. Only those matters that were raised with the Chief Procurement Officer and the Procurement Board of Appeals shall be stated as grounds for appeal.
- C.** Time of Hearing. The Chief Procurement Officer shall schedule the time and place for the Board to meet giving consideration to the schedule of the Board.
- D.** Further Appeal. An Affected Person who is not satisfied with the decision of the Board may file a further Written appeal, but only if permitted by the Chief Procurement Officer. If not permitted by the Chief Procurement Officer, the Affected Person has exhausted its administrative appeals. Any request for further appeal shall be received by the Chief Procurement Officer no later than three (3) Days from the date the Affected Person receives the Board's Written decision. The request shall be delivered to Procurement Services, Attn: Chief Procurement Officer and marked "Request for Hearing by City Council."
- E.** If so referred, City Council shall decide at its next available regularly scheduled hearing whether to hear the appeal. If City Council decides not to hear the appeal, the decision of the Board is final. If City Council decides to hear the appeal it shall be scheduled by the Council Clerk for hearing by City Council. The City Council's decision on the appeal shall be final upon issuance of City Council's order deciding the appeal. The City Council may also adopt the decision of the Board without further hearing by City Council. In this situation, the appeal to City Council shall be final upon issuance of City Council's order adopting the decision of the Board. The rules of City Council provided at Chapter 3.02 shall be the rules for any hearing on appeal.

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- F.** If so permitted, the decision of City Council shall conclude an Affected Person's administrative remedies and further redress sought by an Affected Person shall be pursuant to state law. Otherwise, the Board's decision shall be final for any remedies that might be available to Affected Person under state law.
- G.** Costs: The Chief Procurement Officer may impose a reasonable fee on the Affected Person requesting a hearing before the Board or Council to defray costs of the appeal. The fee shall be paid at the time the hearing is requested or the protest shall be considered waived. In the event that the Person contesting the hearing prevails in its protest, the fee shall be refunded.

5.33.900 Social Equity Contracting and Employment Programs.

(Amended by Ordinance No. 185898, effective February 20, 2013.) From time to time, the City may adopt programs designed to promote competition, enhance economic opportunity and stimulate hiring among all of Portland's citizens. When such programs are adopted, they shall be included or sufficiently referenced in the Solicitation and Contract documents so that prospective Offerors are aware of their requirements.

5.33.920 Records Maintenance; Right to Audit Records.

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- A.** Contractors and Subcontractors shall maintain all fiscal records relating to a Contract executed with the City in accordance with generally accepted accounting principles. In addition, Contractors and Subcontractors shall maintain any other records necessary to clearly document:
 - 1.** Performance. Performance includes, but is not limited to, compliance with plans and Specifications, compliance with fair Contracting and employment programs, compliance with Oregon law on payment of wages and accelerated payment provisions, and any and all requirements imposed on the Contractor or Subcontractor under the Contract or subcontract;
 - 2.** Any claims arising from or relating to their performance under a Contract;
 - 3.** Any cost and pricing data; and,
 - 4.** Payment to suppliers and Subcontractors.
- B.** Such records shall be maintained for a period of six years from the date of final completion of the Contract or until the conclusion of any audit, controversy or litigation arising out of or related to a Contract, whichever is longer, unless a shorter period of time is authorized in Writing by the City.
- C.** Contractors and Subcontractors shall make all their records available to the City within the boundaries of the City of Portland, Oregon, at reasonable times and places regardless of whether litigation has been filed on any claims. If the records

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are not made available within the boundaries of the City, the Contractor or Subcontractor shall pay all costs for City employees, and any necessary consultants hired by the City, including travel, per diem costs, salary, and any other expenses incurred by City in sending its employees or consultants to examine, audit, inspect, and copy those records. If the Contractor elects to have such records outside these boundaries, the costs paid by the Contractor to the City for inspection, auditing, examining and copying those records are not recoverable costs in any legal proceeding.

- D.** The City and its Authorized Representatives shall be entitled to inspect, examine, copy and audit the books and records of any Contractor or Subcontractor upon request by the City for any reason, including any documents that may be placed in escrow according to any Contract requirements. The records that may be inspected and copied include financial documents of the Contractor, including tax returns and financial statements. The City will keep such documents confidential to the extent permitted by Oregon law, subject to Subsection 5.33.920 E. below.
- E.** Contractors and Subcontractors agree to disclose the records requested by the City and agree to their admission as evidence in any proceeding between the parties, including, but not limited to a court proceeding, arbitration, mediation or other alternative dispute resolution process.
- F.** In the event that the records disclose that the City is owed money or establishes that any portion of any claim made against the City is not warranted, the Contractor or Subcontractor shall pay all costs incurred by the City in conducting the audit and inspection. Such costs may be withheld from any sum due or that becomes due to the Contractor by the City.
- G.** Failure of the Contractor or Subcontractor to keep or disclose records as required may result in disqualification as a Bidder or Proposer for future City Contracts or may result in a finding that the Contractor or Subcontractor is not a Responsible Bidder or Proposer.

5.33.930 Right to Inspect Plant or Place of Business.

- A.** Time for Inspection. The City may, at reasonable times, inspect the part of the plant or place of business of a Contractor or any Subcontractor or supplier which is related to the performance of any Contract Awarded.
- B.** Access to Plant or Place of Business. As a condition of Bidding or proposing, Bidders and Proposers agree that representatives of the City may enter a Contractor's or Subcontractor's or supplier's plant, place of business, work site or construction site during normal business hours for the following purposes:

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1. To inspect and/or test supplies or services for acceptance by the City pursuant to the terms of the Bid or Proposal;
 2. To investigate in connection with a Bidder's or Proposer's Bid or Proposal, a minority business or EEO certification, or Bidder or Proposer qualification.
 3. To inspect for compliance with City programs required by the Solicitation Document.
 4. To inspect for Contract compliance.
- C.** Contractual Provisions. Contracts may provide that the City may inspect supplies and services at the Contractor's or Subcontractor's or supplier's office or facility and perform tests to determine whether they conform to the Solicitation Document, or, after Award, to the Contract requirements, and are qualified. Such inspections and tests shall be conducted in accordance with the terms of the Contract.
- D.** Procedures for Inspection, Trial Use and Testing. The City may establish operational procedures governing the inspection, testing and trial use of equipment, materials and the application of resulting information and data to Specifications or Procurements.
- E.** Conduct of Inspections and Tests:
1. Inspectors and testers. Inspections or tests shall be performed so as not to unduly delay the Work of the Contractor or Subcontractor. No change of any provision of the Specifications or the Contract may be required by the inspector or tester without Written authorization of the City, unless otherwise specified in the Solicitation Document. The presence or absence of an inspector or tester shall not relieve the Contractor or Subcontractor from any requirement of the Contract;
 2. Location. When an inspection is made in the plant or place of business of a Contractor or Subcontractor, such Contractor or Subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the inspector or tester;
 3. Time of inspection or testing. Inspection or testing of supplies and services performed at the plant or place of business of any Contractor or Subcontractor shall be performed at reasonable times during normal business hours.

5.33.940 Contract Cancellation, Contractor Termination Procedures. (Amended by Ordinance No. 185898, effective February 20, 2013.)

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- A.** Grounds for Cancellation or Termination. The City may, at its option, cancel a Contract or terminate the Contractor's performance, if cancellation or termination is in the best interest of the City; or, for any material violation of the provisions of the Contract. Such provisions generally include, but are not limited to:
1. Standard terms and conditions included in Contracts;
 2. Product or service Specifications;
 3. Delivery or completion requirements; or
 4. Contracted pricing and price escalation/de-escalation clauses.
- B.** The City and the Contractor may cancel the Contract at any time by mutual Written agreement.
- C.** Termination For Convenience.
1. Reasons for Termination. The City may, in its sole discretion, by a Written order or upon Written request from the Contractor, cancel the Contract or a portion thereof if any of the following occur:
 - a. The Contractor is prevented from completing the Work for reasons beyond the control of the City; or
 - b. The Contractor is prevented from completing the Work for reasons beyond the control of the Contractor; or
 - c. For any reason considered by the City to be in the public interest, other than a labor dispute or any third party judicial proceeding relating to the Work filed in regards to a labor dispute. These reasons may include, but are not limited to, non-availability of materials, phenomena of nature of catastrophic proportions or intensity, executive orders of the President related to national defense, congressional, state or local acts related to funding; or
 - d. Any third party judicial proceeding relating to the Work other than a suit or action filed in regards to a labor dispute; or
 - e. If the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of a Public Improvement.
- D.** Payment When Contract is Canceled. When the Contract, or any portion thereof, is canceled before completion of all items of Work in the Contract, payment shall be made, based on the Contract price, for the actual items of Work completed under

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the Contract, or by mutual agreement, for items of Work partially completed. No claim for loss of anticipated profits or overhead shall be allowed;

- E.** Responsibility for Completed Work if Contract Canceled. Cancellation of a Contract or a portion thereof shall not relieve the Contractor of responsibility for the Work completed, nor shall it relieve the surety of its obligation for any just claims arising from the Work performed.
- F.** Termination of The Contractor's Performance for Default.
 - 1.** Declaration of Default. The City may, after giving the Contractor and its surety seven (7) Days Written notice and an opportunity to cure deficient performance, terminate the Contractor's performance for any reasonable cause. Upon such termination, the City may immediately take possession of the premises and of all materials, tools and appliances thereon as well as all other materials, whether on the premises or not, on which the Contractor has received partial payment. The City may finish the Work by whatever method it may deem expedient;
 - a.** If the Contractor should repeatedly refuse or fail to supply an adequate number of skilled workers or proper materials to carry on the Work as required by the Contract documents, or otherwise fail to pursue the Work in a timely manner; or
 - b.** If the Contractor should repeatedly fail to make prompt payment to Subcontractors or for material or labor; or
 - c.** If the Contractor should voluntarily or involuntarily seek protection under the United States Bankruptcy Code and its Debtor in Possession or Trustee for the estate fails to assume the Contract within a reasonable time, or as provided by the Bankruptcy Court; or
 - d.** If the Contractor should make a general assignment for the benefit of the Contractor's creditors; or
 - e.** If a receiver should be appointed on account of the Contractor's insolvency; or
 - f.** If the Contractor is otherwise in material breach of any part of the Contract; or
 - g.** If the Contractor should disregard laws, rules, or the instructions of the City or its Authorized Representative.

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2. Required Response to Declaration of Default. If a default is declared and the Contractor's performance terminated, the Contractor or the surety shall provide the City with immediate and peaceful possession of all of the materials, tools and appliances located on the premises, as well as all other materials whether on the premises or not, on which the Contractor has received any progress payment. Further, the Contractor shall not be entitled to receive any further payment until the Work is completed. On the completion of the Work, the City shall determine the total amount of compensation the Contractor would have been entitled to receive for the Work, under the terms of the Contract, had the Contractor completed the Work. If the difference between this total amount and the sum of all amounts previously paid to the Contractor, (the unpaid balance) exceeds the expense incurred by the City in completing the Work, including expense for additional managerial and administrative services, such excess will be paid to the Contractor, with the consent of the surety;
 3. Expense of Completion. The expense incurred by the City shall be as determined and certified by the City;
- G.** Refusal to Perform. In addition to and apart from the above-mentioned right of the City to terminate the Contractor's performance, the Contract may be canceled by the City for any willful failure or refusal on the part of the Contractor and its surety to perform faithfully the Contract according to all of its terms and conditions; however, in such event neither the Contractor nor the surety shall be relieved from damages or losses suffered by the City on account of the Contractor's breach of Contract;
- H.** Remedies Cumulative. The City may, at its discretion, avail itself of any or all of the above rights or remedies and invoke anyone of the above rights or remedies without prejudice and without precluding the City from subsequently invoking any other right or remedy set forth above, or in the Contract, or available at law or in equity.
- I.** Notice. The City shall provide the Contractor Written notice of the grounds for Contract cancellation or Contractor termination and of its intention to cancel the Contract or terminate the Contractor's performance. If the Contractor provided a performance and payment bond, the surety shall also be provided with a copy of the notice of Contract cancellation or Contractor termination. The notice shall include:
1. The effective date of the intended cancellation or termination,
 2. The grounds for cancellation or termination, and

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- 3.** Notice of the amount of time (if any) in which the City shall permit the Contractor to correct the failure to perform.
- J.** The Contract documents may provide Contract cancellation or Contractor termination procedures that are different from, or in addition to, those provided herein. If a Contract contains a cancellation or termination clause, that clause rather than Section 5.33.940 shall determine the respective rights and responsibilities of the parties in the event of cancellation or termination.
- K.** Contract Completion By Substitute Contractor. If the Contractor has provided a performance and payment bond, the City may afford the Contractor's surety the opportunity, upon the surety's receipt of a cancellation or termination notice, to provide a substitute Contractor to complete performance of the Contract. The substitute Contractor may Contract with the surety or the City may Contract with the substitute Contractor selected by the surety. Performance by the substitute Contractor shall be rendered pursuant to all material provisions of the original Contract, including the provisions of the performance and payment bond. Substitute performance does not constitute the Award of a new Contract and shall not be subject to the provisions of ORS Chapter 279A, 279B or 279C.

**CHAPTER 5.34 - PUBLIC IMPROVEMENTS
AND CONSTRUCTION SERVICES**

(Chapter replaced by Ordinance No. 180350,
effective August 25, 2006.)

Sections:

5.34.010	Definitions.
5.34.020	Application and Authority.
5.34.040	Affirmative Action.
5.34.060	Contracts for Construction Other than Public Improvements.
5.34.100	Overview of Source Selection and Contractor Selection.
5.34.110	Emergency Contracts; Bidding and Bonding Exemptions.
5.34.120	Selection of Substitute Contractor.
5.34.130	Joint Cooperative Purchasing.
5.34.140	General Rules for Joint Cooperative Procurements; Fees.
5.34.150	Competitive Bidding Requirement.
5.34.160	Intermediate Procurements; Competitive Quotations.
5.34.300	Solicitation Documents; Required Provisions; Assignment or Transfer.
5.34.310	Notice and Advertising Requirements; Posting.
5.34.320	Specifications and Brand Names.
5.34.330	Facsimile Bids and Proposals.
5.33.340	Electronic Procurement.
5.34.410	Bid or Proposal Security.
5.34.420	Pre-Offer Conferences.
5.34.430	Addenda to Solicitation Documents.
5.34.440	Request for Clarification or Change.
5.34.450	Offer Submissions.
5.34.460	Pre-Closing Modification or Withdrawal of Offers.
5.34.470	Receipt, Opening and Recording of Offers.
5.34.480	Late Bids, Late Withdrawals and Late Modifications.
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5.34.010 Definitions.

(Amended by Ordinance Nos. 185898, 187373 and 187974, effective September 7, 2016.)

- A. The definitions contained in Sections 5.33.010 and 5.33.140 are applicable to Chapter 5.34.
1. **“Change Order”** means a written agreement between the City and Contractor that alters the specifications of the Contract.
 2. **“Conduct Disqualification”** means a Disqualification pursuant to ORS 279C.440.
 3. **“Disqualification”** means the preclusion, suspending or sanctioning of a Person from contracting with the City for a period of time in accordance with Section 5.34.530 or Section 5.34.535. Disqualification may be a Conduct Disqualification, DBE Disqualification or MWESB Disqualification.
 4. **“Foreign Contractor”** means a Contractor that is not domiciled in or registered to do business in the State of Oregon.
 5. **“Notice”** means any of the alternative forms of public announcement of Procurements, as described in Section 5.34.310.
 6. **“Work”** means all services, material, labor, tools, equipment, and all appliances, machinery, systems, transportation, and appurtenances necessary to perform and complete the Contract, and such additional items not specifically indicated or described which can be reasonably inferred as belonging to the item described or indicated and as required by good practice to provide a complete, functioning, and satisfactory system or structure.

5.34.020 Application and Authority.

(Amended by Ordinance Nos. 181547, 183445, 185898, 187373 and 187974, effective September 7, 2016.)

- A. Public improvements. Chapter 5.34 applies to the Award of Contracts for public improvements and construction services for public improvements. Contracts for emergency work are governed by Chapter 5.33 and ORS 279B.080.
- B. Contracts for minor alteration, ordinary repair or maintenance of public improvements or Price Agreements, as well as other Contracts for construction services that are not defined as a public improvement under Section 5.33.010 shall be Awarded and executed pursuant to Chapter 5.33 and ORS 279B and not this

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Chapter. However, some portions of ORS 279C and this chapter may still be applicable to the resulting Contracts.

C. Authority and Ethics

- 1.** The Authority of the City Council as the Local Contract Review Board is the same in regard to Chapter 5.34 as it is for Chapter 5.33, including the authorization of Contract amendments.
- 2.** The Authority of the Chief Procurement Officer is the same for Chapter 5.34 in regard to public improvement and construction services Contracts as it is for Goods and Services as set forth in Chapter 5.33.
- 3.** The authority of Bureau and Office directors to authorize and execute Contracts and Contract amendments is the same in regard to Chapter 5.34 as it is in Chapter 5.33.
- 4.** The rules stated in Section 5.33.070 regarding the purchase of Goods and Services from City employees shall also apply to Public Improvements covered by Chapter 5.34.

5.34.040 Affirmative Action.

(Amended by Ordinance Nos. 184403, 185065 and 187974, effective September 7, 2016.)

- A.** Pursuant to ORS 279A.100, the City may limit competition on Contracts to carry out affirmative action policies, in accordance with policies and procedures established by the City.
- B.** Pursuant to ORS 279A.105, the City may require a Contractor to subcontract some part of a Contract to, or to obtain materials to be used in performing the Contract from:
 - 1.** A business enterprise that is certified under ORS 200.055 as an emerging small business; or
 - 2.** A business enterprise that is:
 - a.** Certified under ORS 200.055 as an emerging small business; and
 - b.** Is located in or draws its workforce from economically distressed areas, as designated by the Oregon Economic and Community Development Department (OECD); or
 - c.** Owned or controlled by a disabled veteran, as defined in ORS 408.225.

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- C. A Subcontractor certified under ORS 200.055 as an emerging small business is located in or draws its workforce from economically distressed areas if:
1. Its principal place of business is located in an area designated as economically distressed by the OECDD pursuant to administrative rules adopted by the OECDD; or
 2. The Contractor certifies in Writing to the City that a substantial number of the Subcontractor's employees or Subcontractors that will manufacture the Goods or complete the Services under the Contract reside in an area designated as economically distressed by the OECDD pursuant to administrative rules adopted by OECDD. For the purposes of making the foregoing determination, the City shall determine in each particular instance what proportion of a Contractor's Subcontractor's employees or Subcontractors constitute a substantial number.
 3. The City shall include in each Solicitation Document a requirement that Offerors certify in their Offers in a form prescribed by the City, that the Offeror has not and will not discriminate against a Subcontractor in the Awarding of a Subcontract because the Subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055.
- D. The City may sanction a Person from consideration of Award of the City's Contracts under ORS 200.065 or ORS 200.075 in accordance with Section 5.34.535 and these rules.

5.34.060 Contracts for Construction Other than Public Improvements.

(Amended by Ordinance Nos. 181547 and 185898, effective February 20, 2013.) Pursuant to ORS 279C.320, Public Contracts for construction Services that are not Public Improvement Contracts, may be procured and amended as general trade Services under the provisions of ORS Chapter 279B rather than under the provisions of ORS Chapter 279C and Chapter 5.34.

5.34.100 Overview of Source Selection and Contractor Selection.

(Amended by Ordinance Nos. 185898 and 187373, effective October 14, 2015.) The City shall Award a Public Contract for Public Improvements pursuant to Chapter 5.34 using any method authorized by state law or City Code. Such different methods are called methods of "source selection." Source selection methods for Public Improvements include:

- A. Emergency Procurements;
- B. Substitution of Contractors by a Surety;
- C. Joint Cooperative Procurements;

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- D.** Competitive Quotations;
- E.** Competitive Bidding; and
- F.** Alternative Contracting Methods found in Section 5.34.800 et seq. Class exemptions are located in Subsection 5.34.830 H. while individual Contracts must be authorized by the City Council by ordinance.

5.34.110 Emergency Contracts; Bidding and Bonding Exemptions.

(Amended by Ordinance Nos. 181547, 183445 and 184403, effective February 2, 2011.)

- A.** The City may declare that Emergency circumstances exist that require prompt execution of a Public Contract for Emergency construction. Those contracts are governed by ORS 279B.080 and Chapter 5.33 of this Code. Emergency contracts pursuant to a Proclamation of a State of Emergency or Disaster, however, are governed by Section 5.33.135.
- B.** The Council or Person authorizing the Emergency Procurement shall document the nature of the Emergency and describe the method used for the selection of the particular Contractor. The Emergency declaration may exempt the Public Contract from the competitive bidding requirements of ORS 279C.335(1) and shall thereafter be kept on file as a public record.
- C.** The City shall seek competition for Emergency Contracts as reasonable and appropriate under the Emergency circumstances, and may include Written requests for Offers, oral requests for Offers or direct appointment without competition in cases of extreme necessity, in whatever Solicitation time periods the City considers reasonable in responding to the Emergency.
- D.** The authority to declare an Emergency and authorize an Emergency Contract shall be as follows:
 - 1.** The Chief Procurement Officer may declare the existence of an Emergency and authorize the City or any of its bureaus to enter into an Emergency Contract not to exceed \$150,000.
 - 2.** A bureau director may declare the existence of an Emergency and authorize the bureau to enter into an Emergency Procurement Contract not to exceed \$150,000 only if the Chief Procurement Officer or Person to whom the powers of the Chief Procurement Officer have been delegated, is not available when the purchase needs to be made.
 - 3.** A Commissioner-in-Charge of a bureau may declare the existence of an Emergency and authorize the City and the bureaus of which the Commissioner has responsibility to enter into an Emergency Contract not to exceed \$500,000.

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- 4.** A Commissioner-in-Charge of a bureau may declare the existence of an Emergency and authorize the City and the bureaus of which the Commissioner has responsibility to enter into an Emergency Contract over \$500,000.

 - a.** Following the declaration of an Emergency the Commissioner shall immediately prepare an ordinance for approval of the Emergency Contract by the City Council at its next regularly scheduled session or as soon as possible thereafter. That Contract shall be added to the regular agenda of the Commissioner without the need for approval for inclusion on the agenda by other Commissioners.
 - b.** If the Council adopts the ordinance, the City will pay for the Work required by the Contract. If Council disapproves the ordinance, the City only will pay for Work performed prior to the date that the Council considered the ordinance for approval. If for any reason presentation of the ordinance to the Council is delayed, the City still will only be liable for Work performed prior to the time when the ordinance first was presented to the Council.
- E.** Any Contract Awarded under this section shall be Awarded within 60 Days, unless the City Council authorizes a longer period of time.
- F.** All documentation of Emergency Contracts shall be sent to the Chief Procurement Officer for record keeping purposes.
- G.** All Emergency Contracts Awarded when there was no Emergency or reasonable perception of Emergency are void unless the Contract was otherwise valid under another portion of the City's Purchasing Rules.
- H.** After the Award of an Emergency Contract, the City shall execute a Written Contract with the Contractor as soon as possible.
- I.** All such Contracts, whether or not signed by the Contractor, shall be deemed to contain a termination for convenience clause permitting the City to immediately terminate the Contract at its discretion and, unless the Contract was void, the City shall pay the Contractor only for Work performed prior to the date of termination plus the Contractor's unavoidable costs incurred as a result of the termination. In no event will the City pay for anticipated lost profits or consequential damages as a result of the termination.
- J.** Emergency Contracts may be modified by change order or amendment to address the conditions described in the original declaration or an amended declaration that further describes additional Work necessary and appropriate for related Emergency circumstances.

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- K.** Pursuant to ORS 279C.380(4) and this rule, the Emergency declaration may also state that the City waives the requirement of furnishing a performance bond and payment bond for the Emergency Contract. After making such an Emergency declaration those bonding requirements are excused for the Procurement, but this Emergency declaration does not affect the separate Public Works bond requirement for the benefit of the Bureau of Labor and Industries (BOLI) in enforcing prevailing wage rate and overtime payment requirements. In addition, nothing herein shall prevent the Chief Procurement Officer or City Council from subsequently requesting such from bonds the Contractor after work begins.

5.34.120 Selection of Substitute Contractor.

If a Contractor provided a performance bond, the City may afford the Contractor's surety the opportunity to provide a substitute Contractor to complete performance of the Contract. A substitute Contractor shall perform all remaining Contract Work and comply with all terms and conditions of the Contract, including the provisions of the performance bond and the payment bond. Such substitute performance does not involve the Award of a new Contract and shall not be subject to the Competitive Procurement provisions of ORS Chapter 279C or these rules.

5.34.130 Joint Cooperative Purchasing.

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- A.** The City may participate in, sponsor, conduct or administer Joint Cooperative Procurements for the acquisition of Public Improvements, provided that the Administering Contracting Agency's Solicitation and Award process for the original Contract was an open and impartial Competitive process that used source selection methods substantially equivalent to those found in Chapter 5.34.
- B.** A Solicitation and Award process uses source selection methods substantially equivalent to those identified in ORS 279C and Chapter 5.34 if the Solicitation and Award process:
- 1.** Calls for Award of a Contract on the basis of a lowest Responsible Bidder or a lowest and best Bidder determination in the case of Competitive Bids, or on the basis of a determination of the Proposer whose Proposal is most Advantageous based on evaluation factors set forth in the Request for Proposals in the case of Competitive Proposals when permitted by an exemption established by the City Council;
 - 2.** Does not permit the application of any geographic preference that is more favorable to Bidders or Proposers who reside in the jurisdiction or locality favored by the preference than the preferences provided in ORS 279A.120(2); and

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3. Uses reasonably clear and precise Specifications that promote suitability for the purposes intended and that reasonably encourage competition.
- C. The City shall determine, in Writing, whether the Solicitation and Award process for an Original Contract arising out of a Cooperative Procurement for a Public improvement is substantially equivalent to those identified in ORS 279C and Chapter 5.34.
- D. Protests. Protests regarding the use of all types of cooperative Procurements shall be governed by the applicable provisions of Section 5.34.700 et seq.

5.34.140 General Rules for Joint Cooperative Procurements; Fees.

(Amended by Ordinance No. 183445, effective January 6, 2010.)

- A. If the City is the Administering Contracting Agency, then:
 1. It may charge a fair and reasonable fee to Purchasing Contract Agencies that represent the excess costs of administering the Contract in light of the Purchasing Contracting Agencies use of that Contract; and
 2. Determine whether the Purchasing Contract Agency must enter into a Written agreement with it.
- B. If the City is a Purchasing Contracting Agency it is authorized to pay a fee to the Administering Contracting Agency that the Chief Procurement Officer determines is fair and reasonable in light of all the circumstances surrounding the Procurement, including the savings that may be obtained if a cooperative Procurement is used, the cost of the Procurement in relationship to the fee, and other factors as may be considered. If a fee is paid, it will be borne by the Bureau or portion of the City on whose behalf the Procurement is being made.

5.34.150 Competitive Bidding Requirement.

(Amended by Ordinance Nos. 181547 and 185898, effective February 20, 2013.) The City shall solicit Bids for Public Improvement Contracts by Invitation to Bid ("ITB"), except:

- A. Contracts made with Qualified Nonprofit Agencies providing employment opportunities for disabled individuals, in which case the rules stated in Section 5.33.110 shall apply.
- B. Contracts, or classes of Contracts, exempted by the City Council pursuant to state law, including those stated in Section 5.34.830;
- C. A public improvement contract with a value of less than \$5,000;
- D. Contracts not exceeding \$100,000, if made under procedures for Competitive quotations pursuant to Section 5.34.160;

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- E.** Public improvement contracts Awarded as Emergency Contracts;
- F.** Energy Savings performance contracts entered into in accordance with Chapter 5.34;
- G.** Contracts where federal law overrides this Chapter;
- H.** Contracts governed by ORS 279A.100 and Section 5.34.040 regarding affirmative action, and contracts identified in the Prime Contractor Development Program;
- I.** Any other Contract that is not governed by ORS 279A, 279B and 279C; and
- J.** Contracts exempted by the City Council acting as the Local Contract Review Board, from using an ITB process pursuant to ordinance, in which case the selection shall follow the rules set forth in Section 5.34.800 et seq. in regard to the alternative Contract method selected, unless the exemption authorizes a different method.

5.34.160 Intermediate Procurements; Competitive Quotations.

(Amended by Ordinance Nos. 181547, 183445 and 185898, effective February 20, 2013.)

- A.** Public Improvement Contracts estimated by the City not to exceed \$100,000, may be Awarded through the requirements of this rule.
- B.** All requests for a price quotation for a public improvement anticipated to exceed \$50,000 shall be in Writing and include the selection criteria to be utilized in selecting a Contractor and, if the criteria are not of equal value, their relative value or ranking. The criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, Contractor capacity, responsibility and similar factors.
 - 1.** Written requests shall include the Bureau of Labor and Industries (BOLI) provisions regarding the prevailing wage, if the estimated cost exceeds \$50,000.
 - 2.** If the estimated cost is less than \$50,000, but all price quotations equal or exceed \$50,000, then the Solicitation shall be cancelled and a new request for Written price quotations, containing the BOLI provisions regarding prevailing wage shall be included.
- C.** Requests for quotations for public improvements estimated to be \$50,000 or less can be made orally, provided the City seeks at least three competitive quotations, and keeps a Written record of the sources and amounts of the quotations received. If three quotations are not reasonably available the City shall make a Written record of the effort made to obtain those quotations.

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- D.** The City shall Award the Contract to the prospective Contractor whose Price Quotation will best serve the interests of the City, taking into account the announced selection criteria. If Award is not made to the Offeror offering the lowest price, the City shall make a Written record of the basis for Award.
- E.** Intermediate level Public Improvement Contracts obtained by competitive quotations may be increased above the original amount of Award by change order or amendment within the limitations pursuant to Subsection 5.34.020 C.3.

5.34.300 Solicitation Documents; Required Provisions; Assignment or Transfer.

(Amended by Ordinance Nos. 181547, 185898 and 187373, effective October 14, 2015.)

- A.** The Solicitation Document for a public improvement Contract shall include the following:
 - 1.** Identification of the Public Improvement project, including the character of the Work, and applicable plans, Specifications and other Contract documents;
 - 2.** Notice of any pre-Offer conference as follows:
 - a.** The time, date and location of any pre-Offer conference;
 - b.** Whether attendance at the conference will be mandatory or voluntary; and
 - c.** That statements made by the City's representatives at the conference are not binding upon the City unless confirmed by Written Addendum;
 - 3.** The deadline for submitting mandatory Prequalification applications and the class or classes of Work for which Offerors must be Prequalified if Prequalification is a requirement;
 - 4.** The name and title of the authorized City representative designated for receipt of Offers and contact representative (if different);
 - 5.** Instructions and information concerning the form and submission of Offers, including the address of the office to which Offers must be delivered, any Bid or Proposal Security requirements, and any other required information or special information, e.g., whether Offers may be submitted by Facsimile or Electronic means (see Section 5.34.330 regarding Facsimile Bids or Proposals and Section 5.34.340 regarding Electronic Procurement);
 - 6.** The time, date and place of Opening;

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7. The time and date of Closing after which the City will not accept Offers, which time shall be not less than five (5) Days after the date of the last publication of the advertisement, and may, in the sole discretion of the City, direct or permit the submission and receipt of bids by electronic means. If the City is issuing an ITB that may result in a Public Improvement Contract with a value in excess of \$100,000, the City shall designate a time of Closing consistent with the first-tier Subcontractor disclosure requirements of ORS 279C.370(1)(b) and Section 5.34.493. For timing issues relating to Addenda, see Section 5.34.430;
 8. The office where the Specifications for the Work may be reviewed;
 9. A statement that each Bidder to an ITB must identify whether the Bidder is a "Resident Bidder," as defined in Subsection 5.33.010 A.55.;
 10. If the Contract resulting from a Solicitation will be a Contract for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. § 3141 to 3148), or both the state and federal prevailing rates of wage, a statement that no Offer will be received or considered by the City unless the Offer contains a statement by the Offeror as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of ORS 279.838 or ORS 279C.840 or 40 U.S.C. § 3141 to 3148, or both";
 11. A statement that the City will not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board.
 12. Whether a Contractor or a Subcontractor under the Contract must be licensed under ORS 468A.720 regarding asbestos abatement projects;
 13. Contractor's certification of nondiscrimination in obtaining required Subcontractors in accordance with ORS 279A.110(4) and Section 5.34.040;
 14. How the City will notify Offerors of Addenda and how the City will make Addenda available (see Section 5.34.430); and
 15. When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in Section 5.34.493.
 16. A statement that the Offeror must obtain EEO certification and have a valid City business license, if required.
- B.** The Solicitation Document shall also contain the following information about the evaluation process:

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1. A statement that the City may reject any Offer not in compliance with all prescribed Public Contracting procedures and requirements, and may reject for good cause all Offers upon the City's finding that it is in the public interest to do so;
2. The anticipated Solicitation schedule, deadlines, protest process and evaluation process, if any;
3. Evaluation criteria, including the relative value applicable to each criterion, that the City will use to determine the Responsible Bidder with the lowest Responsive Bid (where Award is based solely on price) or the Responsible Proposer or Proposers with the best Responsive Proposal or Proposals (where use of Competitive Proposals is authorized), along with the process the City will use to determine acceptability of the Work;
 - a. If the Solicitation Document is an Invitation to Bid, the City shall set forth any special price evaluation factors in the Solicitation Document. Examples of such factors include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, and ownership or life-cycle cost formulas. Price evaluation factors need not be precise predictors of actual future costs; but, to the extent possible, such evaluation factors shall be objective, reasonable estimates based upon information the City has available concerning future use;
 - b. If the Solicitation Document is a Request for Proposals, the City shall refer to the additional requirements of Section 5.34.850;
- C. The City shall include all Contract terms and conditions, including warranties, insurance and bonding requirements, that the City considers appropriate for the Public Improvement project.
- D. The City must include all applicable Contract provisions required by Oregon law as follows:
 1. Prompt payment to all Persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279C.505(1)); and all provisions regarding accelerated or twice-monthly payment if required by the City's Standard Construction Specifications;
 2. Demonstrate that an employee drug testing program is in place (ORS 279C.505(2));

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3. If the Contract calls for demolition Work described in ORS 279C.510(1), a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;
4. If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2);
5. Payment of claims by public officers (ORS 279C.515(1));
6. Contractor and first-tier Subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2), including the rate of interest;
7. A Person's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract as provided in ORS 279C.515(3);
8. Hours of labor in compliance with ORS 279C.520;
9. Environmental and natural resources regulations (ORS 279C.525);
10. Payment for medical care and attention to employees (ORS 279C.530(1));
11. A Contract provision substantially as follows: "All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements." (ORS 279C.530(2));
12. Maximum hours, holidays and overtime (ORS 279C.540);
13. Time limitation on claims for overtime (ORS 279C.545);
14. Prevailing wage rates (ORS 279C.800 to 279C.870);
15. Fee paid to BOLI (ORS 279C.830);
16. BOLI Public Works Bond (ORS 279C.830(3));
17. Retainage (ORS 279C.550 to 279C.570);
18. Prompt payment policy, progress payments, rate of interest (ORS 279C.570);

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19. Contractor's relations with Subcontractors (ORS 279C.580);
 20. Notice of claim (ORS 279C.605);
 21. Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385; and
 22. Contractor's certification that all Subcontractors performing Work described in ORS 701.005(5) will be registered with the Construction Contractors Board, or licensed by the State Landscape Contractors Board in accordance with the Construction Contractor's Licensing Act before the Subcontractors commence Work under the Contract.
- E.** Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the Contract, either in whole or in part, without the City's prior Written consent, which must be approved as to form by the City Attorney's Office. Unless approved in Writing and approved as to form, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the City consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the City for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the City otherwise agrees in Writing.

5.34.310 Notice and Advertising Requirements; Posting.

(Amended by Ordinance Nos. 181547, 183445 and 185898, effective February 20, 2013.)

- A.** The City shall furnish "Notice" as set forth in Subsections 5.34.310 A.1. through 3. to a number of Persons sufficient for the purpose of fostering and promoting competition. The Notice shall indicate where, when, how and for how long the Solicitation Document may be obtained and generally describe the Public Improvement project or Work. The Notice may contain any other appropriate information. The City may charge a fee or require a deposit for the Solicitation Document. The City may furnish Notice using any method determined to foster and promote competition, including:
1. Mailing Notice of the availability of Solicitation Documents to Persons that have expressed an interest in the City's Procurements;
 2. Placing Notice on the Oregon Department of Administrative Services' Electronic Procurement System known as "ORPIN"(Oregon Procurement Information Network) or a successor electronic System; or

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3. Placing Notice on the City's Internet Web site.

B. Pursuant to ORS 279C.360 and this rule, the City shall advertise every Solicitation for competitive bids or competitive proposals for a Public Improvement Contract, unless the City Council has exempted the Solicitation from the advertisement requirement as part of a competitive bidding exemption under ORS 279C.335 and Section 5.34.820.

1. Unless the City publishes by Electronic Advertisement as permitted by Subsection 5.34.310 B.2., the City shall publish the advertisement for Offers at least once in at least one newspaper of general circulation in the area where the Contract is to be performed and in as many additional issues and publications as the City may determine to be necessary or desirable to foster and promote competition.

2. The City Council finds that publishing Notice Electronically is likely to be cost effective. The City may publish by Electronic Advertisement if:

a. The City has published a Notice that it may publish future advertisements for Offers by Electronic Advertisement. The City shall publish such Notice weekly, for no less than four (4) consecutive weeks. The City Notice shall include the World Wide Web location (i.e., Uniform Resource Locator or URL) where the City will publish future Electronic Advertisements or alternatively, the Web location where the City will publish information on accessing the Electronic Advertisement via a Telnet application;

b. The City posts in its business office a Notice that the City will publish advertisements for Offers by Electronic Advertisement for no less than four consecutive weeks. The Notice shall include the World Wide Web location (i.e., Uniform Resource Locator or URL) where the City publishes Electronic Advertisements or alternatively, the Web location where the City publishes information on accessing the Electronic Advertisement via Telnet; and

c. In addition to the City's publication required under Subsection 5.34.310 B.2.a. or b., the City shall also publish an advertisement for Offers in at least one trade newspaper of general statewide circulation if the Contract is for a Public Improvement with an estimated cost in excess of \$125,000.

d. All advertisements for Offers shall set forth:

(1) The Public Improvement project;

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- (2) The office where Contract terms, conditions and Specifications may be reviewed;
 - (3) The date that Persons must file applications for Prequalification under ORS 279C.340, if Prequalification is a requirement, and the class or classes of Work for which Persons must be Prequalified;
 - (4) The scheduled Closing, which shall not be less than five (5) Days after the date of the last publication of the advertisement;
 - (5) The name, title and address of the City Person authorized to receive Offers;
 - (6) The scheduled Opening; and
 - (7) If applicable, that the Contract is for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. § 3141 to 3148).
- C. The City shall post a copy of each advertisement for Offers at Procurement Services. An Offeror may obtain a copy of the advertisement for Offers upon request to the Bureau.

5.34.320 Specifications and Brand Names.

(Amended by Ordinance Nos. 183445, 184403 and 185898, effective February 20, 2013.)

- A. Specification content is in the sole discretion of the City of Portland, subject to statutory restrictions on the use of brand names.
- B. The City may consult with technical experts, suppliers, prospective contractors and representative of the industries with which the City will Contract. The City shall take reasonable measure to ensure that no Person who prepares or assists in the preparation of Solicitation Documents, Specifications, plans or Scope of Work (collectively, “documents”), and that no business with which the Person is associated realizes a material competitive advantage that arises from the City’s use of those documents.
- C. A “brand name or equal” Specification may be used when it is Advantageous to the City, because the brand name describes the standard of quality, performance, functionality and other characteristics of the product needed by the City. The City’s determination of what constitutes a product that is equal or superior to the product specified is final. Unless otherwise specified, the use of a brand name shall mean “brand name or equal”.

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- D.** A “brand name” Specification may be used requiring a Contractor to provide a specific brand when the Chief Procurement Officer, or designee, makes the following findings:
- 1.** The use of a brand name Specification is unlikely to encourage favoritism in the Awarding of a Public Contract or substantially diminish competition for Public Contracts; or
 - 2.** The use of a brand name Specification would result in a substantial cost savings to the City; or
 - 3.** There is only one manufacturer or seller of the product of the quality, performance or functionality required; or
 - 4.** Efficient utilization of existing equipment, or supplies requires the acquisition of compatible equipment or supplies
- E.** The City's use of a brand name specification is subject to protest and review only as provided in Section 5.34.720.

5.34.330 Facsimile Bids and Proposals.

(Amended by Ordinance No. 183445, effective January 6, 2010.)

- A.** Authorization. The Chief Procurement Officer may authorize Offerors to submit Facsimile Offers. If the Chief Procurement Officer determines that Bid or Proposal Security is or will be required, the City shall not authorize Facsimile Offers unless the City has established a method for receipt of such security. Prior to authorization the City must determine whether the City’s equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time and establish administrative procedures and controls:
- 1.** For receiving, identifying, recording and safeguarding Facsimile Offers, and
 - 2.** To ensure timely delivery of Offers to the location of Opening and to preserve the "sealed" requirement of competitive Procurement.
- B.** Provisions To Be Included in Solicitation Document. In addition to all other requirements, if the City authorizes a Facsimile Offer, the City shall include in the Solicitation Document (other than a request for price quotations) provisions substantially similar to the following:
- 1.** A “Facsimile Offer”, as used in this Solicitation, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the City via a Facsimile machine.

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2. Offerors may submit Facsimile Offers in response to this Solicitation. The entire response must arrive at the place and by the time specified in this Solicitation Document.
3. Facsimile Offers must be Signed by the Offeror.
4. The City reserves the right to Award the Contract solely on the Facsimile Offer. However, upon the City's request the apparently successful Offeror shall promptly submit its complete original Signed Offer.
5. The data and compatibility characteristics of the City's receiving Facsimile machine are as follows:
 - a. Telephone number;
 - b. Compatibility characteristics, e.g., make and model number, receiving speed, and communications protocol.
6. The City is not responsible for any failure attributable to the transmission or receipt of the Facsimile Offer including, but not limited to the following:
 - a. Receipt of garbled or incomplete documents.
 - b. Availability or condition of the receiving Facsimile machine.
 - c. Incompatibility between the sending and receiving Facsimile machine.
 - d. Delay in transmission or receipt of documents.
 - e. Failure of the Offeror to properly identify the Offer documents.
 - f. Illegibility of Offer documents.
 - g. Security and confidentiality of data.

5.34.340 Electronic Procurement.

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A. General. If the Public Improvement Contract has an estimated cost in excess of \$125,000, the advertisement must be published in at least one trade newspaper of general statewide circulation, except in circumstances where the Chief Procurement Officer finds that Electronic Advertisements are likely to be cost effective.
- B. The City may post a notice of Intent to Award a Contract Electronically at least seven (7) Days before the Award of a Public Contract.

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- C.** Required Factors. In determining whether to authorize Electronic Bids or Proposals, the City shall consider factors such as:
1. Anticipated Bid or Proposal size and volume;
 2. Whether there is an urgent need for the Work being procured;
 3. Frequency of price changes;
 4. Availability, reliability, speed, and capacity of the receiving Electronic equipment;
 5. Adequacy of administrative procedures and controls for receiving, identifying, recording, and safeguarding Electronic Bids or Proposals, and ensuring their timely delivery to the Bid or Proposal Opening location; and,
 6. The means and method for sealing or securing the transmitted documents to preserve the sealed requirement of competitive Procurement.
- D.** Security. If Bid or Proposal Security is required, Electronic submission shall not be authorized unless the City has provided another method for receipt of the security.
- E.** Authorization; Contents of Solicitation Document. Bids or Proposals may be submitted Electronically only if specifically authorized by the Solicitation Document. If Electronic transmission is authorized, the City shall include provisions substantially similar to the following in the City's Solicitation Document:
1. Definition. Electronic Bid or Proposal, as used in this Solicitation Document, means a Bid or Proposal, modification of a Bid or Proposal, or withdrawal of a Bid or Proposal that is Electronically transmitted to and received by the City, in the manner specified in the Solicitation Document.
 2. Timely Submission. Bidders or Proposers may submit Electronic Bids or Proposals in response to this Solicitation Document. The entire Electronic Bid or Proposal shall arrive at the place and by the time specified in the Solicitation Document.
 3. Rejection of Bids or Proposals. Electronic Bids or Proposals that fail to furnish required representations or information, that are contingent or that reject or take exception to any of the terms, conditions, and provisions of the Solicitation Document, may be rejected and excluded from consideration, as otherwise provided by this Chapter.

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4. Signatures. Electronic Bids or Proposals shall contain the required signatures.
5. Request for Original. The City reserves the right to Award the Contract solely on the Electronic Bid or Proposal. However, if requested to do so by the City, the apparently successful Bidder or Proposer agrees to promptly submit the complete original signed Bid or Proposal.
6. Transmission Information. Data and compatibility characteristics.
7. Non-Responsibility for Transmission Failure. If the Bidder or Proposer chooses to transmit an Electronic Bid or Proposal, the City shall not be responsible for any failure attributable to the transmission or receipt of the Electronic Bid or Proposal regardless of cause.

5.34.410 Bid or Proposal Security.

(Amended by Ordinance Nos. 181547, 183445, 185898 and 187373, effective October 14, 2015.)

- A. **Security Amount.** If The City requires Bid or Proposal Security, it shall be not more than 10 percent of the Offeror's Bid or Proposal. The City shall not use Bid or Proposal Security to discourage competition. The City shall clearly state any Bid or Proposal Security requirements in its Solicitation Document. The Offeror shall forfeit Bid or Proposal Security after Award if the Offeror fails to execute the Contract and promptly return it with any required Performance Bond, Payment Bond and any required proof of insurance. See ORS 279C.365(5) and ORS 279C.385. See also, Section 5.34.915 and BOLI rules regarding the separate requirement for a Public Works Bond.
- B. **Requirement for Bid Security (Optional for Proposals).** Unless The City Council has exempted a Solicitation, or class of Solicitations, from Bid security pursuant to ORS 279C.390, the City shall require Bid security for its Solicitation of Bids for Public Improvements. This requirement applies only to Public Improvement Contracts with a value, estimated by the City, of more than \$150,000. The Chief Procurement Officer nonetheless may require Bid security from any Offeror, or for any project, even if the City Council has exempted a class of Solicitations from Bid security if the Chief Procurement Officer believes it necessary to secure payment and performance. The Chief Procurement Officer may require Proposal Security in RFPs. (see ORS 279C.400(5)).
- C. **Form of Bid or Proposal Security.** The City may accept only the following forms of Bid or Proposal Security:
 1. A surety bond, signed by the surety's authorized Attorney in Fact, from a company authorized to do business in the State of Oregon and that is duly

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listed in the United States Treasury list as published in the Federal Register, or which is otherwise approved by the City Attorney. The surety company's seal shall be affixed to the bond and a Power of Attorney for the Attorney in Fact shall be submitted. The City Attorney has the authority to waive the requirement of the corporate seal: or

2. A signed irrevocable letter of credit issued by an insured institution as defined in ORS 706.008(12); or
3. A Cashier's check, or Offeror's certified check.

D. Return of Security. The City shall return or release the Bid or Proposal Security of all unsuccessful Offerors after a Contract has been fully executed and all required Bonds have been provided, or after all Offers have been rejected. The City may return the Bid or Proposal Security of unsuccessful Offerors prior to Award if the return does not prejudice Contract Award and the Security of at least the Bidders with the three lowest Bids, or the Proposers with the three highest scoring Proposals, is retained pending execution of a Contract.

5.34.420 Pre-Offer Conferences.

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- A. The City may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the Procurement requirements, obtain information or to conduct site inspections.
- B. The City may require attendance at the pre-Offer conference as a condition for making an Offer. Unless otherwise specified in the Solicitation Document, a mandatory attendance requirement is considered to have been met if, at any time during the mandatory meeting, a representative of an offering firm is present.
- C. If the City holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.
- D. Statements made by the City's representative at the pre-Offer conference, or elsewhere do not change the Solicitation Document unless the City confirms such statements with a Written Addendum to the Solicitation Document.
- E. The City must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with Section 5.34.300.

5.34.430 Addenda to Solicitation Documents.

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

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- A.** Issuance; Receipt. A Solicitation Document may be changed only by a Written Addendum. An Offeror shall provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the City otherwise specifies in the Addenda or Solicitation Document. If an Offeror submits an Offer and the Solicitation Document states that the Offeror is bound by all Addenda published in accordance with these rules, then the Offeror shall be bound by all Addenda so issued.
- B.** Notice and Distribution. The City shall notify prospective Offerors of Addenda consistent with the standards of Notice set forth in Section 5.34.310. The Solicitation Document shall specify how the City will provide Notice of Addenda and how the City will make the Addenda available (see, Section 5.34.300). For example, the Solicitation Document could say: “City will not mail Notice of Addenda, but will publish Notice of any Addenda on City's Web site.” Addenda may be downloaded off the City's Web site. Offerors should frequently check the City's Web site until Closing, (i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing).
- C.** Timelines; Extensions. The City shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The City should extend the Closing if the Chief Procurement Officer determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent that the Chief Procurement Officer determines that the public interest requires it, the City shall not issue an Addendum less than 72 hours before the Closing unless the Addendum also extends the Closing. Notice of the Addenda shall be deemed to occur when the Addendum is posted on the City's web site or upon mailing, whichever is applicable. If both occur, the notification is complete when the first of these two events occur.
- D.** Request for Change or Protest. Unless a different deadline is set forth in the Addendum, an Offeror must submit a Written request for change or protest to the Addendum, as provided in Section 5.34.440 by the close of the City's next business Day after issuance of the Addendum. The City shall consider only an Offeror's request for change or protest to the Addendum; the City shall not consider a request for change or protest to matters not added or modified by the Addendum. Notwithstanding any provision of this Paragraph, the City is not required to provide a protest period for Addenda issued during a multi-tiered Solicitation process pursuant to Section 5.34.850.

5.34.440 Request for Clarification or Change.

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A.** Time for submission of request for change. Unless otherwise provided in the Solicitation Document, an Offeror shall deliver any request for change to the Solicitation Document, Specifications or Contract provisions to the City in Writing within seven (7) Days prior to Bid or Proposal Closing. Requests for change in

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regard to Addenda shall be submitted in accordance within the time permitted by Subsection 5.34.430 D.

- B.** Any request for change shall include a detailed statement of the legal and factual reasons for the request for change; any proposed changes to Specifications or Contract provisions; and a description of any prejudice to the Offeror; and a statement of the form of relief requested. No request for change of the content of the Solicitation Document, Specifications or Contract provisions shall be considered after the deadline established for submitting such request. The City shall notify the Offeror if the City entirely rejects the request. If the City agrees with the request, in whole or in part, the City shall either issue an Addendum reflecting the change or cancel the Solicitation.
- C.** Extension of Closing date. If any request for change is timely received in accordance with these rules the Closing may be extended by the Chief Procurement Officer if it is determined that an extension is necessary to allow consideration of the request or issuance of any Addendum to the Solicitation Document.
- D.** Identification of request for change. Envelopes containing requests for change of the Solicitation Document, Specifications or Contract provisions shall be marked with the following information:
 - 1.** Solicitation Specification or Contract Provision Request for Change or Clarification; and
 - 2.** Solicitation Document Number or Other Identification.
- E.** A Proposer may request a change to add alternate terms and conditions for negotiation if the Solicitation Document permits negotiation. In this circumstance, request for change procedure shall be governed by the Solicitation Document and Subsections 5.34.840 E. and 5.34.850 F.
- F.** Clarification. Prior to the deadline for submitting a request for change, an Offeror may request in Writing that the City clarify any provision of the Solicitation Document or Contract. The City's clarification, whether oral or in Writing, does not change the Solicitation Document or Contract and is not binding on the City unless the City amends the Solicitation Document or Contract by Written Addenda.

5.34.450 Offer Submissions.

(Amended by Ordinance Nos. 181547 and 185898, effective February 20, 2013.)

- A.** Offer and Acceptance. A Bid, Proposal or Price Quotation is an Offer to enter into a Contract. The Offer is a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the City's acceptance for not less than 30 Days from closing unless otherwise specified in the Solicitation Document. After the 30 Days the Offer shall

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lapse unless extended. The extension may occur after the expiration of the 30-Day period.

- B.** The Offer may be extended beyond 30 Days if the Offeror and the City so agree. If agreement is reached the time period for extension shall be reduced to Writing and the Offer will remain valid, irrevocable and binding on the Offeror for the agreed-upon extension period.
- C.** The City's Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.
- D.** Responsive Offer. The City may Award a Contract only to a Responsible Offeror with a Responsive Offer.
- E.** A competitive Proposal is a "Firm Offer" for the period specified as provided in section A above, but the City may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document with the Proposer. Where negotiation is permitted by the rules or the Solicitation Document, Proposers are bound to an obligation to negotiate in good faith and only on those terms and the rules or the Solicitation Document has reserved for negotiation.
- F.** The City may Award a Contract only to a Responsible Offeror with a Responsive Offer.
- G.** Contingent Offers. Except to the extent that a Proposer is authorized to propose certain terms and conditions pursuant to Section 5.34.850, a Proposer shall not make, and the City shall not accept, an Offer contingent upon the City's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.
- H.** Offeror's Acknowledgement. By signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits Proposal of alternative terms under Section 5.34.850, the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the City in Writing.
- I.** Instructions. An Offeror shall submit and Sign its Offer in accordance with the Solicitation Document. Bids requiring a Written and non-electronic signature shall be signed in ink by an Authorized Representative of the Offeror. An Offeror shall initial and submit any correction or erasure to its Offer prior to the Opening in accordance with the requirements for submitting an Offer under the Solicitation Document.

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- J.** Forms. An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.
- K.** Documents. An Offeror shall provide the City with all documents and Descriptive Literature required under the Solicitation Document.
- L.** Facsimile or Electronic Submissions If the City permits Facsimile or Electronic Offers in the Solicitation Document, the Offeror may submit Facsimile or Electronic Offers in accordance with the Solicitation Document. The City shall not consider Facsimile or Electronic Offers unless authorized by the Solicitation Document.
- M.** Product Samples and Descriptive Literature. The City may require Product Samples or Descriptive Literature if it is necessary or desirable to evaluate the quality, features or characteristics of the offered items. The City will dispose of Product Samples, or return or make available for return Product Samples to the Offeror in accordance with the Solicitation Document.
- N.** Identification of Offers.
 - 1.** To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the City, whichever is applicable.
 - 2.** The City is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.
- O.** Receipt of Offers. The Offeror is responsible for ensuring that the City receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

5.34.460 Pre-Closing Modification or Withdrawal of Offers.

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- A.** Modifications. Once submitted, Bids or Proposals may only be modified in Writing prior to the time and date set for Bid or Proposal Closing. Unless otherwise provided in the Solicitation Document, any modifications shall be prepared on the Bidder's or Proposer's letterhead, signed by an Authorized Representative of the Bidder or Proposer, state that the new document supersedes or modifies the prior Bid or Proposal and be submitted in a sealed envelope, appropriately marked. The City may accept modifications Electronically only if it has authorized Electronic submittal in the Solicitation Document. To ensure the integrity of the Bidding process, the envelope or Electronic submission containing any modifications to a Bid or Proposal shall be marked with the following information:
 - 1.** Bid or Proposal Modification.

2. Solicitation Number or Other Identification.

B. Withdrawals:

1. Bids or Proposals may be withdrawn by a Written notification of the Bidder or Proposer. The notice shall be signed by an Authorized Representative of the Bidder or Proposer, and must be received prior to the time and date set for Bid or Proposal Closing.

2. Written notifications to withdraw Bid or Proposal shall be marked with the following information:

a. Bid or Proposal Withdrawal.

b. Solicitation Number or Other Identification.

C. Documentation. All documents relating to the modification or withdrawal of Bids or Proposals shall be made a part of the appropriate Bid or Proposal Solicitation file.

D. Late Requests for Modification or Withdrawal. Any request for modification or withdrawal of a Bid or Proposal made after the time for Bid or Proposal Closing is late as provided by Section 5.34.480. Any late submission shall be returned to the Bidder or Proposer unopened. If any late submission is opened inadvertently, the procedure provided by Section 5.34.470 shall apply except the submission shall be returned to the sender.

5.34.470 Receipt, Opening and Recording of Offers.

(Amended by Ordinance No. 183445, effective January 6, 2010.)

A. Receipt. Each Offer, and modifications to Offers, shall, upon receipt, be Electronically or mechanically time-stamped by Procurement Services time clock, or marked by hand, but not opened, and shall be stored in a secure place until Bid or Proposal Opening. If Offers or modifications are opened inadvertently or opened prior to the time and date set for Bid or Proposal Opening because they were improperly identified by the Offeror, the opened Offers or modification documents shall be resealed and stored for Opening at the correct time. When this occurs, documentation of the resealing shall be placed in the file.

B. Opening and Recording. Offers and modifications to Offers shall be opened publicly, at the time, date, and place designated in the Solicitation Document. In the case of Invitations to Bid, to the extent practicable, the name of each Bidder, the Bid price(s), and such other information as considered appropriate shall be read aloud. In the case of Requests for Proposals or on voluminous Bids, the City may

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advise Bidders and Proposers, as part of the Solicitation Documents, that the Bid or Proposal items and prices will not be read aloud.

- C. Availability. After Opening, the City shall make Bids available for public inspection, but pursuant to ORS 279C.410. Proposals are not subject to disclosure until after notice of intent to Award is issued. In any event, the City may withhold from disclosure those portions of an Offer that the Offeror designates trade secrets or as confidential proprietary data in accordance with the Oregon Public Records Law, ORS 192.410 et seq. Application of the Oregon Public Records Law ORS 192.410 et seq. shall determine if the information designated as confidential and claimed to be exempt is in fact exempt from disclosure. To the extent the City determines the designated information is not in accordance with applicable law, the City shall make those portions available for public inspection. In order to facilitate public inspection of the non-confidential portion of the Bid or Proposal, material designated as confidential shall accompany the Offer, but the Offeror shall separate it, if requested, from the remainder of the Offer. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment shall be publicly available regardless of the Offeror's designation to the contrary. Copies of public records will be made available upon payment of the City's charges.

5.34.480 Late Bids, Late Withdrawals and Late Modifications.

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A. Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. The City shall not consider late Offers, withdrawals or modifications, except as permitted by Sections 5.34.490 (Mistakes) or 5.33.610 (Offer Evaluation and Award).
- B. For manual submissions of Offers, Procurement Services' time clock shall be the clock of record and the date and time imprint of that clock on an Offer shall determine the timeliness of the submission. Late manual submissions shall be returned to the Offeror unopened with a copy of the envelope containing the Bureau's time stamp on the Offer retained for the Solicitation file
- C. For Electronic submissions, when permitted, the time shown by the City as to the date of arrival of the Electronic submission shall determine the timeliness of the submission. Late Electronic submissions shall be deleted from the City's files, returned Electronically to the Offeror and the time of the submission and the time of return shall be documented in the Solicitation file.
- D. For Facsimile submissions, when permitted, the time recorded at the top of the last page of the submission shall determine the timeliness of the submission. Late Facsimile transmissions shall be returned to the Offeror after keeping a copy of the last page of the transmission for the Solicitation file.

- E.** Failure to properly return or dispose of a late submission does not mean an Offer or submission arrived on time.

5.34.490 Mistakes.

- A.** General. To protect the integrity of the competitive Solicitation process and to assure fair treatment of Offerors, the City should carefully consider whether to permit a waiver, correction or withdrawal of an Offer for certain mistakes.
- B.** Treatment of Mistakes. Errors in judgment do not permit an Offeror to correct or withdraw an Offer. Mistakes that constitute a minor informality may be waived or corrected. Mistakes that constitute clerical errors may be corrected or withdrawn in the City's discretion pursuant to this rule.
- C.** City notification. If the City believes the Offer contains a mistake the City shall notify the Offeror, note the apparent mistake and request that the Offeror verify the Offer in writing, or by electronic transmission within one business day after notification.
- D.** Failure of Offeror to Respond. If the Offeror fails to respond within one business day after notification of the apparent mistake, the City shall consider the Offer as submitted unless the amount of the Offer is so far out of line with the amounts of other bids received, or with the amount estimated by the City, or there are other indications of error so clear, as to reasonably justify the conclusion or that acceptance of the Offer would be unfair to the Offeror or to other bona fide Offerors, in which case the City shall be entitled to reject the Offer. The City may extend the time for response for good cause shown.
- E.** Verification. If the Offeror verifies its Offer, the City must consider the Offer as originally submitted. However, in fairness to other Offerors, verification does not preclude the City from rejecting the Offer if it is clear that a mistake has been made and the City determines the intended Offer is not evident.
- F.** Minor Informality. If the Offeror verifies its Offer, and the City sees no reason for rejection, the City may waive or permit the Offeror to correct a mistake that constitutes a minor informality. A minor informality is a matter of form, rather than substance, that is evident on the face of the Offer and which can be corrected or waived without prejudice to the public or other Offerors. Examples of a minor informality include a failure to:
 - 1.** Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

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2. Sign the Offer in the designated block, provided, however, that a Signature appears elsewhere in the Offer that evidences the Offeror's intent to be bound; or
 3. Acknowledge receipt of an Addendum to the Solicitation Document, provided it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms.
- G. Clerical Mistakes.** If the Offeror does not verify its Offer, but contends a clerical mistake caused a different Offer than intended to be submitted, or verifies the Offer but contends a clerical mistake should be corrected within a portion of the Offer, the City may in its discretion permit correction if the conditions of this section are met.
1. Only clerical mistakes can be corrected. A clerical mistake is not a mistake of judgment. Examples of clerical mistakes include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, misplacement of a decimal point, and instances in which the intended correct price is evident by simple arithmetic calculations.
 2. If correction of the Offer would result in displacement of one or more lower Offers submitted by other Offerors, the correction is permitted if, and only if, both the existence of the mistake and the Offer actually intended are ascertainable from the Solicitation Document and the Offer itself.
 3. If correction of the Offer would not result in the displacement of one or more lower Offers submitted by other Offerors, correction may be permitted if the Offeror provides the City with clear and convincing supporting evidence of the mistake and intended Offer within two business days after the City's initial notification of the mistake. The City may extend the time for response for good cause shown.
 - a. Supporting evidence shall include all pertinent evidence, such as the Offeror's file copy of its Offer, the original worksheets and other data used in preparing the Offer, subcontractors' quotations, if any, and any other evidence that establishes the existence of a clerical mistake, the manner in which it occurred and the Offer actually intended.
 - b. The closer the corrected Offer is to the next lowest Offer the greater the need for the City to be sure that it has clear and convincing evidence that permits a correction to ensure the integrity of the competitive process.

5.34.493 First-Tier Subcontractors; Disclosure and Substitution.

(Amended by Ordinance No. 183445, effective January 6, 2010.)

- A.** Required Disclosure. Within two working hours after the Bid Closing on an ITB for a Public Improvement having a Contract Price estimated by the City to exceed \$100,000, all Bidders shall submit to the City a disclosure form as described by ORS 279C.370(2), identifying any first-tier Subcontractors that will be furnishing labor or labor and materials on the Contract, if Awarded, whose subcontract value would be equal to or greater than:

 - 1.** Five percent of the total Contract Price, but at least \$15,000; or
 - 2.** \$350,000, regardless of the percentage of the total Contract Price.
- B.** Bid Closing, Disclosure Deadline and Bid Opening. For each ITB to which this rule applies, the City shall:

 - 1.** Set the Bid Closing on a Tuesday, Wednesday or Thursday, and at a time between 2 p.m. and 5 p.m., except that these Bid Closing restrictions do not apply to an ITB for maintenance or construction of highways, bridges or other transportation facilities, and provided that the two-hour disclosure deadline described by this rule would not then fall on a legal holiday;
 - 2.** Open Bids publicly immediately after the Bid Closing; and
 - 3.** Consider for Contract Award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by the City.
- C.** Bidder Instructions and Disclosure Form. For the purposes of this rule, the City in its Solicitation shall:

 - 1.** Prescribe the disclosure form that must be utilized, substantially in the form set forth in ORS 279C.370(2); and
 - 2.** Provide instructions in a notice substantially similar to the following:

“Instructions for First-Tier Subcontractor Disclosure

Bidders are required to disclose information about certain first-tier Subcontractors (see ORS 279C.370). Specifically, when the Contract Amount of a first-tier Subcontractor furnishing labor or labor and materials would be greater than or equal to:

 - a.** 5 percent of the project Bid, but at least \$15,000; or

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b. \$350,000 regardless of the percentage, the Bidder must disclose the following information about that subcontract either in its Bid submission, or within two hours after Bid Closing:

- (1)** The Subcontractor's name,
- (2)** The category of Work that the Subcontractor would be performing, and
- (3)** The dollar value of the subcontract.

If the Bidder will not be using any Subcontractors that are subject to the above disclosure requirements, the Bidder is required to indicate "NONE" on the accompanying form.

THE CITY MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE."

- D.** Submission. A Bidder shall submit the disclosure form required by this rule either in its Bid submission, or within two (2) working hours after Bid Closing in the manner specified by the ITB.
- E.** Responsiveness. Compliance with the disclosure and submittal requirements of ORS 279C.370 and this rule is a matter of Responsiveness. Bids that are submitted by Bid Closing, but for which the disclosure submittal has not been made by the specified deadline, are not Responsive and shall not be considered for Contract Award.
- F.** City Role. The City shall obtain, and make available for public inspection, the disclosure forms required by ORS 279C.370 and this rule. The City also shall provide copies of disclosure forms to the Bureau of Labor and Industries as required by ORS 279C.835. The City is not required to determine the accuracy or completeness of the information provided on disclosure forms.
- G.** Substitution. Substitution of affected first-tier Subcontractors shall be made only in accordance with ORS 279C.585. Contracting Agencies shall accept Written submissions filed under that statute as public records. Aside from issues involving inadvertent clerical error under ORS 279C.585, the City is not under an obligation to review, approve or resolve disputes concerning such substitutions. See ORS 279C.590 regarding complaints to the Construction Contractors Board on improper substitution. Substitution of Minority, Women and Emerging Small Businesses are also subject to the City's Solicitation Document.

5.34.500 Responsibility of Offerors.

(Amended by Ordinance Nos. 181547, 183445 and 185898, effective February 20, 2013.)

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- A. Contracts shall be Awarded only to Responsible Offerors. Pursuant to ORS 279C.375, the City shall consider whether the Offeror has:
1. Available the appropriate financial, material, equipment, facility and personnel resources and expertise, necessary to indicate the capability of the prospective Offeror to meet all contractual responsibilities;
 2. Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. The City should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the City should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The City may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. Among the matters the City may review in this regard is whether the Offeror has a record of material violations of state or federal prevailing wage laws. The City shall document the record of performance of a prospective Offeror if the City finds the prospective Offeror non-Responsible under this Paragraph;
 3. A satisfactory record of integrity. The City may find an Offeror not Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person.) The standards for Conduct Disqualification may be used to determine an Offeror's integrity. The City may find an Offeror not Responsible based on previous convictions of offenses related to obtaining or attempting to obtain a Contract or subcontractor or in connection with the Offeror's performance of a Contract or subcontract. The City shall document the record of integrity of a prospective Offeror if the City finds the prospective Offeror non-Responsible under this Paragraph;
 4. Is legally qualified to Contract with the City, including, but not limited to, an EEO Certification and a current, valid, business license from the City. Procurement Services may determine that a Person is not legally qualified if:
 - a. The Person does not have a business license with the City; or

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- b. The Person failed to make payments required by Title 7 of the City Code and has failed to make appropriate payment arrangements with the Revenue Bureau within seven (7) Days of the receipt of a Bid or Proposal, unless the City waives that requirement and decides to pursue collection through retention of Contract funds, or through other means.
 5. Supplied all necessary information in connection with the inquiry concerning responsibility. If a prospective Offeror fails to promptly supply information requested by the City concerning responsibility, the City shall base the determination of responsibility upon any available information or may find the prospective Offeror non-Responsible;
 6. Not been disqualified by the City pursuant to ORS 279C.440 and Section 5.34.530.
- B.** In the event the City determines an Offeror is not Responsible it shall prepare a Written determination of non-responsibility as required by ORS 279C.375.

5.34.510 Prequalification of Offerors.

(Amended by Ordinance Nos. 183445, 184403, 185065, 185898 and 187373, effective October 14, 2015.)

- A.** The City of Portland requires prequalification of all prime construction contractors on public improvement contracts with an estimated value of \$250,000 or greater, per ORS 279C.430(1) which allows public agencies the option to adopt their own rules for mandatory prequalification of contractors desiring to bid for public improvement contracts let by that agency. The Chief Procurement Officer has the authority to require Prequalification for public improvement contracts \$250,000 or less. The City shall not consider a Bid from a Bidder that is not prequalified, if the City required Prequalification.
- B.** Prequalification Application Forms. Contractors seeking to prequalify shall submit a City of Portland Prequalification application to Procurement Services. Within 30 days after receipt of a fully completed prequalification application, the City will evaluate the application as necessary to determine if the contractor is qualified in the classes of work requested. The determination shall be made in less than 30 days, if practicable, if the contractor requests an early decision to allow the contractor as much time as possible to prepare a bid on a contract that has been advertised.
- C.** Standards for Prequalification. To qualify, a Bidder must demonstrate to the City's satisfaction, that they are a Responsible Bidder based on criteria set forth in ORS 279C.375 (3)(b) and Section 5.34.500. If the City determines the Bidder is qualified, notification shall be sent stating the Bidder's qualified bidding limits, classes of work and the validity period of the Bidder's prequalification.

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- D.** Special Prequalification. A separate special Prequalification may be required for a specific project, as contained in the Solicitation Document, when the City determines that the project is of a size, scope or complexity that Special Prequalification is required or such other circumstances exist, that in the opinion of the City, a Special Prequalification would be of assistance in the selection of qualified contractors.
- E.** Prequalification Presumed. If a Bidder is currently Prequalified by either the Oregon Department of Transportation or the Oregon Department of Administrative Services to perform Contracts, the Bidder shall be rebuttably presumed qualified to perform the same Work for the City upon submission of proof of such Prequalification. If a Bidder submits proof of Prequalification, then the Bidder is rebuttably presumed qualified under ORS 279C.435. Nothing contained in this paragraph shall waive the City requirements for Prequalification, the City's authority to require additional information or detail, or prior approval as otherwise set forth in this rule.
- F.** Scope of Prequalification. The Chief Procurement Officer shall determine whether the applicant for Prequalification shall be considered Prequalified for City Bids, and the extent of Prequalification if approved or impose any other restrictions which the Chief Procurement finds appropriate under the circumstances. Thereafter, if the Bidder has Prequalified, Bids may be received from the Bidder only within the limitations and restrictions imposed by the Prequalification decision.
- 1.** Unless otherwise specified by the Chief Procurement Officer, any Bidder whose application for Prequalification has been wholly disapproved may resubmit an application for a Prequalification no sooner than three months after the Chief Procurement Officer's notice of disapproval. A Bidder, whose application has been approved in part or who seeks a broadening of its Prequalification, or elimination of any restriction, may resubmit an application at any time provided a change of circumstances has occurred and the Bidder submits new information to support its re-application.
 - 2.** With or without a request from the Prequalified Bidder, the Prequalification standing and any limitation on class of Work or size of project may be reviewed further by the Chief Procurement Officer and broadened or restricted as determined by the Chief Procurement Officer to be appropriate.
- G.** Notice. If the City determines a Bidder's Prequalification is not approved in whole or in part, or is restricted or revoked, the City shall notify the Bidder, specify the reasons found under ORS 279C.375(3)(b) and Section 5.34.500, and inform the Bidder of the right to a hearing before the Chief Procurement Officer, per ORS

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279C.450. The Chief Procurement Officer may exercise the powers of the City Council for this purpose., or may refer this matter to the Board of Appeals, per Subsection 5.34.750 C.

- H.** If the City has reasonable cause to believe there has been a substantial change in the conditions of a prequalified Bidder and that the Bidder is no longer qualified or is less qualified, the City may revoke or may revise and reissue the prequalification after reasonable notice to the prequalified contractor, per ORS 279C.430(4). The notice shall state the reasons found under ORS 279C.375 (3)(b) for revocation or revision of the prequalification of the Bidder and inform the Bidder of the right to a hearing under ORS 279C.450.
- I.** Appeal. The Chief Procurement Officer may adopt rules of procedure for the hearing, shall conduct the hearing and has the authority of the City Council as provided in ORS 279C.450. The appeal shall be conducted within 30 Days or a date mutually agreed upon by both parties.
- J.** Clarification. A Bidder may seek clarification of a Prequalification decision by Written request received by the Chief Procurement Officer no later than 10 Days following issuance of a determination by the Chief Procurement Officer.

5.34.520 Eligibility to Bid or Propose; Registration or License.

- A.** The City shall not consider a Person's Offer to do Work as a Contractor, as defined in ORS 701.005(2), unless the Person has a current, valid certificate of registration issued by the Construction Contractors Board at the time the Offer is made.
- B.** The City shall not consider a Person's Offer to do Work as a landscape Contractor as defined in ORS 671.520(2), unless the Person has a current, valid landscape contractors license issued pursuant to ORS 671.560 by the State Landscape Contractors Board at the time the Offer is made.
- C.** An Offer received from a Person that fails to comply with this rule is nonresponsive and shall be rejected as stated in ORS 279C.365(1)(k), unless contrary to federal law or subject to different timing requirements set by federal funding agencies.

5.34.530 Disqualification of Persons.

(Amended by Ordinance Nos. 183445, 185898 and 187974, effective September 7, 2016.)

- A.** Authority. The City may disqualify a Person from consideration of Award of the City's Contracts after providing the Person with notice and a reasonable opportunity to be heard in accordance with this rule.
 - 1.** Standards for Conduct Disqualification. As provided in ORS 279C.440, the City may disqualify a Person for:

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- a. Conviction for the commission of a criminal offense as an incident in obtaining or attempting to obtain a public or private Contract or subcontract, or in the performance of such Contract or subcontract;
 - b. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the Person's responsibility as a Contractor;
 - c. Conviction under state or federal antitrust statutes; or
 - d. Violation of a Contract provision that is regarded by the City to be so serious as to justify Conduct Disqualification. A violation under Subsection 5.34.530 A.1.d. may include but is not limited to material failure to perform the terms of a Contract or an unsatisfactory performance in accordance with the terms of the Contract. However, a Person's failure to perform or unsatisfactory performance caused by acts beyond the Person's control is not a basis for Disqualification.
 2. For a DBE Disqualification under ORS 279A.110, the City may disqualify a Person if the City finds that the Person discriminated against minority, women or emerging small business enterprises in Awarding a subcontract under a Contract with the City.
- B. Notice of Intent to Disqualify. The City shall notify the Person in Writing of a proposed Disqualification personally or by registered or certified mail, return receipt requested. This notice shall:
 1. State that the City intends to disqualify the Person;
 2. Set forth the reasons for the Disqualification;
 3. Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the Chief Procurement Officer does not receive the Person's Written request for a hearing within the time stated, the Person shall have waived its right to a hearing;
 4. Include a statement of the authority and jurisdiction under which the hearing will be held;
 5. Include a reference to the particular sections of the statutes and rules involved;
 6. State the proposed Disqualification period; and

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7. State that the Person may be represented by legal counsel.
- C. Hearing. The Chief Procurement Officer shall schedule a hearing upon the receipt of the Person's timely request. The Chief Procurement Officer shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing prior to hearing.
- D. Notice of Disqualification. The Chief Procurement Officer will notify the Person in Writing of its Disqualification, personally or by registered or certified mail, return receipt requested. The notice shall contain:
 1. The effective date and period of Disqualification;
 2. The grounds for Disqualification; and
 3. A statement of the Person's appeal rights and applicable appeal deadlines. For a Conduct Disqualification or a DBE Disqualification under ORS 279A.110, the disqualified Person must notify the Chief Procurement Officer in Writing within three (3) business Days after receipt of the notice of Disqualification if the Person intends to appeal the City's decision.

5.34.535 Disadvantaged, Minority, Women, Service-Disabled Veteran or Emerging Small Business Enterprise Prohibited Conduct; Sanctions; Appeals.

(Added by Ordinance No. 187974, effective September 7, 2016.)

- A. If the City determines at any time during the term of a contract that a contractor to which the City awarded the contract on the basis described in ORS 279A.107 (1), or a subcontractor to which the contractor awarded a subcontract in connection with the contract on the basis described in ORS 279A.107 (1), is no longer certified, the City may:
 1. Terminate the contract;
 2. Require the contractor to terminate the subcontract; or
 3. Exercise any of the remedies for breach of contract that are reserved in the contract.
- B. Notwithstanding the scope of ORS 200.055 et seq., Section 5.33.540 or 5.34.535 applies to all projects, including, but not limited to, contracts, loans, grants, development agreements, and any other City-owned, City-sponsored or City-funded project.
- C. The City may investigate complaints alleging one or more of the following violations of ORS 200.065:

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1. Fraudulently obtaining or retaining certification as a disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprise;
 2. Attempting to fraudulently obtain or retain certification as a disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprise;
 3. Aiding another person to fraudulently obtain or retain certification as a disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprise; or
 4. Knowingly make a false claim that any person is qualified for certification or is certified under ORS 200.055 (Certification of disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprises) for the purpose of obtaining a public contract or subcontract or other benefit.
- D.** When the City investigates a complaint that a person has violated ORS 200.065, the City may require any additional information, and through the City Attorney's Office, administer oaths, take depositions, and issue subpoenas to compel witnesses to attend and to produce books, papers, records, memoranda or other information necessary for the City to complete its investigation. If a person fails to comply with any subpoena that the City issues under ORS 200.065 or refuses to testify on any matter on which a person may lawfully be interrogated, the City shall follow the procedure provided in ORS 183.440 to compel compliance.
- E.** The City may issue the following sanctions against any person for violating ORS 200.065:
1. Withhold payment;
 2. Suspend or terminate a public contract;
 3. Impose a civil penalty not to exceed 10 percent of the contract or subcontract price or \$5,000, whichever is less, for each violation; and
 4. Disqualify for up to 3 years from submitting a bid or proposal for, or receiving an award of a public contract.
- F.** The City may also disqualify any person from bidding or participating in a public contract for a period of up to 3 years:
1. Who under oath during the course of an investigation admits to violating ORS 200.065 (1) or (2); or

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2. Upon notice of a finding of fraudulent certification by the Oregon Business Development Department or other public contracting agency.
- G. Any bidder, proposer, contractor or subcontractor on a City contract that knowingly commits any of the following acts shall have its right to submit a bid or proposal for, or receive an award of, a City contract in the future suspended under ORS 200.075:
 1. Entering into any agreement to represent that a disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise certified under ORS 200.055 will perform work or supply materials under a public contract without the knowledge and consent of the disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise.
 2. Exercising or permitting another bidder, proposer, contractor or subcontractor to exercise management and decision making control over the internal operations of a disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise other than the bidder's, proposer's, contractor's or subcontractor's own business enterprise. As used in this paragraph, "internal operations" does not include normal scheduling, coordination, execution or performance as a subcontractor on a public contract.
 3. Using a disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise to perform a public contract or subcontract or to supply material under a public contract to meet an established goal or requirement if the disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise does not perform a Commercially Useful Function in carrying out responsibilities and obligations under the public contract.
 4. Failing to perform a Commercially Useful Function in performing a public contract or subcontract or in supplying material to a contractor or subcontractor that is performing a public contract or subcontract if the bidder, proposer, contractor or subcontractor is presented as a certified disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise to meet an established goal or requirement.
- H. The suspension shall be 1 year for a first violation, three years for a second violation and 5 years for a third violation. Each violation must remain on record for 5 years. After 5 years the City may not consider the violation in reviewing future violations.
- I. Prior to suspending, disqualifying or otherwise sanctioning a person under Section 5.33.540 or 5.34.535, the City shall provide written notice to the person of a

proposed sanction under ORS 200.065 or ORS 200.075, served personally or by registered or certified mail, return receipt requested. This notice shall include:

1. That the City intends to sanction;
 2. The effective date and period of the sanction, if applicable;
 3. The reason(s) for the sanction; and
 4. That the person has the right to request a hearing before the Code Hearings Officer in accordance with Section 3.130.020.
- J.** The hearing shall be conducted in accordance with Chapter 22.10 and any administrative rules governing appeals to the Code Hearings Officer.

5.34.600 Bid or Proposal Evaluation Criteria.

(Amended by Ordinance No. 187373, effective October 14, 2015.)

- A.** General. A Public Improvement Contract, if Awarded, shall be Awarded to the Responsible Bidder submitting the lowest Responsive Bid, or to the Responsible Proposer submitting the best Responsive Proposal.
- B.** Bid Evaluation Criteria. Invitations to Bid may solicit lump-sum Offers, unit-price Offers or a combination of the two.
1. Lump Sum. If the ITB requires a lump-sum Bid, without additive or deductive alternates, or if the City elects not to Award additive or deductive alternates, Bids shall be compared on the basis of lump-sum prices, or lump-sum base Bid prices, as applicable. If the ITB calls for a lump-sum base Bid, plus additive or deductive alternates, the total Bid price shall be calculated by adding to or deducting from the base Bid those alternates selected by the City, for the purpose of comparing Bids.
 2. Unit Price. If the Bid includes unit pricing for estimated quantities, the total Bid price shall be calculated by multiplying the estimated quantities by the unit prices submitted by the Bidder, and adjusting for any additive or deductive alternates selected by the City, for the purpose of comparing Bids. The City shall specify within the Solicitation Document the estimated quantity of the Procurement to be used for determination of the low Bidder. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the Bidder, the unit price shall govern.
- C.** Proposal Evaluation Criteria. If the City Council has exempted a Public Improvement from the Competitive Bidding requirements of ORS 279C.335(1), and has directed the use of an Alternative Contracting Method under ORS

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279C.335(3) and ORS 279C.337, evaluation criteria shall be set forth in the Solicitation Documents.

5.34.610 Offer Evaluation and Award; Determination of Responsibility.

(Amended by Ordinance Nos. 181547, 183445, 185898 and 187373, effective October 14, 2015.)

- A.** General. If Awarded, the City shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer or Proposers submitting the best, Responsive Proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract. See ORS 279C.375(2)(a), or is ineligible for Award as a Nonresident (as defined in ORS 279A.120), education service district. The City may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.
- B.** Determination of Responsibility. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the City must have information that indicates that the Offeror meets the standards of responsibility set forth in ORS 279.375C(3)(b). To be a Responsible Offeror, the City must determine that the Offeror:

 - 1.** Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to demonstrate the capability of the Offeror to meet all contractual responsibilities;
 - 2.** Has a satisfactory record of Contract performance. The City should carefully scrutinize an Offeror's record of Contract performance if the Offeror is or recently has been materially deficient in Contract performance. In reviewing the Offeror's performance, the City should determine whether the Offeror's deficient performance was expressly excused under the terms of Contract, or whether the Offeror took appropriate corrective action. The City may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of Contract performance. The City shall make its basis for determining an Offeror not Responsible under this paragraph part of the Solicitation file;
 - 3.** Has a satisfactory record of integrity. An Offeror may lack integrity if The City determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to the City. The City may find an Offeror not Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or

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successor Person). The standards for Conduct Disqualification under Section 5.34.540 may be used to determine an Offeror's integrity. The City shall make its basis for determining that an Offeror is not Responsible under this paragraph part of the Solicitation file;

4. Is qualified legally to Contract with the City, including having a current City business license and EEO certification. The Procurement Services may determine that such a Person is not legally qualified if:
 - a. The Person does not have a business license with the City; or
 - b. The Person failed to make payments required by Title 7 of the City Code and has failed to make appropriate payment arrangements with the Revenue Division of the Bureau of Revenue and Financial Services within seven (7) Days of the receipt of a Bid or Proposal, unless the City waives that requirement and decides to pursue collection through retention of Contract funds, or through other means.
 5. Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by the City concerning responsibility, the City shall base the determination of responsibility upon any available information, or may find the Offeror not Responsible.
- C.** Documenting City Determinations: The City shall document its compliance with ORS 279C.375(3) and the above sections of this rule on a Responsibility Determination Form substantially as set forth in ORS 279.375(3)(c) and file that form with the Construction Contractors Board within 30 days after Contract Award.
- D.** City Evaluation. The City shall evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The City shall not evaluate an Offer using any other requirement or criterion.
- E.** Offeror Submissions.
1. The City may require an Offeror to submit Product Samples, Descriptive Literature, technical data, or other material and may also require any of the following prior to Award:
 - a. Demonstration, inspection or testing of a product prior to Award for characteristics such as compatibility, quality or workmanship;
 - b. Examination of such elements as appearance or finish; or

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- c. Other examinations to determine whether the product conforms to Specifications.
 - 2. The City shall evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation Document to determine that a product is acceptable. The City shall reject an Offer providing any product that does not meet the Solicitation Document requirements. The City's rejection of an Offer because it offers nonconforming Work or materials is not Disqualification and is not appealable under ORS 279C.445 or these rules.
- F. Evaluation of Bids. The City shall use only objective criteria to evaluate Bids as set forth in the ITB. The City shall evaluate Bids to determine the Responsible Offeror offering the lowest Responsive Bid.
- G. Clarifications. In evaluating Bids, The City may seek information from a Bidder only to clarify the Bidder's Bid. Such clarification shall not vary, contradict or supplement the Bid. A Bidder must submit Written and Signed clarifications and such clarifications shall become part of the Bidder's Bid.
- H. Evaluation of Proposals. See Section 5.34.850 regarding rules applicable to Requests for Proposals.
- I. The City may award a public improvement contract or may award multiple public improvement contracts when specified in the Invitation to Bid or the Request for Proposals.

5.34.620 Negotiation With Bidders Prohibited.

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- A. Bids. Except as permitted by ORS 279C.340 and Section 5.34.640, when all Bids exceed the Cost Estimate, the City shall not negotiate with any Bidder prior to Contract Award. After Award of the Contract, the City and Contractor may modify the Contract only by change order or amendment to the Contract in accordance with these rules, or any applicable Contract provisions or ordinance.
- B. Requests for Proposals. The City may conduct discussions or negotiations with Proposers only in accordance with the applicable requirements of Section 5.34.850.

5.34.625 Contract Preferences; Resident Bidders.

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- A. Award When Offers Identical. When the City receives Offers identical in price, fitness, availability and quality, and chooses to Award a Contract, the City shall Award the Contract based on the following order of precedence:

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1. The City shall Award the Contract to the Offeror among those submitting identical Offers that is offering Goods or Services that have been manufactured or produced in Oregon.
 2. If two or more Offerors submit identical Offers, and both offer Goods or Services manufactured or produced in Oregon, the City shall Award the Contract by drawing lots among the identical Offers offering Goods or Services that have been manufactured or produced in Oregon. The Offerors that submitted the identical Offers subject to the drawing of lots shall be given notice and an opportunity to be present when the lots are drawn.
 3. If the City receives identical Offers, and none of the identical Offers offer Goods or Services manufactured or produced in Oregon, then the City shall Award the Contract by drawing lots among the identical Offers. The Offerors that submitted the identical Offers subject to the drawing of lots shall be given notice and an opportunity to be present when the lots are drawn.
- B.** Determining if Offers are Identical. The City shall consider Offers identical in price, fitness, availability and quality as follows:
1. Bids received in response to an Invitation to Bid issued under ORS 279C.335 and Chapter 5.34 are identical in price, fitness, availability and quality if the Bids are Responsive, and offer the services described in the Invitation to Bid at the same price.
 2. Proposals received in response to a Request for Proposals issued under ORS 279C.400 and Chapter 5.34 are identical in price, fitness, availability and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposals.
- C.** Determining if Goods or Services are Manufactured or Produced in Oregon. For the purposes of complying with Subsection 5.34.625 A., the City may request, either in a Solicitation Document, following Closing, or at any other time determined appropriate by the City, any information it determines is appropriate and necessary to allow it to determine if the Goods or Services are manufactured or produced in Oregon. The City may use any reasonable criteria to determine if Goods or Services are manufactured or produced in Oregon, provided that the criteria reasonably relate to that determination, and provided that the same criteria apply equally to each Bidder or Proposer.
- D.** Procedure for Drawing Lots. In any instance when this Rule calls for the drawing of lots, the City shall draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of being selected, and that does not

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allow the Person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.

5.34.630 Reciprocal Preferences.

(Amended by Ordinance Nos. 185898 and 187373, effective October 14, 2015.)

- A.** When evaluating Bids pursuant to Section 5.34.610, the City shall add a percentage increase to the Bid of a Nonresident Bidder equal to the percentage, if any, of the preference that would be given to that Bidder in the state in which the Bidder resides.
- B.** The City shall use the list prepared and maintained by the Oregon Department of Administrative Services pursuant to ORS 279A.120(4) to determine both
 - 1.** whether the Nonresident Bidder's state gives preference to in-state Bidders, and
 - 2.** the amount of such preference. Bidders or Proposers who believe that information is inaccurate shall notify the City prior to submitting their Bid to permit a reasonable investigation. Otherwise, the City shall rely on that information in making its determination.

5.34.640 Negotiation When Bids Exceed Cost Estimate.

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- A.** Generally. In accordance with ORS 279C.340, if all Responsive Bids from Responsible Bidders on a competitively Bid Project exceed the City's Cost Estimate, prior to Contract Award the City may negotiate Value Engineering and Other Options with the Responsible Bidder submitting the lowest, Responsive Bid in an attempt to bring the Project within the City's Cost Estimate. The Subcontractor disclosure and substitution requirements of Section 5.34.493 do not apply to negotiations under this rule.
- B.** Definitions. The following definitions apply to this administrative rule:
 - 1. "Cost Estimate"** means the City's most recent pre-Bid, good faith assessment of anticipated Contract costs, consisting either of an estimate of an architect, engineer or other qualified professional, or confidential cost calculation Worksheets, where available, and otherwise consisting of formal planning or budgetary documents.
 - 2. "Other Options"** means those items generally considered appropriate for negotiation in the RFP process, relating to the details of Contract performance as specified in Section 5.34.850, but excluding any material requirements previously announced in the Solicitation process that would likely affect the field of competition.

3. **“Project”** means a Public Improvement.
 4. **“Value Engineering”** means the identification of alternative methods, materials or systems which provide for comparable function at reduced initial or life-time cost. It includes proposed changes to the plans, Specifications, or other Contract requirements which may be made, consistent with industry practice, under the original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the Public Improvement. Cost savings include those resulting from Life Cycle Costing, which may either increase or decrease absolute costs over varying time periods.
- C. Rejection of Bids. In determining whether all Responsive Bids from Responsible Bidders exceed the Cost Estimate, only those Bids that have been formally rejected, or Bids from Bidders who have been formally disqualified by the City, shall be excluded from consideration.
- D. Scope of Negotiations. Contracting Agencies shall not proceed with Contract Award if the Scope of the Project is significantly changed from the original Bid. The Scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other Bidders would have been expected by the City to participate in the Bidding process had the change been made during the Solicitation process rather than during negotiation. This rule shall not be construed to prohibit resolicitation of trade subcontracts.
- E. Discontinuing Negotiations. The City may discontinue negotiations at any time, and shall do so if it appears to the City that the apparent low Bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to rebid any portion of the project, or to obtain Subcontractor pricing information upon request, shall be considered a lack of good faith.
- F. Limitation. Negotiations may be undertaken only with the lowest Responsive, Responsible Bidder pursuant to ORS 279C.340.
- G. Public Records. ORS 279C.340 shall not be construed as creating any additional public records where that result is not otherwise contemplated by the Public Records law, ORS Chapter 192. Records of a Bidder used in Contract negotiations may not become public records unless they are also submitted to the City.
- 5.34.645 Rejection of Offers.**
(Amended by Ordinance Nos. 185065, 185898 and 187974, effective September 7, 2016.)
- A. **Rejection of an Offer.**

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1. The City may reject any Offer upon finding that to accept the Offer may impair the integrity of the Solicitation process or that rejecting the Offer is in the public interest. An example of rejection in the public interest is the City's determination that any of the unit Bid prices are significantly unbalanced to the City's potential detriment.
2. The City shall reject an Offer upon the City's finding that the Offer:
 - a. Is contingent upon the City's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;
 - b. Takes exception to terms and conditions (including Specifications);
 - c. Attempts to prevent public disclosure of matters in contravention of the terms and conditions of Solicitation Document or in contravention of applicable law;
 - d. Offers Work that fails to meet the Specifications of the Solicitation Document;
 - e. Is late;
 - f. Is not in substantial compliance with the Solicitation Documents;
 - g. Is not in substantial compliance with all prescribed public Solicitation procedures.
 - h. Omits, or is unclear as to, the price; or the price cannot be determined in the Solicitation Documents;
 - i. Requires a delivery date different from that required by the Solicitation Document;
 - j. The Offeror failed to substantially comply with any Subcontractor Equity Program Specifications;
3. The City shall reject an Offer upon the City's finding that the Offeror:
 - a. Has not been Prequalified under ORS 279C.430 and the City required mandatory Prequalification;
 - b. Has been Disqualified or suspended;

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- c. Has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries and the Contract is for a Public Work;
 - d. Is listed as not qualified by the Construction Contractors Board or the Landscape Contractors Board, when required;
 - e. Has not met the requirements of ORS 279A.105 if required by the Solicitation Document;
 - f. Has not submitted properly executed Bid or Proposal Security as required by the Solicitation Document;
 - g. Has failed to provide the certification required under Subsection 5.34.645 C.;
 - h. Is not Responsible.
- B. Form of Business.** For purposes of this rule, the City may investigate any Person submitting an Offer. The investigation may include that Person's officers, Directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Disqualification provisions of ORS 279C.440 to 279C.450 and Section 5.34.550.
- C. Certification of Non-Discrimination.** The Offeror shall certify and deliver to the City Written certification, as part of the Offer that the Offeror has not discriminated and will not discriminate against a disadvantaged business enterprise, or minority, women or emerging small business enterprises in obtaining any required subcontracts. Failure to do so shall be grounds for rejection.
- D. Rejection of all Offers.** The City may reject all Offers for good cause upon the City's Written finding it is in the public interest to do so. The City shall notify all Offerors of the rejection of all Offers, along with the good cause justification and finding.
- E. Criteria for Rejection of All Offers.** The City may reject all Offers upon a Written finding that:
 - 1. The content of, an error in, or the omission from the Solicitation Document, or the Solicitation process unnecessarily restricted competition for the Contract;
 - 2. The price, quality or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;

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3. Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity, or the appearance of fairness and integrity of the Competitive process;
4. Causes other than legitimate market forces threaten the integrity of the Competitive Procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-Competitive conduct and inadvertent or intentional errors in the Solicitation Document;
5. The City cancels the Solicitation in accordance with Section 5.34.660; or
6. Any other circumstance indicating that Awarding the Contract would not be in the public interest.

5.34.650 Notice of Intent to Award.

(Amended by Ordinance Nos. 181547, 183445 and 185898, effective February 20, 2013.)

- A. Notice: The City shall issue a Notice of Intent to Award a public improvement Contract to all Offerors.
 1. If the Solicitation was posted by Electronic means, the City may post the Intent to Award Electronically in the same manner as the Solicitation.
 2. If the Solicitation was not posted by Electronic means, and unless otherwise provided in the Solicitation Document, the City shall post notice of the City's intent to Award Contracts on the City's website or by Written notice posted at the office of Procurement Services. For Contracts in excess of \$500,000, a Written notice of intent to Award shall be mailed by regular mail to all Bidders or Proposers in addition to posting as provided above.
 3. The Notice shall be posted at least seven (7) Days before the Award of a Contract, unless the Chief Procurement Officer determines that a compelling governmental interest, such as loss of funding, safety, public inconvenience or loss of taxpayer or ratepayer funds requires prompt execution of the Public Improvement Contract. If so, the Chief Procurement Officer shall specify in the Notice of the Intent the time period when the Contract will be Awarded and shall cause the Solicitation file to be documented with the specific reasons for the shorter notice period.
 4. As provided in ORS 279C.375(2), the Notice requirements of this rule do not apply to contracts excepted or exempted from competitive bidding under ORS 279C.335(1)(c) or (d).
- B. The City's Award shall not be final until the later of the following three dates:

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1. Seven (7) Days after the date of notice of intent to Award, unless the Solicitation Document provided a different period for protest of Contract Award or the Chief Procurement Officer determined that a shorter period of time was necessary pursuant to Subsection 5.34.650 A.2. For purposes of this paragraph, the Day on which the Notice is posted from which the seven Days or other time period shall begin to run shall not be included, but the last Day of the period shall be included;
2. The City provides a Written response to all timely-filed protests that denies the protest and affirms the Award; or
3. Upon the conclusion of any administrative appeal pursuant to Section 5.34.740 if the Chief Procurement Officer decides to permit an appeal.

5.34.660 Cancellation, Delay or Suspension of Solicitation.

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- A. Cancellation in the Public Interest. The City may cancel a Solicitation for good cause if the City finds that the cancellation is in the public interest. The reasons for cancellation shall be made part of the Solicitation file.
- B. Delay or Suspension. Any Solicitation may be delayed or suspended in whole, or in part, when the delay or suspension is in the best interest of the City as determined by the City.
- C. Costs. The City is not liable to any Offeror for costs, expenses or losses caused by the cancellation, delay or suspension.
- D. Notice. If the City cancels, delays or suspends a Solicitation prior to Opening, the City shall provide notice of cancellation in accordance with Section 5.34.310. Such notice of cancellation shall:
 1. Identify the Solicitation;
 2. Briefly explain the reason for cancellation; and
 3. If appropriate, explain that an opportunity will be given to compete on any re-solicitation.

5.34.670 Disposition of Offers if Solicitation Canceled.

- A. Prior to Offer Opening. If the City cancels a Solicitation prior to Offer Opening, the City will return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the City will open the Offer to determine the source and then return it to the Offeror.

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- B.** After Offer Opening. If the City rejects all Offers, the City will retain all such Offers as part of the City's Solicitation file. If a Request for Proposals is cancelled after Proposals are received, the City may return a Proposal to the Proposer that submitted it. The City shall keep a list of returned Proposals in the file for the Solicitation.

5.34.675 Documentation of Award.

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- A.** Basis of Award. After Award, the City shall make a record showing the basis for determining the successful Offeror part of the City's Solicitation file.
- B.** Contents of Award Record. The City's record shall include
- 1.** Bids.
 - a.** Completed Bid tabulation sheet; and
 - b.** Written justification for any rejection of lower Bids or Bids rejected as a result of a failure to meet mandatory Bid requirements.
 - 2.** Proposals.
 - a.** The completed evaluation of the Proposals;
 - b.** Written justification for any rejection of higher scoring Proposals or for failing to meet mandatory requirements of the Request for Proposal; and
 - c.** If the City permitted negotiations in accordance with Section 5.34.850 the City's completed evaluation of the initial Proposals and the City's completed evaluation of final Proposals.

5.34.680 Time for City Acceptance; Extension.

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- A.** Time for Offer Acceptance. An Offer submitted as a Firm Offer is irrevocable, valid and binding on the Offeror for not less than 30 Days from Closing unless otherwise specified in the Solicitation Document. After 30 Days, or such other period of time specified in the Solicitation Document, the Offer shall lapse unless extended.
- B.** Extension of Acceptance Time. The City may request, orally or in Writing, that Offerors extend, in Writing, the time during which the City may consider and accept their Offer(s). If an Offeror agrees to such extension, the Offer shall continue as a Firm Offer, irrevocable, valid and binding on the Offeror for the agree-upon

extension period. The extension may occur after the 30-Day time period referenced in Subsection 5.34.680 A.

5.34.685 Availability of Award Decisions.

- A.** Contract Documents. To the extent required, the City shall deliver to the successful Offeror, a Signed purchase order, Price Agreement, or other Contract document(s), as applicable.
- B.** Notification to Unsuccessful Offerors. A Person may obtain tabulations of Awarded Bids or evaluation summaries of Proposals for a nominal charge, in Person or by submitting to the City a Written request accompanied by payment. Such request shall provide the Solicitation Document number and enclose a self-addressed, stamped envelope.
- C.** Bid Tabulations and Award Summaries. Upon request of any Person the City shall provide tabulations of Awarded Bids or evaluation summaries of Proposals for a nominal charge that may be payable in advance. Requests must contain the Solicitation Document number and, if requested, be accompanied by a self-addressed, stamped envelope. The City may also provide tabulations of Bids and Proposals Awarded on designated Web sites or on the City's web site.
- D.** Copies from Solicitation Files. Any Person may obtain copies of material from Solicitation files upon payment of a reasonable copying charge.

5.34.690 Performance and Payment Security; Waiver.

(Amended by Ordinance Nos. 181547, 183445, 185898 and 187974, effective September 7, 2016.)

- A. Public Improvement Contracts.** Unless the required performance bond is waived under ORS 279C.380(1)(a), excused in cases of Emergency under ORS 279C.380(4), or unless the City Council, acting as the Local Contract Review Board, exempts a Contract or classes of Contracts from the required performance bond and payment bond pursuant to ORS 279C.390, the Contractor shall execute and deliver to the City a performance bond and a payment bond each in a sum equal to the Contract Price for all Public Improvement Contracts. Price Agreements with specific Work/Task Orders forming Contracts at a value under \$150,000 are exempted from performance and/or payment bonds. This requirement applies only to Public Improvement Contracts with a value, estimated by the City, of more than \$150,000. Notwithstanding any exemption, the Chief Procurement Officer may require a performance bond, or payment bond, or both, in the Chief Procurement Officer's sole discretion (see also, Section 5.34.915 regarding the separate public works bond).

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- B. Other Construction Contracts.** The City may require performance security for other construction Contracts that are not Public Improvement Contracts. Such requirements shall be expressly set forth in the Solicitation Document.
- C. Requirement for Surety Bond.** The City shall accept only a performance bond and payment bond furnished by a surety company authorized to do business in Oregon and who is duly listed in the United States Treasury List as published in the Federal Register or is otherwise approved by the City Attorney each in the amount of 100 percent of the Contract price unless otherwise specified in the Solicitation Document or such substitute security is approved by the City Attorney's office. The surety bond shall have the company's seal affixed to it, be signed by the surety's Attorney in Fact, and have attached the Power of Attorney for the Attorney in Fact. The City Attorney may waive the requirement of the corporate seal.
- D. Time for Submission.** The apparent successful Offeror must furnish the required performance and payment security within 10 Days after notification by the City. If the Offeror fails to furnish the performance security as requested, the City may reject the Offer and Award the Contract to the Responsible Bidder with the next lowest Responsive Bid or the Responsible Proposer with the next highest-scoring Responsive Proposal, and, at the City's discretion, the Offeror shall forfeit its Bid or Proposal Security.

5.34.695 Notification to State of Nonresident Contractor.

If the Contract Price exceeds \$10,000 and the Contractor is a Nonresident Contractor, the Contractor shall promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Contract Price, terms of payment, Contract duration and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report shall be forwarded to the City. The City shall satisfy itself that the above requirements have been complied with before it issues final payment on the Contract.

5.34.700 Protests and Judicial Review of Individual and Class Exemptions.

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A.** An Affected Person may protest the City's approval of an individual or Class Exemption.
- B.** Method of Protest
 - 1.** Time: A Written protest of the City's approval shall be provided to the Chief Procurement Officer not later than seven (7) Days after the approval of the Individual or Class Exemption unless a different time period is provided in the Notice. The Chief Procurement Officer shall not consider a protest submitted after the timeline established for submitting such protest under this rule or such different time period.

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2. Contents. The Written protest must include:
 - a. Sufficient information to identify the Request that is the subject of the protest;
 - b. A detailed statement of all the legal and factual grounds for the protest;
 - c. Evidence or supporting documentation that supports the grounds on which the protest is based;
 - d. A description of the resulting harm to the Affected Person; and
 - e. The relief requested.
- C. Required City Response. The City shall take the following actions, as appropriate:
 1. The City shall inform the Affected Person in Writing if the protest was not timely filed;
 2. The City shall inform the Affected Person if it failed to meet the requirements of Subsection 5.34.700 B.2. and the reasons for that failure;
 3. If the protest was timely filed and provides the information required by Subsection 5.34.700 B.2., the City shall issue a decision in Writing and provide that decision to the Affected Person within seven (7) business days unless a Written determination is made by the City that circumstances exist that require a shorter time limit.
 4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.
- D. Optional City Response: In addition to the requirements of Subsection 5.34.700 C., the Chief Procurement Officer may do any of the following:
 1. Agree with the protest and take any corrective action necessary;
 2. Issue a Written response to the protest and provide that decision to the Affected Person;
 3. Refer the protest and any response to the Board of Appeals for decision;
 4. Refer the protest and any response to the City Council for decision; or

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5. Take any other action that is in the best interest of the City while giving full consideration to the merits of the protest.

E. Judicial Review.

1. An Affected Person may not seek judicial review of the City Council's approval of an Individual or Class Exemption unless it Files an appeal in accordance with this rule and has exhausted all avenues of appeal provided by the Chief Procurement Officer.
2. Judicial review is not available if the Request is denied by the City Council, Contract Board of Appeals or is withdrawn by the Chief Procurement Officer.

5.34.710 Protests and Judicial Review of Multi-Tiered Solicitations.

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A. An Affected Person may protest their exclusion from multi-tiered Solicitations. Protest of Contract terms and conditions, however, shall be made pursuant to Section 5.34.720.
- B. Offerors may protest in one of two ways:
 1. If no other protest remedies are provided in the Solicitation Document, an Affected Person can file a Written protest to the Award within seven (7) Days after the issuance of the Notice of Intent to Award if the protest meets the requirements of Subsection 5.34.710 C., pursuant to Section 5.34.730 [Protests of Contractor Selection, Contract Award]; or
 2. If expressly required or permitted by the Solicitation Document, an Affected Person can file a Written protest after being excluded from the Competitive Range or after being excluded from any subsequent stages of Procurement.
- C. Basis of Protest. An Affected Person may protest its exclusion from the Competitive Range or from subsequent stages of a Procurement only if:
 1. The Affected Person is a Responsible and submitted a Responsive Offer;
 2. The City made a mistake that, if corrected, would have made the Affected Person eligible to participate in the next stage of the Solicitation process.
- D. Method of Protest.
 1. Time. If the Solicitation Document permits or requires protests prior to the City's issuance of a Notice of Intent to Award, an Affected Person must

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submit a Written protest specifying its basis within seven (7) Days after the Affected Person was excluded from participating further in the Procurement, unless the Solicitation Document specifies a shorter period of time.

2. Contents: The protest must include the following information:
 - a. Sufficient information to identify the errors that led to the Affected Person's exclusion from the Competitive Range or from subsequent stages of a Procurement;
 - b. A detailed statement of all the legal and factual grounds for the protest;
 - c. Evidence or supporting documentation that supports the grounds on which the protest is based;
 - d. A description of the resulting harm to the Affected Person; and
 - e. The relief requested.

E. Required City Response. The City shall take the following actions, as appropriate:

1. The City shall inform the Affected Person in Writing if the protest was not timely filed;
2. The City shall inform the Affected Person if it failed to meet the requirements of Subsection 5.34.710 D.2., and the reasons for that failure;
3. If the protest was timely filed and provides the information required by Subsection 5.34.710 D.2., the Chief Procurement Officer shall issue a decision in Writing and provide that decision to the Affected Person within seven (7) business days unless a Written determination is made by the City that circumstances exist that require a shorter time limit.
4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.

F. Optional City Response: In addition to the requirements of Subsection 5.34.710 E., the City may take any or all of the following actions:

1. Agree with the Protest, in whole or in part, and permit the Affected Person to participate in the next stage of the Solicitation process;

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2. Issue a Written response to the protest and provide that determination to the Affected Person.
 3. Refer the protest to the Board of Appeals.
 4. Refer the protest to the City Council for consideration along with the Chief Procurement Officer's Award; or
 5. Take any other action that is in the best interest of the City while giving full consideration to the merits of the protest.
- G.** Judicial Review. An Affected Person may not seek judicial review of its elimination from a preliminary stage of a multi-tiered process unless it files a protest in accordance with this rule and has exhausted all avenues of appeal provided by the Chief Procurement Officer.

5.34.720 Protests and Judicial Review of Solicitation Documents and the Solicitation Processes other than Multi-Tier Processes.

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A.** An Affected Person may protest the Solicitation process or the Solicitation Document for Offers solicited pursuant to Competitive sealed Bidding or through an alternative contracting process.
1. The exclusive method for protesting individual and class exemptions, is through Section 5.34.700 and not this rule. The exclusive process of protesting a multi-tiered Solicitation process is pursuant to Section 5.34.710 and not this rule.
 2. Prior to submitting a protest regarding Solicitation Documents or the Solicitation process, an Affected Person may seek clarification of any provision of the Solicitation Document. The City's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the City unless the City amends the Solicitation Document by Addendum.
- B.** Method of Protest.
1. Time: A Written protest regarding a Solicitation Document or the procurement process shall be provided to the Chief Procurement Officer within seven (7) Days after a Solicitation Document is advertised unless the Solicitation Document requires a shorter period of time. The Chief Procurement Officer shall not consider a protest submitted after the timeline established for submitting such protest under this rule.
 2. Contents: The protest must include the following information:

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- a.** Sufficient information to identify the portion or portions of the Solicitation Document that are being protested or the solicitation process or processes that are the subject of the protest;
- b.** A detailed statement of all the legal and factual grounds for the protest;
- c.** Evidence or supporting documentation that supports the grounds on which the protest is based;
- d.** A description of the resulting harm to the Affected Person; and
- e.** The relief requested.

C. Required City Response.

- 1.** The City shall inform the Affected Person in Writing if the protest was not timely filed;
- 2.** The City shall inform the Affected Person if it failed to meet the requirements of Subsection 5.34.720 B.2. and the reasons for that failure;
- 3.** If the protest was timely filed and provides the information required by Subsection 5.34.720 B.2., the Chief Procurement Officer shall issue a decision in Writing and provide that decision to the Affected Person no less than three (3) business Days before Offers are due, unless a Written determination is made by the Chief Procurement Officer that circumstances exist that require a shorter time limit.
- 4.** The Chief Procurement Officer's response shall inform the Affected Person if the decision is final or whether the Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council. When the decision is final, the Affected Person must seek judicial review before the Opening of Bids, Proposals or Offers.
- 5.** If the Chief Procurement Officer receives protest from an Affected Person in accordance with this rule, the Chief Procurement Officer may extend Closing if the City determines an extension is necessary to consider the protest and to issue an Addendum to the Solicitation Document.

D. Optional City Response: In addition to the requirements of Subsection 5.34.720 C., the Chief Procurement Officer may take any or all of the following:

- 1.** Agree with the protest and make any necessary corrections to the Solicitation Document or Procurement process;

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2. Issue a Written response to the protest and provide that decision to the Affected Person.
 3. Refer the protest and any response to the Board of Appeals;
 4. Refer the protest and any response to the City Council for decision; or
 5. Any other action that is in the best interest of the City while giving full consideration to the merits of the protest.
- E. Judicial Review. An Affected Person may not seek judicial review of the City's final decision regarding its protest of the contents of a Solicitation Document or the Solicitation process unless it fully has complied with the Protest requirements of this rule and has exhausted all avenues of appeal provided by the Chief Procurement Officer.

5.34.725 Administrative Reconsideration as a Result of Rejection for Failure to Meet DBE Requirements.

(Amended by Ordinance No. 183445, effective January 6, 2010.)

- A. This Code provision applies only to City Solicitation Documents concerning Federal-Aid Certified projects that contain Supplemental Contract provisions implementing the requirements of the United States Department of Transportation and Part 26, Title 49 of the Code of Federal Regulations concerning Disadvantaged Business Enterprises (DBEs).
- B. An Affected Person whose Offer is rejected as nonresponsive as a result of noncompliance with the DBE requirements of the Solicitation Document may seek administrative reconsideration of that decision from the Oregon Department of Transportation (ODOT) in the time and manner set forth in the Solicitation Document.
- C. An Affected Person whose Offer has been rejected as nonresponsive to a Solicitation Document described in Paragraph A for reasons other than noncompliance with the DBE requirements of the Solicitation Document shall submit a protest to the Chief Procurement Officer in accordance with the applicable provisions of City Code and not to ODOT. Similarly, protests of any matters other than bid rejection for failure to meet DBE requirements shall be considered by the Chief Procurement Officer in accordance with the applicable provision of City Code and not by ODOT.
- D. An Affected Person whose Offer has been rejected as nonresponsive on multiple grounds, including a failure to meet the DBE requirements of the Solicitation Document, shall seek administrative reconsideration from ODOT regarding the rejection regarding DBE requirements and shall file a protest with the Chief

Procurement Officer regarding any other grounds on which rejection was made in accordance with the applicable provision of City Code.

- E.** An Affected person may not seek judicial review unless it fully has complied with the requirements of this rule and exhausted all avenues of administrative reconsideration, protest, or both.

5.34.730 Protest of Contractor Selection, Contract Award.

(Amended by Ordinance Nos. 183445, 184403 and 185898, effective February 20, 2013.)

- A.** An Affected Person may protest the Award or the intent to Award a Contract resulting from a Competitive Sealed Bid or Competitive Sealed Proposal, whichever occurs first, if:

- 1.** The Affected Person would be eligible to be Awarded the Public Contract in the event that the protest were successful; and
- 2.** The reason for the protest is that:
 - a.** All other Offers are nonresponsive;
 - b.** The City failed to conduct the evaluation of Proposals in accordance with the criteria or processes described in the Solicitation Document;
 - c.** The City abused its discretion in rejecting the Affected Person's Bid or Proposal as nonresponsive; or
 - d.** The City's evaluation of Offers or the City's subsequent determination of Award is otherwise in violation of these rules, ORS Chapter 279C or ORS Chapter 279A.

- B.** Method of Protest.

- 1.** Time: A Written protest of the Notice of Intent to Award or Award itself shall be provided to the Chief Procurement Officer within seven (7) Days after the City posts a notice that it will make a Contract Award, or the Contract is Awarded, whichever occurs first, unless the Solicitation Document specified a shorter period of time. The Chief Procurement Officer shall not consider a protest submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the Solicitation Document.
- 2.** Contents: The protest must include the following information:

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- a. Sufficient information to identify the Contract or Notice of Intent to Award that is the subject of the protest;
 - b. A detailed statement of all the legal and factual grounds for the protest.
 - c. Evidence or supporting documentation that supports the grounds on which the protest is based;
 - d. A description of the resulting harm to the Affected Person submitting the protest; and
 - e. The relief requested.
- C. Required City Response. The City shall take the following actions, as appropriate:
 - 1. The City shall inform the Affected Person in Writing if the protest was not timely filed;
 - 2. The City shall inform the Affected Person if it failed to meet the requirements of Subsection 5.34.730 B.2, and the reasons for that failure;
 - 3. If the protest was timely filed and provides the information required by Subsection 5.34.730 B.2., the Chief Procurement Officer shall issue a decision in Writing and provide that decision to the Affected Person within a reasonable time of the receipt of the protest.
 - 4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.
- D. Optional City Response: In addition to the requirements of Subsection 5.34.730 C., the City may take any or all of the following:
 - 1. Agree with the Protest and issue a revised Notice of Intent to Award or take any other corrective action that may be necessary to ensure that the Contract is Awarded to the appropriate Offeror;
 - 2. Issue a Written response to the protest and provide that decision to the Affected Person.
 - 3. Refer the protest and any response to the Board of Appeals for decision;
 - 4. Refer the protest and any response to the City Council for decision; or

5. Take any other action that is in the best interest of the City while giving full consideration to the merits of the protest.
- E. Judicial Review. An Affected Person may not seek judicial review unless it fully has complied with the protest requirements of this rule and has exhausted all avenues of appeal provided by the Chief Procurement Officer.

5.34.740 Protests of Other Violations.

(Amended by Ordinance Nos. 183445, 184403 and 185898, effective February 20, 2013.)
Protests of any violation of ORS Chapter 279C, for which no administrative remedy is otherwise provided by this Code, are subject to this rule:

- A. An Affected Person can file a protest under this section only if a Public Contract is about to be Awarded or has been Awarded and:
 1. An alleged violation of ORS 279C has occurred in the Solicitation process and violation has resulted or will result in the unlawful Award of a Contract or the unlawful failure to Award the Contract;
 2. The alleged violation deprived the Affected Person of the Award of the Contract or the opportunity to compete for the Award of the Contract;
 3. The Affected Person would have been a Responsible Bidder, Proposer or Offeror qualified to receive the Award of the Contract;
 4. The Affected Person gave Written notice to the City describing the alleged violation no later than seven (7) Days after the date on which the alleged violation occurred and in no event more than seven (7) Days after the date of the execution of the Contract; and
 5. If the alleged violation is of ORS 279C, then it is one for which no judicial review is provided by another section of Chapter 5.34.
- B. Method of Protest.
 1. Time: The Chief Procurement Officer shall not consider a protest submitted after the timeline established for submitting such protest under this rule and shall not consider a protest under this section if a right to protest is elsewhere provided by this Code.
 2. Contents: The protest must include the following information:
 - a. Sufficient information to identify the Solicitation that is the subject of the protest;

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- b.** A detailed statement of the alleged violation and all the legal and factual grounds for the protest.
 - c.** Evidence or supporting documentation that supports the grounds on which the protest is based;
 - d.** A description of the resulting harm to the Affected Person; and
 - e.** The relief requested
- C.** Required City Response. The City shall take the following actions, as appropriate:
 - 1.** The City shall inform the Affected Person in Writing if the protest was not timely filed;
 - 2.** The City shall inform the Affected Person if it failed to meet the requirements of Subsection 5.34.740 B.2. and the reasons for that failure;
 - 3.** If the protest was timely filed and provides the information required by Subsection 5.34.740 B.2., the City shall issue a decision in Writing and provide that decision to the Affected Person within a reasonable time of the receipt of the protest.
 - 4.** If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.
- D.** Optional City Response: In addition to the requirements of Subsection 5.34.740 C., the City may take any or all of the following:
 - 1.** Agree with the Protest and take any corrective action necessary;
 - 2.** Issue a Written response to the protest and provide that decision to the Affected Person;
 - 3.** Refer the protest and any response to the Board of Appeals for decision.
 - 4.** Refer the protest and any response to the City Council for decision; or
 - 5.** Take any other action that is in the best interest of the City while giving full consideration to the merits of the protest
- E.** Judicial Review. An Affected Person may not seek judicial review of any violations covered by this rule unless it fully has complied with the protest requirements of this rule and has exhausted all avenues of appeal provided by the Chief Procurement Officer.

5.34.750 Review of Prequalification and Disqualification Decisions.

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A.** A Bidder who has received notification of a Prequalification denial, revocation or revision and wishes to appeal the decision must submit Written appeal to the City within three (3) business Days after receipt of the City's notice.
- B.** The City Council delegates its authority to the Chief Procurement Officer for the purposes of receiving notice that a Person has appealed. Upon receipt of the notice the Chief Procurement Officer shall notify the Person appealing of a time and place of a hearing designed to consider the appeal within 30 Days or a date mutually agreed upon by both parties.
- C.** The City Council delegates its authority to conduct a hearing to the Chief Procurement Officer. The Chief Procurement Officer may subdelegate the authority to conduct a hearing to any Person(s) the Chief Procurement Officer deems appropriate, including the Board of Appeals.

5.34.760 Procurement Board of Appeals.

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A.** Purpose. The purpose of this rule is to provide for the prompt, effective and efficient resolution of appeals and protests of Affected Persons in regard to City decisions when such matters are referred to it by the Chief Procurement Officer or when authorized or required by this Chapter.
- B.** Board Created. Pursuant to Portland City Charter Section 2-103, City Council hereby creates the Procurement Board of Appeals for the purposes described above.
- C.** Jurisdiction of Board. The Procurement Board of Appeals shall hear and resolve protests and appeals arising from City decisions arising under this Chapter only when such matters are referred to it by the Chief Procurement Officer.
- D.** Composition of Board.
 - 1.** The Procurement Board of Appeals shall consist of three members. A quorum shall consist of three members.
 - 2.** The members of the Board shall be:
 - a.** A representative from the public purchasing sector;
 - b.** The City Engineer or designee;
 - c.** A member of the general public with affiliation to the purchasing industry.

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3. The public members shall be appointed by the Mayor, subject to confirmation by City Council and shall serve for a period of up to two years, which may be extended by the Chief Procurement Officer.
4. A member of the board shall serve as chairperson.
- E. Compensation. All members of the Board shall serve without pay, except that they may receive their regular salaries during time spent on Board matters.
- F. Vacancies. A vacancy on the Board shall be filled as soon as possible in accordance with the procedures described above.
- G. Procedure and Rules. The Chief Procurement Officer shall establish administrative rules of procedure for the Board and the Board shall follow that procedure for all matters heard by the Board.
- H. Staff. Procurement Services shall provide staff and appropriate assistance for the Board.

5.34.770 Powers of the Board.

(Amended by Ordinance No. 183445, effective January 6, 2010.)

- A. The Board shall be responsible for reviewing the decisions of the City arising under this Chapter. In regard to appeals of decisions regarding Prequalification or disqualification of Bidders or Proposers, the Board shall comply with Oregon state law and these rules.
- B. The Board shall consider only those matters that were raised by the Affected Person in its protest to the Chief Procurement Officer .
- C. The Board shall not consider the appeal of any Affected Person who did not file a timely appeal.
- D. The Board shall hear appeals based on administrative rules of procedure established by the Chief Procurement Officer. The administrative rules shall provide for notice and prompt hearing of appeals and protests, record-making, right to counsel and other procedural matters.
- E. Following completion of a hearing, the Board shall prepare a Written decision that shall be mailed to all parties to the hearing by certified mail, return receipt requested.

5.34.780 Appeal to Board.

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

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- A.** Time. Any request for hearing by the Board shall be received by the Chief Procurement Officer no more than seven (7) Days from the date of the Chief Procurement Officer's decision unless a different timeline is provided in the Solicitation Document. The request shall be delivered to Procurement Services, Attn: Chief Procurement Officer and marked "Request for Hearing by the Purchasing Board of Appeals."
- B.** Contents. The request shall set forth the specific reasons for requesting a hearing by City Council. Only those matters that were raised with the Chief Procurement Officer and the Procurement Board of Appeals shall be stated as grounds for appeal.
- C.** Time of Hearing. The Chief Procurement Officer shall schedule the time and place for the Board to meet giving consideration to the schedule of the Board.
- D.** Further Appeal. An Affected Person who is not satisfied with the decision of the Board may file a further Written appeal, but only if permitted by the Chief Procurement Officer. If not permitted by the Chief Procurement Officer, the Affected Person has exhausted its administrative appeals. Any request for further appeal shall be received by the Chief Procurement Officer no later than three (3) Days from the date the Affected Person receives the Board's Written decision. The request shall be delivered to Procurement Services, Attn: Chief Procurement Officer and marked "Request for Hearing by City Council."
- E.** If so referred, City Council shall decide at its next available regularly scheduled hearing whether to hear the appeal. If City Council decides not to hear the appeal, the decision of the Board is final. If City Council decides to hear the appeal it shall be scheduled by the Council Clerk for hearing by City Council. The City Council's decision on the appeal shall be final upon issuance of City Council's order deciding the appeal. The City Council may also adopt the decision of the Board without further hearing by City Council. In this situation, the appeal to City Council shall be final upon issuance of City Council's order adopting the decision of the Board. The rules of City Council provided at PCC Chapter 3.02 shall be the rules for any hearing on appeal.
- F.** If so permitted, the decision of City Council shall conclude an Affected Person's administrative remedies and further redress sought by an Affected Person shall be pursuant to state law. Otherwise, the Board's decision shall be final for any remedies that might be available to Affected Person under state law.
- G.** Costs: The Chief Procurement Officer may impose a reasonable fee on the Affected Person requesting a hearing before the Board or Council to defray costs of the appeal. The fee shall be paid at the time the hearing is requested or the protest shall be considered waived. In the event that the Person contesting the hearing prevails in its protest, the fee shall be refunded.

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5.34.800 Purpose.

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.) Section 5.34.800 et seq. is intended to provide guidance to Bureaus and Divisions of the City of Portland regarding the use of Alternative Contracting Methods for Public Improvement Contracts, as may be directed by the City's Chief Procurement Officer. Those methods include, but are not limited to, Design-Build, Energy Savings Performance Contract (ESPC) and Construction Manager/General Contractor (CM/GC) forms of contracting. As to ESPC contracting, Section 5.34.880 implements the requirements of ORS 279C.335 pertaining to the adoption of model rules appropriate for use by the City govern the procedures for entering into ESPCs.

5.34.810 Definitions for Alternative Contracting Methods.

(Amended by Ordinance Nos. 185898 and 187373, effective October 14, 2015.) The following definitions shall apply to Sections 5.34.800 through 5.34.890, unless the context requires otherwise:

- A. Alternative Contracting Methods.** Innovative techniques for procuring or performing Public Improvement Contracts, utilizing processes other than the traditional method involved in the design-Bid-build with Award of a Public Improvement Contract based solely on price (in which a final design is issued with formal Bid documents, construction Work is obtained by sealed Bid Awarded to the lowest Responsive, Responsible Bidder, and the project is built in accordance with those documents). In industry practice, such methods commonly include variations of Design-Build contracting, CM/GC forms of contracting and ESPCs, which are specifically addressed in Section 5.34.880. These methods also include other developing techniques including, but not limited to, general "performance contracting" and "cost plus time" contracting, for which procedural requirements are identified under Sections 5.34.800 through 5.34.890.
- B. Construction Manager/General Contractor (or "CM/GC").** A CM/GC Contractor means a person who provides Construction Manager/General Contractor services to the City under a Public Improvement Contract.
- C. Construction Manager/General Contractor Method (or "CM/GC Method")** means the Alternative Contracting Method which involves the City's section of a CM/GC to perform CM/GC Services for a project or projects.
- D. Construction Manager/General Contractor Services (or "CM/GC Services")** means construction-related services the City procures by means of an Alternative Contracting Method under ORS 279C.335 and the at:
 - 1.** Include a Construction Manager/General Contractor's:
 - a.** Functioning as a member of a project team that includes the City, the architect or engineer that designs the Public Improvement under

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a separate contract with the City and other contractors and consultants; and

- b.** Reviewing and analyzing a design for a Public Improvement in order to:
 - (1)** Suggest changes in the design that minimize potential errors, delays, unexpected costs and other problems during construction;
 - (2)** Recommend means by which the City may achieve the functions of the Public Improvement or a component of the Public Improvement safely, reliably, efficiently and at the lowest overall cost;
 - (3)** Improve the value and quality of the Public Improvement; and
 - (4)** Reduce the time necessary to complete the Public Improvement.

- 2.** May include, depending on the specific terms of the Public Improvement Contract and on whether the City decides to proceed with construction, a Construction Manager/General Contractor's:

- a.** Devising a schedule for constructing the Public improvement;
- b.** Estimating construction, materials, labor and other costs for the Public Improvement;
- c.** Establishing a fixed price, a Guaranteed Maximum Price or other maximum price;
- d.** Constructing portions of the Public improvement and subcontracting portions to other contractors;
- e.** Coordinating and overseeing the construction process; or
- f.** Performing other services related to constructing a Public Improvement in accordance with the terms of the Public Improvement Contract.

- E. Design-Build.** A form of Procurement that results in a Public Improvement Contract in which the construction Contractor also provides or obtains specified design services, participates on the project team with the City, and manages both design and construction. In this form of Contract, a single Contractor provides the

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City with all of the Professional, Technical and Expert Services and Work necessary to both design and construct the project.

- F. Early Work.** Early Work means construction services, construction materials and other Work authorized by the parties to be performed under the CM/GC Contract in advance of the establishment of the GMP, fixed price or other maximum, not-to-exceed price for the project. Permissible Early Work shall be limited to early procurement of materials and supplies, early release of Bid or Proposal packages for site development and related activities, and any other advance Work related to important components of the project for which performance prior to establishment of the GMP will materially and positively affect the development or completion of the project.
- G. Guaranteed Maximum Price (or "GMP").** GMP means the total price at which the Construction Manager/General Contractor agrees to provide Construction Manager/General Contractor services to the City in accordance with the terms and conditions and scope of work for a specific Public Improvement Contract and within which are:
1. All costs the City agrees to reimburse and all fees the City agrees to pay for completing the Work; and
 2. Any contingent costs, fees, or other charges specifically identified in the Public Improvement Contract. For Alternative Contracting Methods other than the CM/GC method, "Guaranteed Maximum Price: ("GMP") means the total maximum price provided to the City by the Contractor, and accepted by the City, that includes all reimbursable costs of and fees for completion of the Contract Work and any particularly identified contingency amounts, as defined by the Public Improvement Contract.
- H. Project Development Plan.** A secondary phase of Personal Services and Work.
- I. Savings Pertaining to CM/GC (or "Savings").** CM/GC Savings means a positive difference between a fixed price, Guaranteed Maximum Price, or other maximum price set forth in the Contract and the actual cost of the Work, including costs for which the City reimburses a Construction Manager/General Contractor and fees or profits the Construction Manager/General Contractor earns. For other Alternative Contracting Methods, "Savings" means a positive difference between a Guaranteed Maximum Price or other maximum not-to-exceed price set forth in a Public Improvement Contract and the actual costs of the Contractor's performance of the Work payable by the City under the terms of the Contract, including costs for which the City reimburses the Contractor and fees, profits, or other payments the Contractor earns.

5.34.820 Use of Alternative Contracting Methods.

(Amended by Ordinance Nos. 183445, 185898 and 187373, effective October 14, 2015.)

- A. Competitive Bidding Exemptions.** ORS Chapter 279C requires a competitive bidding process for Public Improvement Contracts unless a statutory exception applies, a class of Contracts has been exempted from Competitive Bidding, or an individual Contract has been exempted from Competitive Bidding, in accordance with ORS 279C.335 and Section 5.34.830. Use of Alternative Contracting Methods may be directed by the City's Chief Procurement Officer as an exception to the prescribed Public Contracting practices in Oregon, and their use must be justified in accordance with City Code.
- B. Post-Project Evaluation.** ORS 279C.355 requires that the City prepare a formal post-project evaluation of Public Improvement projects in excess of \$100,000 when the City does not use Competitive Bidding. The purpose of this evaluation is to determine whether it was actually in the City's best interest to use an Alternative Contracting Method instead of Competitive Bidding. The evaluation must be delivered to City Council on behalf of the City's Chief Procurement Officer within 30 Days after the date the City "accepts" the Public Improvement project, which event is typically defined in the Contract. In the absence of a definition of "acceptance", the later of the date of final payment or the date of final completion of the Work will govern. ORS 279C.355 describes the timing and content of this evaluation, with three required elements:

 - 1. Financial information, consisting of Cost Estimates, any Guaranteed Maximum Price, changes and actual costs;
 - 2. A narrative description of successes and failures during design, engineering and construction; and
 - 3. An objective assessment of the use of the Alternative Contracting Method as compared to the exemption Findings.

5.34.830 Findings, Notice and Hearing.

(Amended by Ordinance Nos. 181547, 185898 and 187373, effective October 14, 2015.)

- A.** The City Council may by ordinance exempt a Contract from the requirements of Competitive Bidding if it makes the following findings:

 - 1. It is unlikely that the exemption will encourage favoritism in the Awarding of Public Improvement Contracts or substantially diminish competition for Public Improvement Contracts as further described in Subsection 5.34.830 F.; and

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2. The exemption will likely result in substantial costs savings and other substantial benefits to the City in accordance with ORS 279C.335(2)(b). As set forth in ORS 279C.335(2)(b)A-N and Subsection 5.34.830 D. below, if a particular factor has no application whatsoever to the particular Public Improvement Contract or class of Public Improvement Contracts then it is not required to address the factor other than to state that the factor has no application; or
 3. If the Public Improvement relate to the operation, maintenance or construction of highways, bridges and other transportation facilities, that the exemption will result in substantial cost savings to the City or to the public.
 4. As an alternative to the findings regarding substantial cost savings, the City may make a finding that identifies the project as a pilot project for which the City intends to determine whether the use of the Alternate Contracting Method actually results in substantial cost savings to the City, or, if it is for a Public Improvement described in Subsection 5.34.830 A.3. above, to the public, provided the City has not previously used the proposed Alternate Contracting Method. Nevertheless, findings are still required in accordance with ORS 279C.335(2)(a).
- B.** The City council may consider the type, cost and amount of the Contract the number of Persons available to bid and other such factors as may be deemed appropriate in declaring the exemption.
- C.** Findings supporting a competitive bidding exemption must describe with specificity the Alternative Contracting Method to be used in lieu of competitive bidding, including, but not limited to, whether a one step (Request for Proposals) or two step (beginning with Requests for Qualifications) solicitation process will be utilized. The Findings may also describe anticipated characteristics or features of the resulting Public Improvement Contract. However, the purpose of an exemption from competitive bidding is limited to a determination of the Procurement method. Any unnecessary or incidental descriptions of the specific details of the anticipated Contract within the supporting Findings are not binding upon the City. The parameters of the Public Improvement Contract are those characteristics or specifics that are announced in the Solicitation Document. The representations in and the accuracy of the findings, including any general description of the resulting public improvement contract, are the bases for approving the findings and granting the exception. The findings may describe the anticipated features of the resulting public improvement contract, but the final parameters of the contract are those characteristics or specifics announced in the solicitation document.
- D.** The City Council shall require and approve additional findings in the following areas in order to declare the exemption:

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1. How many persons are available to bid;
2. The construction budget and the projected operating costs for the completed Public Improvement;
3. Public benefits that may result from granting the exemption;
4. Whether value engineering techniques may decrease the cost of the Public Improvement;
5. The cost and availability of specialized expertise that is necessary for the Public Improvement;
6. Any likely increases in public safety;
7. Whether granting the exemption may reduce risks to the City or the public that are related to the Public Improvement
8. Whether granting the exemption will affect the sources of funding for the Public Improvement;
9. Whether granting the exemption will better enable the City to control the impact that market conditions may have on the cost of and time necessary to complete the Public Improvement;
10. Whether granting the exemption will better enable the City to address the size and technical complexity of the Public Improvement;
11. Whether the Public Improvement involves new construction or renovates or remodels an existing structure;
12. Whether the Public Improvement will be occupied or unoccupied during construction;
13. Whether the Public Improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and
14. Whether the City has, or has retained under contract, and will use City personnel, consultants and legal counsel that have necessary expertise and substantial experience in Alternative Contracting Methods to assist in developing the Alternative Contracting Methods that the City will use to award the Public Improvement contract and to help negotiate, administer and enforce the terms of the Public Improvement Contract.

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To the extent applicable, if a particular factor has no application whatsoever to the particular Public Improvement Contract or class of Public Improvement Contracts, the City does not need to consider that factor, and the City is not required to address the factor, other than to state why the factor has no application whatsoever to the particular Public Improvement Contract or class of Public Improvement Contracts.

- E.** The City shall hold a public hearing before final adoption of the findings and a declaration of the exemption. Notification of the public hearing shall be published in at least one trade newspaper of general statewide circulation a minimum of 14 Days before the hearing;

 - 1.** The Notice shall state that the public hearing is for the purpose of taking comments on the City's draft findings for an exemption from Competitive Bidding. At the time of the notice, copies of the draft findings shall be made available to the public.
 - 2.** At the hearing, the City shall offer an opportunity for any interested persons to appear and present comment;
 - 3.** Notice of the hearing may be published simultaneously with the City's Solicitation of contractors for the alternative public contracting method when the City is required to act promptly due to circumstances beyond the City's control that do not constitute an Emergency as long as responses to the Solicitation are due at least five (5) Days after the meeting and approval of the findings;
- F.** Addressing Cost Savings. Accordingly, when the Contract or class of Contracts under consideration for an exemption contemplates the use of Alternative Contracting Methods, the "substantial cost savings and other substantial benefits" requirement may be addressed by a combination of:

 - 1.** Specified Findings that address the factors and other information specifically identified by statute, including, but not limited to, an analysis or reasonable forecast of present and future cost savings and other substantial benefits; and
 - 2.** Additional Findings that address industry practices, surveys, trends, past experiences, evaluations of completed projects required by ORS 279C.355 and related information regarding the expected benefits and drawbacks of particular Alternative Contracting Methods. To the extent practicable, such Findings should relate back to the specific characteristics of the project or projects at issue in the exemption request.

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- G.** Favoritism and Competition. The criteria at ORS 279C.335(2)(a) that it is "unlikely" that the exemption will "encourage favoritism" or "substantially diminish competition" may be addressed in contemplating the use of Alternative Contracting Methods by specifying the manner in which an RFP process will be utilized, that the Procurement will be formally advertised, competition will be encouraged, and Award made based upon identified selection criteria.
- H.** Class Exemptions.
- 1.** In making the findings supporting a class exemption the City shall clearly identify "class" with respect to its defining characteristics pursuant to the requirements of ORS 279C.335(3) as indicated below:
 - a.** The class cannot be based on a single characteristic or factor, so that the City directly or indirectly creates a class (e.g., using the CM/GC Method for all City construction projects, unidentified future construction projects of a particular work category, or all construction projects from a particular funding source such as the sale of bonds); and
 - b.** The class must include a combination of factors to be defined by the City through characteristics that reasonably relate to the exemption criteria, and must reflect a detailed evaluation of those characteristics so that the class is defined in a limited way that effectively meets the City's objectives while allowing for impartial and open competition and protecting the integrity of the exemption process (i.e., a series of renovation projects that involve renovations for a common purpose, require completion on a related schedule to avoid unnecessary disruption of operations, share common characteristics such as historic building considerations, presence of asbestos or other hazardous substances, or the presence of staff during construction, or otherwise possess characteristics that meet the requirements).
 - 2.** The following classes of Contracts are hereby exempt from the Competitive low Bidding requirements of this Chapter:
 - a.** Contract Amendments. Contract amendments, pursuant to the authority granted by Subsection 5.34.020 C., and provided that the original Contract was executed in accordance with this chapter;
 - b.** Tenant improvements. Tenant Improvements on City owned property are exempt from the requirements of Competitive low Bidding, but may be subject to other provisions of this Chapter or ORS 279C. Tenant improvements are exempt when:

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- (1) The improvements are paid for in part, or in whole, by the tenant;
 - (2) The improvements are primarily for the tenant's benefit; and
 - (3) The tenant hires the Contractor to perform the Work, whether or not a competitive process is used by the tenant.
 - c. Deficiency Corrections/Contractor on site. The City may hire a private Contractor to perform Work if:
 - (1) The City finds that a Contractor hired by a private developer or Person is at or near the site where City Work needs to be performed and the cost proposed by the private Contractor is reasonable and the cost of the Work will be less than \$25,000; or
 - (2) The City finds that a Contractor hired by the City is at or near the site where City Work needs to be performed; and
 - (a) The new Work is not within the Scope the original Contract and was not anticipated at the time that the original Contract was Awarded; and
 - (b) If the original Contract was less than \$25,000 the new work does not cause the total payment to the Contractor to exceed \$25,000; or
 - (c) If the original Contract was more than \$25,000, the new Work does increase the total amount paid to the Contractor by more than \$50,000.

5.34.840 Competitive Proposals; General Procedures.

(Amended by Ordinance Nos. 185898 and 187373, effective October 14, 2015.)

- A. General Application: The City may utilize the RFP outlined in Subsections 5.34.840 C. through D. below for Public Improvement Contracts, allowing flexibility in both Proposal evaluation and Contract negotiation, only in accordance with ORS 279C.330 to ORS 279C.337, ORS 279C.400 to 279C.410 and Sections 5.34.800 to 5.34.890, unless other applicable statutes control the City's use of competitive Proposals for Public Improvement Contracts. Nothing in this rule shall limit the use of evaluation factors or other matters expressly permitted by those additional rules or authorized by ordinance.
- B. Proposal Evaluation. Factors in addition to price may be considered in the selection process, but only as set forth in the RFP. Evaluation factors need not be precise

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predictors of future costs and performance, but to the extent possible such evaluation factors shall:

1. Be reasonable estimates based on information available to the City;
2. Treat all Proposals equitably; and
3. Recognize that public policy requires that Public Improvements be constructed at the least overall cost to the City (see ORS 279C.305).

C. Evaluation Factors.

1. In basic negotiated construction contracting, where the only reason for an RFP is to consider factors other than price, those factors may consist of firm and personnel experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capacity, past performance, safety records, project understanding, proposed methods of construction, proposed milestone dates, references, service, the status of its Equal Employment Opportunity (EEO) certification, its efforts to diversify its workforce in order to reach all of the City's citizens and other related matters that could affect the cost or quality of the Work.
2. In CM/GC contracting, in addition to Subsection 5.33.840 D.1., those factors may also include the ability to respond to the technical complexity or unique character of the project, analyze and propose value engineering options, analyze energy efficiency measure or alternative energy options, coordinate multiple disciplines on the project, effectively utilize the time available to commence and complete the improvement, and related matters that could affect the cost or quality of the Work.
3. In Design-Build contracting, in addition to Subsections 5.33.840 D.1. and 2., those factors may also include design professional qualifications, specialized experience, preliminary design submittals, technical merit, design-builder team experience and related matters that affect cost or quality.

D. Contract Negotiations. Contract terms may be negotiated to the extent allowed by the RFP and Sections 5.34.800 to 5.34.890, provided that the general Work Scope remains the same and that the field of competition does not change as a result of material changes to the requirements stated in the Solicitation Document. See Section 5.34.850. Terms that may be negotiated consist of details of Contract performance, methods of construction, timing, assignment of risk in specified areas, fee, and other matters that affect cost or quality. For the CM/GC Method, terms that may be negotiated also include the specific scope of pre-construction services, the

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work to be performed by the CM/GC, and any other term that the City has identified as being subject to negotiation.

5.34.845 Requests for Qualifications (RFQ).

(Amended by Ordinance Nos. 181547 and 183445, effective January 6, 2010.) As provided by ORS 279C.405(1), the City may utilize Requests for Qualifications (RFQs) to obtain information useful in the preparation or distribution of a Request for Proposals (RFPs). When using RFQs as the first step in a two step solicitation process, in which distribution of the RFPs will be limited to the firms identified as most qualified through their submitted statements of qualification, the City shall first advertise and provide notice of the RFQ in the same manner in which RFP's are advertised, specifically stating that RFPs will be distributed only to the qualified firms in the RFQ process. The Chief Procurement Officer shall decide whether to permit protests at the end of the RFQ process. Thereafter, the City may distribute RFPs to those qualified firms without further advertisement of the solicitation.

5.34.850 Requests for Proposals (RFP).

(Amended by Ordinance Nos. 184403, 185065, 185898 and 187373, effective October 14, 2015.)

- A.** Generally. The use of competitive Proposals must be specifically authorized for a Public Improvement Contract under the Competitive Bidding exception and exemption requirements of ORS 279C.335, Section 5.34.150 and Sections 5.34.800 to 5.34.890. Also see ORS 279C.337, ORS 279C.400 to 279C.410 for statutory requirements regarding competitive Proposals, and Section 5.34.840 regarding competitive Proposal procedures.
- B.** Solicitation Documents. In addition to the Solicitation Document requirements of Section 5.34.300, this rule applies to the requirements for Requests for Proposals. RFP Solicitation Documents shall conform to the following standards:
 - 1.** The City shall set forth selection criteria in the Solicitation Document. Examples of evaluation criteria include price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or physical plant, financial wherewithal, sources of supply, references and warranty provisions. See Section 5.34.840. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall be reasonable estimates based on information available to the City. Subject to ORS 279C.410(4) the Solicitation Document may provide for discussions with Proposers to be conducted for the purpose of Proposal evaluation prior to award or prior to establishing any Competitive Range;

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2. When the City is willing to negotiate terms and conditions of the Contract or allow submission of revised Proposals following discussions, the City must identify the specific terms and conditions in or provisions of the Solicitation Document that are subject to negotiation or discussion and authorize Offerors to propose certain alternative terms and conditions in lieu of the terms and conditions the City has identified as authorized for negotiation. The City must describe the evaluation and discussion or negotiation process, including how the City will establish the Competitive Range;
3. The anticipated size of the Competitive Range shall be stated in the Solicitation document, but may be decreased if the number of Proposers that submit Responsive Proposals is less than the specified number, or may be increased as provided in Subsection 5.34.850 D.1.b.
4. When the City intends to Award Contracts to more than one Proposer, the City must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award. The City shall also include the criteria it will use to determine how the City will endeavor to achieve optimal value, utility and substantial fairness when selecting a particular Contractor to provide Personal Services or Work from those Contractors Awarded Contracts.

C. Evaluation of Proposals.

1. Evaluation. The City shall evaluate Proposals only in accordance with criteria set forth in the RFP and applicable law. The City shall evaluate Proposals to determine the Responsible Proposer or Proposers submitting the best Responsive Proposal or Proposals.
 - a. Clarifications. In evaluating Proposals, The City may seek information from a Proposer to clarify the Proposer's Proposal. A Proposer must submit Written and Signed clarifications and such clarifications shall become part of the Proposer's Proposal.
 - b. Limited Negotiation. If the City did not permit negotiation in its Request for Proposals, the City may, nonetheless, negotiate with the highest-ranked Proposer, but may then only negotiate the:
 - (1) Statement of Work; and
 - (2) Contract Price as it is affected by negotiating the statement of Work.

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- (3) The process for discussions or negotiations that is outlined and explained in Subsections 5.34.850 E.2. and 5.34.850 F. does not apply to this limited negotiation.
 2. Discussions; Negotiations. If the City permitted discussions or negotiations in the Request for Proposals, the City shall evaluate Proposals and establish the Competitive Range, and may then conduct discussions and negotiations in accordance with this rule.
 - a. If the Solicitation Document provided that discussions or negotiations may occur at City's discretion, the City may forego discussions and negotiations and evaluate all Proposals in accordance with this rule.
 - b. If the City proceeds with discussions or negotiations, the City shall establish a negotiation team tailored for the acquisition. The City's team may include legal, technical, auditing and negotiating personnel.
 3. Cancellation. Nothing in this rule shall restrict or prohibit the City from canceling the Solicitation at any time.
- D. Competitive Range; Protest; Award.
1. Determining Competitive Range.
 - a. If the City does not cancel the Solicitation, after the Opening the City will evaluate all Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the City will rank the Proposers based on the City's scoring and determine the Competitive Range.
 - b. The City may increase the number of Proposers in the Competitive Range if the City's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial Competitive Range are closely Competitive, or have a reasonable chance of being determined the best Proposer after the City's evaluation of revised Proposals submitted in accordance with the process described in this rule.
 2. Protesting Competitive Range. The City shall provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Proposer that is not within the Competitive Range may protest the City's evaluation and determination of the Competitive Range in accordance with Section 5.34.710.

- 3.** Intent to Award; Discuss or Negotiate. After the protest period provided in accordance with these rules expires, or after the City has provided a final response to any protest, whichever date is later, the City may either:

 - a.** Provide Written notice to all Proposers in the Competitive Range of its intent to Award the Contract to the highest-ranked Proposer in the Competitive Range.

 - (1)** An unsuccessful Proposer may protest the City's intent to Award in accordance with Section 5.34.740.
 - (2)** After the protest period provided in accordance with Section 5.34.740 expires, or after the City has provided a final response to any protest, whichever date is later, the City shall commence final Contract negotiations with the highest-ranked Proposer in the Competitive Range; or
 - b.** Engage in Negotiations with all Proposers in the Competitive Range, as provided in Subsection 5.34.850 F. below; or
 - c.** Engage in discussions with Proposers in the Competitive Range, as provided in Subsection 5.34.850 E. below, accept revised Proposals from them, and, following such discussions and receipt and evaluation of revised Proposals, either select the highest ranking Proposer or conduct further negotiations with the Proposers in the Competitive Range;
 - d.** Otherwise proceed in any other legal manner designed to select a or as specified by the RFP or ordinance.
- E.** Discussions; Revised Proposals. If the City chooses to enter into discussions with and receive revised Proposals from the Proposers in the Competitive Range, the City shall proceed as follows:

 - 1.** Initiating Discussions. The City shall initiate oral or Written discussions with all of the Proposers in the Competitive Range regarding their Proposals with respect to the provisions of the RFP that the City identified in the RFP as the subject of discussions. The City may conduct discussions for the following purposes:

 - a.** Informing Proposers of deficiencies in their initial Proposals;
 - b.** Notifying Proposers of parts of their Proposals for which the City would like additional information; and

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- c. Otherwise allowing Proposers to develop revised Proposals that will allow the City to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.
- 2. Conducting Discussions. The City may conduct discussions with each Proposer in the Competitive Range necessary to fulfill the purposes of this section, but need not conduct the same amount of discussions with each Proposer. The City may terminate discussions with any Proposer in the Competitive Range at any time. However, the City shall offer all Proposers in the Competitive Range the opportunity to discuss their Proposals with City before the City notifies Proposers of the date and time pursuant to this section that revised Proposals will be due.
 - a. In conducting discussions, the City :
 - (1) Shall treat all Proposers fairly and shall not favor any Proposer over another;
 - (2) Shall not discuss other Proposers' Proposals;
 - (3) Shall not suggest specific revisions that a Proposer should make to its Proposal, and shall not otherwise direct the Proposer to make any specific revisions to its Proposal. Nothing in this paragraph, however, shall prevent the City from identifying deficiencies in a Proposal, as provided in Subsection 5.34.850 E.1.a. above.
 - b. At any time during the time allowed for discussions, the City may:
 - (1) Continue discussions with a particular Proposer;
 - (2) Terminate discussions with a particular Proposer and continue discussions with other Proposers in the Competitive Range; or
 - (3) Conclude discussions with all remaining Proposers in the Competitive Range and provide notice to the Proposers in the Competitive Range to submit revised Proposals.
- 3. Revised Proposals. If the City does not cancel the Solicitation at the conclusion of the City's discussions with all remaining Proposers in the Competitive Range, the City shall give all remaining Proposers in the Competitive Range notice of the date and time by which they must submit revised Proposals. This notice constitutes the City's termination of discussions, and Proposers must submit revised Proposals by the date and time set forth in the City's notice.

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- a. Upon receipt of the revised Proposals, the City shall score the revised Proposals based upon the evaluation criteria set forth in the Request for Proposals, and rank the revised Proposals based on the City's scoring.
 - b. The City may conduct discussions with and accept only one revised Proposal from each Proposer in the Competitive Range unless otherwise set forth in the Request for Proposals.
4. Intent to Award; Protest. The City shall provide Written notice to all Proposers in the Competitive Range of the City's intent to Award the Contract. An unsuccessful Proposer may protest the City's intent to Award in accordance with Section 5.34.740. After the protest period provided in accordance with that rule expires, or after the City has provided a final response to any protest, whichever date is later, the City shall commence final Contract negotiations.

F. Negotiations.

- 1.** Initiating Negotiations. The City may determine to commence negotiations with the highest-ranked Proposer in the Competitive Range following the:
 - a.** Initial determination of the Competitive Range; or
 - b.** Conclusion of discussions with all Proposers in the Competitive Range and evaluation of revised Proposals.
- 2.** Conducting Negotiations, Scope. The City may negotiate:
 - a.** The statement of Work;
 - b.** The Contract Price as it is affected by negotiating the statement of Work; and
 - c.** Any other terms and conditions reasonably related to those expressly authorized for negotiation in the Request for Proposals. Accordingly, Proposers shall not submit, and City shall not accept, for negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the Request for Proposals.
- 3.** Continuing Negotiations. If the City terminates discussions or negotiations with a Proposer, the City may then commence negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in this rule until the City has either:

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- a. Determined to Award the Contract to the Proposer with whom it is currently discussing or negotiating; or
 - b. Completed one round of discussions or negotiations with all Proposers in the Competitive Range, unless the City provided for more than one round of discussions or negotiations in the Request for Proposals, in which case the Contracting Agency may proceed with any authorized further rounds of discussions or negotiations.
 - 4. Terminating Discussions or Negotiations. At any time during discussions or negotiations conducted in accordance with this Rule, the City may terminate discussions or negotiations with the Proposer with whom it is currently conducting discussions or negotiations if the City reasonably believes that;
 - a. The Proposer is not discussing or negotiating in good faith; or
 - b. Further discussions or negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner that will be in the best interests of the City. The determination of a timely manner and the best interests of the City are matters solely within the discretion of the City.

5.34.860 RFP Pricing Mechanisms.

(Amended by Ordinance Nos. 184403 and 187373, effective October 14, 2015.)

- A. A Request for Proposals may result in a Contract with a lump sum Contract Price or a fixed Contract Price, as in the case of Competitive Bidding. Alternatively, a Request for Proposals may result in a cost reimbursement Contract with a GMP or some other maximum price specified in the Contract.
- B. Economic incentives or disincentives may be included to reflect stated City purposes related to time of completion, safety or other Public Contracting objectives, including but not limited to, total least cost mechanisms such as Life Cycle Costing.
- C. A Guaranteed Maximum Price (GMP) may be used as the pricing mechanism for Contracts for CM/GC Services where a total Contract Price is provided in the design phase in order to assist the City in determining whether the project Scope is within the City's budget, and allowing for design changes during preliminary design rather than after final design services have been completed.
 - 1. If this collaborative process is successful, the Contractor shall propose a final GMP, which may be accepted by the City and included within the Contract.

2. If this collaborative process is not successful, and no mutually agreeable resolution on GMP can be achieved with the Contractor, then the City shall terminate the Contract. The City may then proceed to negotiate a new Contract (and GMP) with the firm that was next ranked in the original selection process, or employ other means for continuing the project under ORS Chapter 279C.
- D. When cost reimbursement Contracts are utilized, regardless of whether a GMP is included, the City shall provide for audit controls that will effectively verify rates and ensure that costs are reasonable, allowable and properly allocated.

5.34.870 Design-Build Contracts.

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- A. General. The Design-Build form of contracting, as defined in Subsection 5.34.810 C., has technical complexities that are not readily apparent. In order to use the Design-Build process, the City must be able to reasonably anticipate the following types of benefits:
1. Obtaining, through a Design-Build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control and required documentation as a fully integrated function with a single point of responsibility;
 2. Integrating value engineering suggestions into the design phase, as the construction Contractor joins the project team early with design responsibilities under a team approach, with the potential of reducing Contract changes;
 3. Reducing the risk of design flaws, misunderstandings and conflicts inherent in construction Contractors building from designs in which they have had no opportunity for input, with the potential of reducing Contract claims;
 4. Shortening project time as construction activity (early submittals, mobilization, subcontracting and advance Work) commences prior to completion of a "Biddable" design, or where a design solution is still required (as in complex or phased projects); and
 5. Obtaining innovative design solutions through the collaboration of the Contractor and design team, which would not otherwise be possible if the Contractor had not yet been selected.
- B. Authority. Contracting Agencies shall utilize the Design-Build form of contracting only in accordance with the requirements of Sections 5.34.800 to 5.34.890 of these

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rules. See particularly Section 5.34.820 on "Use of Alternative Contracting Methods" and Section 5.34.880 pertaining to ESPCs.

- C.** Selection. Design-Build selection criteria may include those factors set forth above in Subsections 5.34.840 B.1., 2. and 3.
- D.** QBS Inapplicable. Because the value of construction services predominates the Design-Build form of contracting, the qualifications based selection (QBS) process is not applicable.
- E.** Licensing. If a Design-Build Contractor is not an Oregon licensed design professional, the City shall require that the Design-Build Contractor disclose in its Written Offer that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(2)(g) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction Work.
- F.** Performance Security. ORS 279C.380(1)(a) provides that for Design-Build Contracts the surety's obligation on performance bonds, or the Bidder's obligation on cashier's or certified checks accepted in lieu thereof, includes the preparation and completion of design and related Personal Services specified in the Contract. This additional obligation, beyond performance of construction services, extends only to the provision of professional services and related design revisions, corrective Work and associated costs prior to final completion of the Contract (or for such longer time as may be defined in the Contract). The obligation is not intended to be a substitute for professional liability insurance, and does not include errors and omissions or latent defects coverage.
- G.** Contract Requirements. The City shall conform its Design-Build contracting practices to the following requirements:
 - 1.** Design Services. The level or type of design services required must be clearly defined within the Procurement documents and Contract, along with a description of the level or type of design services previously performed for the project. The Personal Services and Work to be performed shall be clearly delineated as either design Specifications or performance standards, and performance measurements must be identified.
 - 2.** Professional Liability. The Contract shall clearly identify the liability of design professionals with respect to the Design-Build Contractor and the City, as well as requirements for professional liability insurance.
 - 3.** Risk Allocation. The Contract shall clearly identify the extent to which the City requires an express indemnification from the Design-Build Contractor

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for any failure to perform, including professional errors and omissions, design warranties, construction operations and faulty Work claims.

4. Warranties. The Contract shall clearly identify any express warranties made to the City regarding characteristics or capabilities of the completed project (regardless of whether errors occur as the result of improper design, construction, or both), including any warranty that a design will be produced that meets the stated project performance and budget guidelines.
5. Incentives. The Contract shall clearly identify any economic incentives and disincentives, the specific criteria that apply and their relationship to other financial elements of the Contract.
6. Honoraria. If allowed by the RFP, honoraria or stipends may be provided for early design submittals from qualified finalists during the Solicitation process on the basis that the City is benefited from such deliverables.

5.34.880 Energy Savings Performance Contracts (ESPC).

(Amended by Ordinance Nos. 185898 and 187373, effective October 14, 2015.)

- A. Generally. Sections 5.34.800 to 5.34.890 include a limited, efficient method for the City to enter into ESPCs outside the competitive bidding requirements of ORS 279C.335 for existing buildings or structures, but not for new construction. If the City chooses not to utilize these rules, the City may still enter into an ESPC by complying with the competitive bidding exemption process set forth in ORS 279C.335, or by otherwise complying with the Procurement requirements applicable to any City not subject to all the requirements of ORS 279C.335. The following definitions shall apply specifically to Energy Savings Performance Contracts (or "ESPC"), unless the context requires otherwise.
 1. Energy Conservation Measures (or "ECMs") (also known as "energy efficiency measures"). As used in ESPC Procurement, any equipment, fixture or furnishing to be added or used in an existing building, structure or building/structure system, and any repair, alteration or improvement to an existing building, structure or building/structure system that is designed to reduce energy consumption and related costs, including those costs related to electrical energy, thermal energy, water consumption, waste disposal, and future contract-labor costs and materials costs associated with maintenance of the building or structure. Maintenance services are not Energy Conservation Measures, for purposes of this Section.
 2. Energy Savings Guarantee. The energy savings and performance guarantee provided by the ESCO under an ESPC Procurement, which guarantees to the City that certain energy savings and performance will be achieved for the project covered by the RFP, through the installation and implementation

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of the agreed-upon ECMs for the project. The Energy Savings Guarantee shall include, but shall not be limited to, the specific energy savings and performance levels and amounts that will be guaranteed, provisions related to the financial remedies available to the City in the event the guaranteed savings and performance are not achieved, the specific conditions under which the ESCO will guarantee energy savings and performance (including the specific responsibilities of the City after final completion of the design and construction phase), and the term of the energy savings and performance guarantee.

- 3.** Energy Savings Performance Contract (or "ESPC"). A Public Improvement Contract between The City and a Qualified Energy Service Company for the identification, evaluation, recommendation, design and construction of Energy Conservation Measures, including a Design-Build Contract, that guarantee energy savings or performance.

- a.** Measurement and Verification (or "M & V"). As used in ESPC Procurement, the examination of installed ECMs using the International Performance Measurement and Verification Protocol ("IPMVP"), or any other comparable protocol or process, to monitor and verify the operation of energy-using systems pre-installation and post-installation.

- b.** Technical Energy Audit. As used in ESPC Procurement, the initial phase of Personal Services to be performed by an ESCO that includes a detailed evaluation of an existing building or structure, an evaluation of the potential ECMs that could be effectively utilized at the facility, and preparation of a report to the City of the ESCO's Findings during this initial phase of the Work; the term "Technical Energy Audit" can also refer to the report provided by the ESCO at the conclusion of this phase of the Work.

- B.** Energy Savings Performance Contracts. Unlike other Alternative Contracting Methods covered by Section 5.34.800 et seq. ESPCs are exempt from the competitive bidding requirement for Public Improvement Contracts pursuant to ORS 279C.335(1)(f), if the City complies with the procedures set forth in Section 5.34.880 related to the Solicitation, negotiation and contracting for ESPC Work. If those procedures are not followed, an ESPC procurement may still be exempted from competitive bidding requirements by following the general exemption procedures within ORS 279C.335.

- C.** ESPC Contracting Method. The ESPC form of contracting, as defined in herein, has unique technical complexities associated with the determination of what ECMs are feasible for the City, as well as the additional technical complexities associated with a Design-Build Contract. For ESPC's the RFP outlined in Subsections

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5.34.840 B. through D. shall be utilized if the City desires the Procurement process to be exempt from the competitive bidding requirements of ORS 279C.335. The City shall only utilize the ESPC contracting method with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to utilize the ESPC contracting process, the City must be able to reasonably anticipate one or more of the following types of benefits:

1. Obtaining, through an ESCO, the following types of integrated Personal Services and Work: facility profiling, energy baseline studies, ECMs, Technical Energy Audits, project development planning, engineering design, plan preparation, cost estimating, Life Cycle Costing, construction administration, project management, construction, quality control, operations and maintenance staff training, commissioning services, M & V services and required documentation as a fully integrated function with a single point of responsibility;
 2. Obtaining, through an ESCO, an Energy Savings Guarantee;
 3. Integrating the Technical Energy Audit phase and the Project Development Plan phase into the design and construction phase of Work on the project;
 4. Reducing the risk of design flaws, misunderstandings and conflicts inherent in the construction process, through the integration of ESPC Personal Services and Work;
 5. Obtaining innovative design solutions through the collaboration of the members of the ESCO integrated ESPC services team;
 6. Integrating cost-effective ECMs into an existing building or structure, so that the ECMs pay for themselves through savings realized over the useful life of the ECMs;
 7. Preliminary design, development, implementation and an Energy Savings Guarantee of ECMs into an existing building or structure through an ESPC, as a distinct part of a major remodel of that building or structure that is being performed under a separate remodeling Contract; and
 8. Satisfying local energy efficiency design criteria or requirements.
- D.** In ESPC contracting, terms that may be negotiated also include the Scope of preliminary design of DCMs to be evaluated by the parties during the Technical Energy Audit phase of the Work, the Scope of Personal Services and Work to be performed by the ESCO during the Project Development Plan phase of the Work, the detailed provisions of the Energy Savings Guarantee to be provided by the ESCO and Scope of Work, methodologies and compensation terms and conditions

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during the design and construction phase and M & V phase of the Work, consistent with the requirements of this Section.

- E.** In Energy Savings Performance Contracting (ESPC), in addition to the factors set forth in Subsections 5.33.840 C.1., 2. and 3., those factors may also include sample Technical Energy Audits from similar projects, sample M & V reports, financial statements and related information of the ESCO for a time period established in the RFP, financial statements and related information of joint ventures comprising the ESCO, the ESCO's capabilities and experience in performing energy baseline studies for facilities (independently or in cooperation with an independent third-party energy baseline consultant), past performance of the ESCO in meeting energy guarantee Contract levels, the specific Person that will provide the Energy Savings Guarantee to be offered by the ESCO, the ESCO's management plan for the project, information on the specific methods, techniques and equipment that the ESCO will use in the performance of the Work under the ESPC, the ESCO's team members and consultants to be assigned to the project, the ESCO's experience in the Energy Savings Performance Contracting field, the ESCO's experience acting as the prime Contractor on previous ESPC projects (as opposed to a sub-contractor or consultant to a prime ESCO), the ESCO's vendor and product neutrality related to the development of ECMs, the ESCO's project history related to removal from an ESPC project or the inability or unwillingness of the ESCO to complete an ESPC project, the ESCO's M & V capabilities and experience (independently or in cooperation with an independent third-party M & V consultant), the ESCO's ability to explain the unique risks associated with ESPC projects and the assignment of risk in the particular project between the City and the ESCO, the ESCO's equipment performance guarantee policies and procedures, the ESCO's energy savings and cost savings guarantee policies and procedures, the ESCO's project cost guarantee policies and procedures, the ESCO's pricing methodologies, the price that the ESCO will charge for the Technical Energy Audit phase of the Work and the ESCO's fee structure for all phases of the ESPC.
- F.** Authority. Bureaus wanting to pursue an exemption from the Competitive Bidding requirements of ORS 279C.335 (and, if applicable, ORS 351.086), shall utilize the ESPC form of contracting only in accordance with the requirements of Sections 5.34.800 through 5.34.890.
- G.** No Findings. The City is only required to comply with the ESPC contracting procedures set forth in Sections 5.34.800 through 5.34.890 in order for the ESPC to be exempt from the competitive bidding processes of ORS 279C.335. No Findings are required for an ESPC to be exempt from the competitive bidding process for Public Improvement Contracts pursuant to ORS 279C.335, unless the City is subject to the requirements of ORS 279C.335 and chooses not to comply with the ESPC contracting procedures set for in these rules.

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- H.** Selection. ESPC selection criteria may include those factors set forth above in Subsections 5.34.840 C.1., 2., and 3. Since the Energy Savings Guarantee is such a fundamental component in the ESPC contracting process, Proposers must disclose in their Proposals the identity of any Person providing (directly or indirectly) any Energy Savings Guarantee that may be offered by the successful ESCO during the course of the performance of the ESPC, along with any financial statements and related information pertaining to any such Person.
- I.** QBS Inapplicable. Because the value of construction Work predominates in the ESPC method of contracting, the qualifications based selection (QBS) process mandated by ORS 279C.110 is not applicable.
- J.** Licensing. If the ESCO is not an Oregon licensed design professional, the City shall require that the ESCO disclose in the ESPC that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(5) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction Work.
- K.** Performance Security. At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the ESCO must provide a performance bond and payment bond, each for 100 percent of the full Contract Price, including the construction Work and design and related Personal Services specified in the ESPC Design-Build Contract, pursuant to ORS 279C.380(1)(a). For ESPC Design-Build Contracts, these "design and related professional services" include conventional design services, commissioning services, training services for the City's operations and maintenance staff, and any similar Personal Services or Work provided by the ESCO under the ESPC Design-Build Contract prior to final completion of construction. M & V services, and any Personal Services and Work associated with the ESCO's Energy Savings Guarantee are not included in these ORS 279C.380(1)(a) "design and related professional services." Nevertheless, The City may require that the ESCO provide performance security for M & V services and any Personal Services and Work associated with the ESCO's Energy Savings Guarantee, if the City so provides in the RFP.
- L.** Contracting Requirements. Contracting Agencies shall conform their ESPC contracting practices to the following requirements:

 - 1.** General ESPC Contracting Practices. An ESPC involves a multi-phase project, which includes the following contractual elements:

 - a.** A contractual structure which includes general Contract terms describing the relationship of the parties, the various phases of the Work, the contractual terms governing the Technical Energy Audit for the project, the contractual terms governing the Project

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Development Plan for the project, the contractual terms governing the final design and construction of the project, the contractual terms governing the performance of the M & V services for the project, and the detailed provisions of the ESCO's Energy Savings Guarantee for the project.

b. The various phases of the ESCO's Work will include the following:

- (1)** The Technical Energy Audit phase of the Work;
- (2)** The Project Development Plan phase of the Work;
- (3)** A third phase of the Work that constitutes a Design-Build Contract, during which the ESCO completes any plans and Specifications required to implement the ECMs that have been agreed to by the parties to the ESPC, and the ESCO performs all construction, commissioning, construction administration and related Personal Services or Work to actually construct the project; and
- (4)** A final phase of the Work, whereby the ESCO, independently or in cooperation with an independent consultant hired by the City, performs M & V services to ensure that the Energy Savings Guarantee identified by the ESCO in the earlier phases of the Work and agreed to by the parties has actually been achieved.

2. Design-Build Contracting Requirements in ESPCs. At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the City shall conform its Design-Build contracting practices to the Design-Build contracting requirements set forth in Subsection 5.34.870 G. above.

3. Pricing Alternatives. The City may utilize one of the following pricing alternatives in an ESPC:

- a.** A fixed price for each phase of the Personal Services and Work to be provided by the ESCO;
- b.** A cost reimbursement pricing mechanism, with a maximum not-to-exceed price or a GMP; or
- c.** A combination of a fixed fee for certain components of the Personal Services to be performed, a cost reimbursement pricing mechanism for the construction Work to be performed with a GMP, a single or annual fixed fee for M & V services to be performed for an identified

time period after final completion of the construction Work, and a single or annual Energy Savings Guarantee fixed fee payable for an identified time period after final completion of the construction Work that is conditioned on certain energy savings being achieved at the facility by the ECMs that have been implemented by the ESCO during the project (in the event an annual M & V services fee and annual Energy Savings Guarantee fee is utilized by the parties, the parties may provide in the Design-Build Contract that, at the sole option of the City, the ESCO's M & V services may be terminated prior to the completion of the M & V/Energy Savings Guarantee period and the City's future obligation to pay the M & V services fee and Energy Savings Guarantee fee will likewise be terminated, under terms agreed to by the parties).

4. Permitted ESPC Scope of Work. The Scope of Work under the ESPC is restricted to implementation and installation of ECMs, as well as other Work on building systems or building components that are directly related to the ECMs, and that, as an integrated unit, will pay for themselves over the useful life of the ECMs installed. The permitted Scope of Work for ESPCs resulting from a Solicitation under Sections 5.34.800 to 5.34.890 rules does not include maintenance services for the project facility.

5.34.890 Construction Manager/General Contractor Services (CM/GC Services).
(Amended by Ordinance Nos. 181547, 185898 and 187373, effective October 14, 2015.)

- A. **General.** The CM/GC Method is a technically complex project delivery system. City bureaus shall use this contracting method only with the assistance of legal counsel, as well as knowledgeable staff, consultants or both staff and consultants who have a demonstrated capability of managing the CM/GC Method, in the necessary disciplines of engineering, construction scheduling and cost control, accounting, legal, Public Contracting and project management. Unlike the Design-Build Method, the CM/GC Method does not contemplate a "single point of responsibility" under which the CM/GC is responsible for successful completion of all Work related to a performance Specification. The CM/GC has defined Contract obligations, including responsibilities as part of the project team along with the City and design professional, although with the CM/GC Method there is a separate Contract between the City and the design professional(s). In order to utilize the CM/GC Method, the City must be able to reasonably anticipate the following types of benefits:
 1. Time Savings. With the CM/GC Method, the Public Improvement has significant schedule ramifications, such that concurrent design and construction are necessary in order to meet critical deadlines and shorten the overall duration of construction. The City may consider operational and financial data that show significant savings or increased opportunities for

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generating revenue as a result of early completion, as well as less disruption to public facilities as a result of shortened construction periods;

2. **Cost Savings.** With the CM/GC Method, early CM/GC input during the design process is expected to contribute to significant cost savings. The City may consider value engineering, building systems analysis, Life Cycle Costing analysis and construction planning that lead to cost savings. The City shall specify any special factors influencing this analysis, including high rates of inflation, market uncertainty due to material and labor fluctuations or scarcities, and the need for specialized construction expertise due to technical challenges; and
3. **Technical Complexity.** With the CM/GC Method, the Public Improvement presents significant technical complexities that are best addressed by a collaborative or team effort between the City, design professionals, City project management or technical consultants and the CM/GC, in which the CM/GC will assist in addressing specific project challenges through pre-construction services. The City may consider the need for CM/GC input on issues such as operations of the facility during construction, tenant occupancy, public safety, delivery of an early budget or GMP, financing, historic preservation, difficult remodeling projects and projects requiring complex phasing or highly coordinated scheduling.

B. Authority. The City shall use the CM/GC Method only in accordance with the requirements of ORS 279C.337, when an exemption from Competitive Bidding is approved by Council. See particularly, Section 5.34.820 on "Use of Alternative Contracting Methods".

C. Selection. CM/GC selection criteria may include those factors set forth above in Subsection 5.34.840 C. The City shall, in documents the City uses to procure CM/GC Services.

1. Describe the selection criteria and the weight of each criterion in the evaluation process;
2. Describe how interviews will be used and evaluated, if interviews are to be used in the selection;
3. Describe any other criteria that may be considered in selecting a CM/GC;
4. Describe how scoring from the evaluation of the written proposals and interviews will be combined to arrive at a Proposer's final score and ranking;
5. State that any Savings the CM/GC realizes in performing the Contract will accrue to the City, unless the Contract provides otherwise;

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6. Specify terms and conditions that govern how the fixed price, GMP or other maximum price set forth in the Contract will be determined and whether the price includes or is based on unit pricing or allows for Work that is constructed in phases;
 7. State that the City will not pay any amount that exceeds a fixed price, GMP or other maximum price specified in the Contract unless the amount results from material changes to the scope of work set forth in the Contract and the parties to the Contract agree in writing to the material changes;
 8. State that the City will conduct the procurement in accordance with model rules the Attorney General adopts under ORS 279A.065 (3); and
 9. Specify deadlines and time periods for the selection that allow prospective Proposers a reasonable opportunity to submit proposals, including but not limited to:
 - a. The date and time by which the City must receive proposals;
 - b. The time periods during which the City will conduct interviews, if the City will conduct interviews;
 - c. The date by which the City plans to indicate an intent to award the Contract; and
 - d. The time period during which the City will meet with Proposers that the City did not select for the Contract, if a Proposer requests a meeting to discuss the procurement.
- D. Basis for Payment.** The CM/GC process adds specified Construction Manager Professional, Technical and Expert Services to traditional design-bid-build general contractor Work, requiring full Contract performance within a negotiated GMP, fixed Contract Price or other maximum Contract Price. For a GMP pricing method, the basis for payment is reimbursable direct costs as defined under the Contract, plus a fee constituting full payment for Work and Professional, Technical and Expert Services rendered, which together shall not exceed the GMP. See GMP definition at Subsection 5.34.810 E. and Pricing Mechanisms in Section 5.34.860.
- E. Contract Requirements.** The City shall conform its CM/GC Services contracting practices to the following requirements:
1. Nature of the Contracts for CM/GC Services. Since the scope of CM/GC Services includes a pre-construction phase of Professional, Technical and Expert Services and a construction phase Work to be performed by the CM/GC, the City may award one or more Contracts for CM/GC Services.

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In general, Contracts for CM/GC Services will include contract provisions that will not only govern the relationship between the City and the CM/GC for the pre-construction Professional, Technical and Expert Services, but will also include provisions that will govern the CM/GC's providing of the Work necessary to complete the Public Improvement. The City will only authorize the construction phase or phases of a portion of the project or the entire project upon successful negotiation of the GMP. For purposes of paying BOLI prevailing wages, a CM/GC Services Contract becomes a public works Contract at the time covered Work activities commence, through authorized Early Work during the pre-construction phase or construction phase Work.

2. Setting the GMP, Fixed Contract Price or Other Maximum Contract Price. The GMP, fixed Contract price or other maximum Contract Price shall be set at an identified time consistent with industry practice and project conditions and after supporting information reasonably considered necessary to its use has been developed. The supporting information for the GMP must define with particularity both what Professional, Technical and Expert Services and Work is included and/or excluded from the GMP, fixed Contract price or other maximum Contracts Price. A set of project drawings and Specifications shall be produced establishing the scope of Work contemplated by the GMP, fixed Contract price or other maximum Contract Price.
3. Adjustments to the GMP, Fixed Contract Price or Other Maximum Contract Price. The Contract shall clearly identify the standards or factors under which changes or additional Work will be considered outside of the Work Scope that warrants an increase in the GMP, fixed Contract price or other maximum Contract Price as well as criteria for decreasing the GMP, fixed Contract price or other maximum Contract Price. The GMP, fixed Contract price or other maximum Contract Price shall not be increased without a concomitant increase to the scope of Work defined at the establishment of the GMP, fixed Contract price or other maximum Contract Price or most recent amendment to the GMP, fixed Contract price or other maximum Contract Price.
4. Cost Savings. The Contract shall clearly identify the disposition of any Cost Savings resulting from completion of the Work below the GMP, fixed Contract price or other maximum Contract Price; that is, under what circumstances, if any, the CM/GC might share in those Cost Savings, or whether the Cost Savings accrue only to the City's benefit. Unless there is a clearly articulated reason for sharing the Cost Savings set forth in the Contract, the Cost Savings must accrue to the City .)

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5. Cost Reimbursement. The Contract shall clearly identify what items or categories of items are eligible for cost reimbursement within the GMP or other maximum Contract Price.
6. Audit. Cost reimbursements shall be made subject to final audit adjustment, and the Contract shall establish an audit process to ensure that Contract costs are allowable, properly allocated and reasonable.
7. Fee. Compensation for the CM/GC's Personal Services and construction Work where the Contract uses a GMP, shall be paid on the basis of a fee that is inclusive of profit, overhead and all other indirect or non-reimbursable costs. Costs determined to be included within the fee shall be expressly defined in the Contract terms and conditions at the time the City selects the CM/GC. The fee, which may be expressed as either a fixed dollar amount or as a proposed percentage of all reimbursable costs, shall be identified during and become an element of the selection process. It shall subsequently be expressed as a fixed amount for particular construction Work authorized to be performed, when Early Work is added to the Contract through an amendment and when the GMP is established. The CM/GC fee does not include any fee paid to the CM/GC for performing preconstruction services during a separate preconstruction phase.
8. Incentives. The Contract shall clearly identify any economic incentives, the specific criteria that apply and their relationship to other financial elements of the Contract (including the GMP, fixed Contract price or other maximum Contract Price).
9. Controlled Insurance Programs. For projects where an owner-controlled or contractor-controlled insurance program is permitted, the Contract shall clearly identify whether an Owner Controlled or Contractor Controlled Insurance Program is anticipated or allowable. If so, the Contract shall clearly identify:
 - a. anticipated cost savings from reduced premiums, claims reductions and other factors;
 - b. the allocation of cost savings; and
 - c. safety responsibilities, incentives or both safety responsibilities and incentives.
10. Early Work. The RFP shall clearly identify, whenever feasible, the circumstances under which any Early Work may be authorized and undertaken for compensation prior to establishing the GMP, fixed Contract price or other maximum Contract price.

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- 11.** Subcontractor Selection. Subcontracts under the Contract are not Public Contracts within the meaning of the Code. However, the Contract must include provisions that clearly meet the requirements of ORS 279C.337(3) and other City requirements. Within the scope of ORS 279C.337(3), the CM/GC's subcontractor selection process must meet the following parameters:
- a.** Absent a written justification prepared by the CM/GC and approved by the City as more particularly provided for in this section, the CM/GC's Subcontractor selection process must be "competitive", meaning that the process should include publicly advertised subcontractor solicitations and be based on a low-bid competitive method, a low-quote competitive method for contracts in a specified dollar range agreeable to the City, or a method whereby both price and qualifications of the subcontractors are evaluated in a competitive environment, consistent with the RFP and Contract requirements;
 - b.** When the Subcontractor selection process for a particular Work package will not be "competitive" as provided for in this section, the process must meet the following requirements:
 - (1)** The CM/GC must prepare and submit a written justification to the City, explaining the project circumstances that support a non-competitive Subcontractor selection process for a particular Work package, including, but not limited to, Emergency circumstances, the CM/GC's need to utilize a key Subcontractor member of the CM/GC's project team consistent with the CM/GC's project proposal, the need to meet other specified Contract requirements, the continuation or expansion of an existing Subcontractor agreement that was awarded through a "competitive process" along with facts supporting the continuation or expansion of the Subcontractor agreement, or a "sole source" justification;
 - (2)** For a "sole source" selection of a subcontractor to proceed, the City must evaluate the written justification provided by the CM/GC and must find that critical project efficiencies require utilization of labor, services or materials from one subcontractor; that technical compatibility issues on the project require labor, services or materials from one subcontractor; that particular labor, services or materials are needed as part of an experimental or pilot project or as part of an experimental or pilot aspect of the project; or that other project circumstances exist to support the conclusion that the

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labor, services or materials are available from only one subcontractor:

- (3) The CM/GC must provide an independent cost estimate for the Work package that will be subject to the non-competitive process, if required by the City;
 - (4) The CM/GC must fully respond to any questions or comments submitted to the CM/GC by the City; and
 - (5) The City must approve the CM/GC's use of the non-competitive Subcontractor selection process prior to the CM/GC's pursuit of the non-competitive process.
 - c. A competitive selection process may be preceded by a publicly advertised subcontractor pre-qualification process, with only those subcontractors meeting the pre-qualification requirements being invited to participate in the later competitive process through which the CM/GC will select the subcontractor to perform the construction Work described in the selection process;
 - d. If the CM/GC or an Affiliate or subsidiary of the CM/GC will be included in the subcontractor selection process to perform particular construction Work on the project, the CM/GC must disclose that fact in the selection process documents and announcements. The Contract must also identify the conditions, processes and procedures the CM/GC will utilize in that competitive process in order to make the process impartial, competitive and fair, including but not limited to objective, independent review and opening of bids or proposals for the elements of Work involved, by a representative of the City or another independent third party.
12. Subcontractor Approvals and Protests. The Contract shall clearly establish whether the City must approve subcontract Awards, and to what extent, if any, the City will resolve or be involved in the resolution of protests of the CM/GC's selection of Subcontractors and suppliers. The procedures and reporting mechanisms related to the resolution of Subcontractor and supplier protests shall be established in the Contract with certainty, including the CM/GC's roles and responsibilities in this process and whether the CM/GC's subcontracting records are considered to be public records. In any event, the City must retain the right to monitor the subcontracting process in order to protect City's interests and to confirm the CM/GC's compliance with the contract and with applicable statutes, administrative rules and other legal requirements.

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- 13.** CM/GC Self-Performance or Performance by CM/GC Affiliates or Subsidiaries Without Competition. Consistent with the requirements of ORS 279C.3337(3)(c), the Contract must establish the conditions under which the CM/GC or an Affiliate or subsidiary of the CM/GC may perform elements of the Work without competition from subcontractors. In order for the CM/GC or an Affiliate or subsidiary of the CM/GC to perform elements of the construction Work without competition from subcontractors, the CM/GC must provide, or must have included in the CM/GC's RFP proposal to perform CM/GC Services for the project, a detailed proposal for performance of the Work by the CM/GC or an Affiliate or subsidiary of the CM/GC. If required by the City, the CM/GC's proposal to perform the construction Work must be supported by at least one independent cost estimate prior to the Work being included in the Contract.
- 14.** Unsuccessful Subcontractor Briefing. ORS 279C.337(3)(e) is designed to allow a subcontractor who was not selected by the CM/GC to perform a particular element of the construction Work to obtain specific information from the CM/GC, and meet with the CM/GC to discuss the subcontractor qualification and selection process involved and the CM/GC's subcontractor selection decisions, in order to better understand why the subcontractor was not successful in being selected to perform the particular element of the Work and to improve the subcontractor's substantive qualifications or the subcontractor's methods in competing for elements of the Work for the particular project involved, or for future projects. The briefing meetings may be held with individual subcontractors or, if the subcontractors agree, in groups of subcontractors, with those groups established by bid package or other designation agreed to by the City and the CM/GC. Nevertheless, the CM/GC is not obligated to provide this briefing opportunity unless the CM/GC receives a written request from a subcontractor to discuss the subcontractor qualification and selection process involved. Unless the City and the CM/GC agree on a different schedule, the CM/GC Contract should include provisions:

 - a.** Allowing a Subcontractor 60 days from the CM/GC's notice of award of a subcontract for a particular Work package to request, in writing, a post-selection meeting with the CM/GC under this section; and
 - b.** Requiring the CM/GC to set a meeting with the subcontractor under this section within 45 days of the Subcontractor's written request.
- 15.** Performance and Payment Bonds. Provided no construction Work is included with the preconstruction services to be performed under the initial form of the CM/GC Contract, no performance bond or payment bond is

required to be provided by the CM/GC at the time of Contract signing, consistent with ORS 279C.380. Once construction Work is included in the Contract and authorized by the City to be performed by the CM/GC, however, the CM/GC must provide a performance bond and payment bond in the full amount of any Early Work to be performed by the CM/GC, or the full amount of the amount of the GMP, fixed price or other maximum Contract Amount, as applicable. Furthermore, in the event additional Early Work is added to the CM/GC Contract after the initial Early Work or in the event an amendment to the CM/GC Contract is made so that the GMP, fixed price or other maximum Contract Amount must be increased, the performance bond and the payment bond must be increased in an amount equal to the additional Early Work or the increased GMP, fixed price or other maximum Contract Amount.

16. Independent Review of CM/GC Performance: Conflicts of Interest. If the City requires independent review, monitoring, inspection or other oversight of a CM/GC's performance of pre-construction Professional, Technical and Expert Services, construction Work or both pre-construction and construction Work, the City must obtain those independent review services from a Contractor independent of the CM/GC, the CM/GC's Affiliates and the CM/GC's Subcontractors, pursuant to the requirements of ORS 279C.307. However, ORS 279C.307 does not prohibit the following:
 - a. The CM/GC's performance of both pre-construction Professional, Technical and Expert Services and construction Work that are included within the definition of CM/GC Services, consistent with ORS 279C.307(2); or
 - b. The CM/GC's performance of internal quality control services, quality assurance services or other internal peer review of CM/GC work product that is intended to confirm the CM/GC's performance of the CM/GC Contract according to its terms.
17. Socio-Economic Programs. The Contract shall clearly identify conditions relating to any required socio-economic programs, including the manner in which such programs affect the CM/GC's subcontracting requirements, the enforcement mechanisms available, and the respective responsibilities of the CM/GC and City.

5.34.900 Required Contract Clauses.

(Amended by Ordinance No. 185898, effective February 20, 2013.) The City shall include in all formal Solicitations for Public Improvement Contracts all of the ORS Chapter 279C required Contract clauses, as set forth in the checklist contained in Section 5.34.300 regarding Solicitation Documents. The following series of rules provide further guidance regarding particular Public Contract provisions.

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5.34.910 Waiver of Delay Damages Against Public Policy.

Any clause in a Public Improvement Contract purporting to waive, release, or extinguish the rights of a Contractor to damages resulting from The City's unreasonable delay in performing the Contract is void and unenforceable, as against public policy. However, Contract provisions requiring notice of delay, providing for alternative dispute resolution such as arbitration (where allowable) or mediation, providing other procedures for settling Contract disputes, or providing for reasonable liquidated damages, are permissible.

5.34.915 BOLI Public Works Bond.

(Amended by Ordinance No. 184403, effective February 2, 2011.) Pursuant to ORS 279C.830(2), the specifications for every Public Works Contract shall contain a provision stating that the Contractor and every subcontractor must have a Public Works bond filed with the Construction Contractors Board before starting Work on the project, unless otherwise exempt. This bond is in addition to performance bond and payment bonds requirements.

5.34.920 Retainage.

(Amended by Ordinance Nos. 181547, 183445, 185898 and 187373, effective October 14, 2015.)

- A.** Retainage of 5 Percent. The amount to be retained from any given progress payment shall not exceed 5 percent of the payment. If the Contract Work is 50 percent completed and the Work is progressing satisfactorily, the City may, at its discretion, reduce or eliminate the retainage on the remaining progress payments. Any reduction or elimination of retainage shall be allowed only upon Written application of the Contractor, which application shall include Written approval of the Contractor's surety; except that when the Contract Work is 97.5 percent completed, the City may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the Contract Work remaining to be done. Upon receipt of a Written application by the Contractor, the City shall respond in Writing within a reasonable time. If retainage has been reduced or eliminated, the City reserves the right in protecting its interests to reinstate at any time retainage from further progress payments.
- B.** Form of Retainage. Unless the City finds in writing that accepting a bond or instrument described in 1. and 2. of this Subsection poses an extraordinary risk that is not typically associated with the bond or instrument, the City, in lieu of withholding moneys from payment, shall accept from the Contractor:
 - 1.** Bonds, securities, or other instruments that are deposited and accepted as provided in Subsection 5.34.920 D.1. of this rule; or
 - 2.** A surety bond deposited as provided in Subsection 5.34.920 D. of this rule.

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- C.** Deposit in Interest-bearing Accounts. Upon request of the Contractor, the City shall deposit cash retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, for the benefit of the City. Earnings on such account shall accrue to the Contractor. The City may determine the account into which the retainage is placed.
- D.** Alternatives to Cash Retainage. In lieu of cash retainage to be held by the City, the Contractor may select one of the following options:
- 1.** Deposit of bonds, securities and other instruments:
 - a.** The Contractor may deposit bonds, securities or other instruments with the City as set forth in Section 5.34.920 or in any bank or trust company to be held for the benefit of the City. If the City accepts the deposit, the City shall reduce the retainage in an amount equal to the value of the bonds and securities. This reduction in retainage shall be made in the progress payments made subsequent to the time the Contractor deposits the bonds and securities;
 - b.** The value of the bonds and securities shall be determined periodically by the City, in the manner described in Subsection 5.34.920 D.1.c., and the amount retained on progress payments shall be adjusted accordingly. The bonds and securities deposited by the Contractor shall be fully assigned to the City or be payable to the City on demand and shall be of a character approved by the City Treasurer and in a form approved by the City Attorney including, but not limited to, the following:
 - (1)** Bills, certificates, notes or bonds of the United States;
 - (2)** Other obligations of the United States or agencies of the United States;
 - (3)** Obligations of any corporation wholly owned by the federal government;
 - (4)** Indebtedness of the Federal National Mortgage Association;
 - (5)** General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon; or
 - (6)** Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.
 - c.** The value of bonds and securities deposited by the Contractor shall be calculated as follows:

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- (1) As to bonds or securities for which the “Bid” and “asked” prices are published on a regular basis in the Wall Street Journal or in the New York Times, the value shall be the average of the “Bid” and “asked” prices for the bonds or securities so published on (or most recently prior to) the date value is determined;
 - (2) As to bonds or securities for which the “Bid” and “asked” prices are not published in the Wall Street Journal or the New York Times, the value shall be either: the average “Bid” price for the bond or security, on the date value is determined, as established by any two nationally recognized government securities dealers (selected by the City in its sole discretion) making a market in such investments; or, the “Bid” price published by a nationally recognized pricing service;
 - (3) As to certificates of deposit and bankers acceptances, the value shall be the face amount thereof, plus accrued interest.
 - d. At the time the City determines that all requirements for the protection of the City’s interest have been fulfilled, all bonds and securities deposited as above provided shall be released to the Contractor.
 2. Execution of Escrow Agreement. The Chief Procurement Officer is authorized to execute any escrow agreement necessary to safeguard deposit of securities with the City subject to approval as to form by the City Attorney.
 3. Deposit in Interest-Bearing Accounts. Upon Written request of the Contractor, the City shall deposit any amounts withheld as retainage in an interest-bearing account in a bank, savings bank, trust company or savings association for the benefit of the City. Earnings on such account shall accrue to the Contractor but the interest shall remain in the account until the City authorizes its release. The account shall be established through the City Treasurer.

E. Recovery of Costs. If the City incurs additional costs as a result of the exercise of any of the options for retainage, the City may recover such costs from the Contractor by reduction of the final payment. As Work on the Contract progresses, the City shall, upon request, inform the Contractor of all accrued costs.

F. Additional Retainage When Certified Payroll Statements not Filed. Pursuant to ORS 279C.845(7), if a Contractor is required to file certified payroll statements and

fails to do so, the City shall retain 25 percent of any amount earned by the Contractor on a Public Works Contract until the Contractor has filed such statements with the City. The City shall pay the Contractor the amount retained under this provision within 14 days after the Contractor files the certified statements, regardless of whether a subcontractor has filed such statements.

5.34.930 Social Equity Contracting and Employment Programs.

(Amended by Ordinance No. 185898, effective February 20, 2013.) From time to time, the City may adopt programs designed to promote competition, enhance economic opportunity and stimulate hiring among all of Portland's citizens. When such programs are adopted, they shall be included or sufficiently referenced in the Solicitation and Contract Documents so that Persons desiring to enter into Contracts with the City are aware of their requirements.

5.34.940 Public Works Contracts.

(Amended by Ordinance Nos. 181547, 183445 and 185065, effective January 1, 2012.)

A. Required Contract Conditions. Every Public Works Contract must contain the following provisions:

1. City authority to pay certain unpaid claims and charge such amounts to Contractors, as set forth in ORS 279C.515A.
2. Maximum hours of labor and overtime, as set forth in ORS 279C.520(1).
3. Employer notice to employees of hours and days that employees may be required to Work, as set forth in ORS 279C.520(2).
4. Contractor required payments for certain services related to sickness or injury, as set forth in ORS 279C.530.
5. Requirement for payment of prevailing rate of wage, as set forth in ORS 279C.830(1).

B. Requirements for Specifications. The Specifications for every Public Works Contract, consisting of the procurement package (such as the Project Manual, Bid or Proposal Booklets, Request for Quotations or similar Procurement Specifications), must contain the following provisions:

1. The state prevailing rate of wage, and, if applicable, the federal prevailing rate of wage, as required by ORS 279C.830(1)(a):
 - a. physically contained within or attached to hard copies of Procurement Specifications;

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- b. included by a statement incorporating the applicable wage rate publication in the Specifications by reference; or
 - c. when the rates are available electronically or by Internet access, the rates may be incorporated into the Specifications by referring to the rates and providing adequate information on how to access them.
- 2. If both state and federal prevailing rates of wage apply, a requirement that the contractor shall pay the higher of the applicable state or federal prevailing rate of wage to all workers.

5.34.950 City Payment for Unpaid Labor or Supplies.

- A. Contract incomplete. If the Contract is still in force, the City may, in accordance with ORS 279C.515(1), pay a valid claim to the Person furnishing the labor or services, and charge the amount against payments due or to become due to the Contractor under the Contract. If the City chooses to make such a payment as provided in ORS 279C.515(1), the Contractor and the Contractor's surety shall not be relieved from liability for unpaid claims.
- B. Contract completed. If the Contract has been completed and all funds disbursed to the prime Contractor, all claims shall be referred to the Contractor's surety for resolution. The City shall not make payments to Subcontractors or suppliers for Work already paid for by the City.

5.34.960 Records Maintenance; Right to Audit Records.

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- A. Contractors and Subcontractors shall maintain all fiscal records relating to a Contract executed with the City in accordance with generally accepted accounting principles. In addition, Contractors and Subcontractors shall maintain any other records necessary to clearly document:
 - 1. Their performance. Performance includes, but is not limited to, compliance with plans and Specifications, compliance with fair contracting and employment programs, compliance with Oregon law on payment of wages and accelerated payment provisions, and any and all requirements imposed on the Contractor or Subcontractor under the Contract or subcontract;
 - 2. Any claims arising from or relating to their performance under a Public Contract;
 - 3. Any cost and pricing data; and,
 - 4. Payment to suppliers and Subcontractors.

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- B.** Such records shall be maintained for a period of six years from the date of final completion of the Contract or until the conclusion of any audit, controversy or litigation arising out of or related to a Contract, whichever is longer, unless a shorter period of time is authorized in Writing by the City.
- C.** Contractors and Subcontractors shall make all their records available to the City within the boundaries of the City of Portland, Oregon, at reasonable times and places regardless of whether litigation has been filed on any claims. If the records are not made available within the boundaries of the City, the Contractor or Subcontractor shall pay all costs for City employees, and any necessary consultants hired by the City, including travel, per diem costs, salary, and any other expenses incurred by City in sending its employees or consultants to examine, audit, inspect, and copy those records. If the Contractor elects to have such records outside these boundaries, the costs paid by the Contractor to the City for inspection, auditing, examining and copying those records are not recoverable costs in any legal proceeding.
- D.** The City and its Authorized Representatives shall be entitled to inspect, examine, copy and audit the books and records of any Contractor or Subcontractor upon request by the City for any reason, including any documents that may be placed in escrow according to any Contract requirements. The records that may be inspected and copied include financial documents of the Contractor, including tax returns and financial statements. The City will keep such documents confidential to the extent permitted by Oregon law, subject to Subsection 5.34.960 E. below.
- E.** Contractors and Subcontractors agree to disclose the records requested by the City and agree to their admission as evidence in any proceeding between the parties, including, but not limited to a court proceeding, arbitration, mediation or other alternative dispute resolution process.
- F.** In the event that the records disclose that the City is owed money or establishes that any portion of any claim made against the City is not warranted, the Contractor or Subcontractor shall pay all costs incurred by the City in conducting the audit and inspection. Such costs may be withheld from any sum due or that becomes due to the Contractor by the City.
- G.** Failure of the Contractor or Subcontractor to keep or disclose records as required may result in a finding that the Contractor or Subcontractor is not a Responsible Bidder or Proposer as provided in Subsection 5.34.610 B.

5.34.970 Right to Inspect Plant or Place of Business.

- A.** Time for Inspection. The City may, at reasonable times, inspect the part of the plant or place of business of a Contractor or any Subcontractor or supplier which is related to the performance of any Contract Awarded.

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- B.** Access to Plant or Place of Business. As a condition of submitting an Offer, Offerors agree that representatives of the City may enter a Contractor's or Subcontractor's or supplier's plant, place of business, work site or construction site during normal business hours for the following purposes:
1. To inspect and/or test supplies or services for acceptance by the City pursuant to the terms of the Bid or Proposal;
 2. To investigate in connection with an Offer's Offer, a minority business or EEO certification, or Offeror qualification.
 3. To inspect for compliance with City programs required by the Solicitation Document.
 4. To inspect for Contract compliance.
- C.** Contractual Provisions. Contracts may provide that the City may inspect supplies and services at the Contractor's or Subcontractor's or supplier's office or facility and perform tests to determine whether they conform to the Solicitation Document, or, after Award, to the Contract requirements, and are acceptable. Such inspections and tests shall be conducted in accordance with the terms of the Contract.
- D.** Procedures for Inspection, Trial Use and Testing. The City may establish operational procedures governing the inspection, testing and trial use of equipment, materials and the application of resulting information and data to Specifications or Procurements.
- E.** Conduct of Inspections and Tests:
1. Inspectors and testers. Inspections or tests shall be performed so as not to unduly delay the Work of the Contractor or Subcontractor. No change of any provision of the Specifications or the Contract may be required by the inspector or tester without Written authorization of the City, unless otherwise specified in the Solicitation Document. The presence or absence of an inspector or tester shall not relieve the Contractor or Subcontractor from any requirement of the Contract;
 2. Location. When an inspection is made in the plant or place of business of a Contractor or Subcontractor, such Contractor or Subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the inspector or tester;
 3. Time of inspection or testing. Inspection or testing of supplies and services performed at the plant or place of business of any Contractor or Subcontractor shall be performed at reasonable times during normal business hours.

5.34.980 Contract Cancellation, Contractor Termination Procedures.

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- A.** Grounds for Cancellation or Termination. The City may, at its option, cancel a Contract or terminate the Contractor's performance, if cancellation or termination is in the best interest of the City; or, for any material violation of the provisions of the Contract. Such provisions generally include, but are not limited to:
 - 1.** Standard terms and conditions included in Contracts;
 - 2.** Product or service Specifications;
 - 3.** Delivery or completion requirements; or
 - 4.** Contracted pricing and price escalation/de-escalation clauses.
- B.** The City and the Contractor may cancel the Contract at any time by mutual Written agreement.
- C.** Termination For Convenience.
 - 1.** Reasons for Termination. The City may, in its sole discretion, by a Written order or upon Written request from the Contractor, cancel the Contract or a portion thereof if any of the following occur:
 - a.** The Contractor is prevented from completing the Work for reasons beyond the control of the City; or
 - b.** The Contractor is prevented from completing the Work for reasons beyond the control of the Contractor; or
 - c.** For any reason considered by the City to be in the public interest, other than a labor dispute or any third party judicial proceeding relating to the Work filed in regards to a labor dispute. These reasons may include, but are not limited to, non-availability of materials, phenomena of nature of catastrophic proportions or intensity, executive orders of the President related to national defense, congressional, state or local acts related to funding; or
 - d.** Any third party judicial proceeding relating to the Work other than a suit or action filed in regards to a labor dispute; or
 - e.** If the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of a public improvement.

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- D.** Payment When Contract is Canceled. When the Contract, or any portion thereof, is canceled before completion of all items of Work in the Contract, payment shall be made, based on the Contract price, for the actual items of Work completed under the Contract, or by mutual agreement, for items of Work partially completed. No claim for loss of anticipated profits or overhead shall be allowed;
- E.** Responsibility for Completed Work if Contract Canceled. Cancellation of a Contract or a portion thereof shall not relieve the Contractor of responsibility for the Work completed, nor shall it relieve the surety of its obligation for any just claims arising from the Work performed.
- F.** Termination of the Contractor's Performance for Default.
 - 1.** Declaration of Default. The City may, after giving the Contractor and its surety seven (7) Days Written notice and an opportunity to cure deficient performance, terminate the Contractor's performance for any reasonable cause, including but not limited to those set forth in Subsections 5.34.980 F.1.a. to g. Upon such termination, the City may immediately take possession of the premises and of all materials, tools and appliances thereon as well as all other materials, whether on the premises or not, on which the Contractor has received partial payment. The City may finish the Work by whatever method it may deem expedient;
 - a.** If the Contractor should repeatedly refuse or fail to supply an adequate number of skilled workers or proper materials to carry on the Work as required by the Contract documents, or otherwise fail to pursue the Work in a timely manner; or
 - b.** If the Contractor should repeatedly fail to make prompt payment to Subcontractors or for material or labor; or
 - c.** If permitted by law, if the Contractor should voluntarily or involuntarily seek protection under the United States Bankruptcy Code and its Debtor in Possession or Trustee for the estate fails to assume the Contract within a reasonable time, or as provided by the Bankruptcy Court; or
 - d.** If the Contractor should make a general assignment for the benefit of the Contractor's creditors; or
 - e.** If a receiver should be appointed on account of the Contractor's insolvency; or
 - f.** If the Contractor is otherwise in material breach of any part of the Contract; or

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- g. If the Contractor should disregard laws, rules, or the instructions of the City or its Authorized Representative.
2. Required Response to Declaration of Default. If a default is declared and the Contractor's performance terminated, the Contractor or the surety shall provide the City with immediate and peaceful possession of all of the materials, tools and appliances located on the premises, as well as all other materials whether on the premises or not, on which the Contractor has received any progress payment. Further, the Contractor shall not be entitled to receive any further payment until the Work is completed. On the completion of the Work, the City shall determine the total amount of compensation the Contractor would have been entitled to receive for the Work, under the terms of the Contract, had the Contractor completed the Work. If the difference between this total amount and the sum of all amounts previously paid to the Contractor, (the unpaid balance) exceeds the expense incurred by the City in completing the Work, including expense for additional managerial and administrative services, such excess will be paid to the Contractor, with the consent of the surety;
3. Expense of Completion. The expense incurred by the City shall be as determined and certified by the City;
- Refusal to Perform. In addition to and apart from the above-mentioned right of the City to terminate the Contractor's performance, the Contract may be canceled by the City for any willful failure or refusal on the part of the Contractor and its surety to perform faithfully the Contract according to all of its terms and conditions; however, in such event neither the Contractor nor the surety shall be relieved from damages or losses suffered by the City on account of the Contractor's breach of Contract;
- Remedies Cumulative. The City may, at its discretion, avail itself of any or all of the above rights or remedies and invoke anyone of the above rights or remedies without prejudice and without precluding the City from subsequently invoking any other right or remedy set forth above, or in the Contract, or available at law or in equity;
- Notice. The City shall provide the Contractor Written notice of the grounds for Contract cancellation or Contractor termination and of its intention to cancel the Contract or terminate the Contractor's performance. If the Contractor provided a performance and payment bond, the surety shall also be provided with a copy of the notice of Contract cancellation or Contractor termination. The notice shall include:
1. The effective date of the intended cancellation or termination,

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2. The grounds for cancellation or termination, and
 3. Notice of the amount of time (if any) in which the City shall permit the Contractor to correct the failure to perform.
- J.** The Contract documents may provide Contract cancellation or Contractor termination procedures that are different from, or in addition to, those provided in Section 5.34.980. If a Contract contains a cancellation or termination clause, that clause rather than Section 5.34.980 shall determine the respective rights and responsibilities of the parties in the event of cancellation or termination.

CHAPTER 5.36 - PROPERTY CONTROL

Sections:

- 5.36.001 Surplus Property Policy.
- 5.36.010 Disposition of Surplus Property.
- 5.36.015 Disposition of Unclaimed Found Personal Property.
- 5.36.020 Sale of Buildings for Removal from City Property.
- 5.25.025 Purchase and Resale by the City of Tax-Foreclosed Property.
- 5.36.030 Loans of Personal Property Owned by City.
- 5.36.035 Lost or Stolen City Property.
- 5.36.040 Parking Meter Fund Equipment.
- 5.36.050 Use of City Automobiles for Transporting Firing Squads.
- 5.36.060 Use of Water Bureau Property by Bureau of Shops.
- 5.36.080 Zoological Specimens.
- 5.36.090 Gifts and Loans of Property.
- 5.36.100 Use of City Property for Elections.
- 5.36.110 Use of City Property for Air Quality Measuring Stations.
- 5.36.115 Designation of "Persons In Charge."

5.36.001 Surplus Property Policy.

(Replaced by Ordinance No. 179813, effective January 6, 2006.) It is the policy of the City to dispose of surplus property in the most efficient and cost-effective manner possible in accordance with the guidelines in this Chapter and any related administrative rules or policies. Temporary, full-time and part-time City employees, persons acting on the employee's behalf, and any business with which a City employee is associated, as defined by Chapter 5.33, may not purchase or receive surplus property unless offered for public sale.

5.36.010 Disposition of Surplus Property.

(Replaced by Ordinance No. 179813; Amended by Ordinance Nos. 181483 and 187165, effective July 10, 2015.)

A. Definition:

- 1.** "Surplus Property" means: tangible personal property owned by the City, including equipment and materials, which is no longer needed by the City Bureau or Office that owns it. Examples include inventoried and non-inventoried office furniture, specialized equipment, and items that are obsolete or overstocked.

- B.** City Capital Asset Disposal Documentation: The bureau initiating the transfer, donation, sale, or disposal of surplus property that has been inventoried as a capital asset, shall comply with City Accounting Administrative Rules regarding disposal of capital assets, which establish minimum standards for the disposal of capital assets and subsequent reporting in the financial records.

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- C.** City Assets Procured with the Proceeds of Tax-Exempt Bonds: The bureau initiating the transfer, donation, sale, or disposal of surplus property that was procured with the proceeds of tax-exempt bonds should contact the City's debt management office prior to disposal of the property to determine what, if any, limitations exist on the disposal of such property and the use of any revenue derived from such disposal.
- D.** Usable Surplus Property: Whenever a Commissioner-In-Charge, or designee, determines that surplus property exists, the property may be disposed of in one of the following ways:

 - 1.** Inter-Bureau Transfer or Sale - Surplus property may be transferred or sold to another City bureau upon written request from the director of the bureau that has a use for it.
 - 2.** Negotiated Direct Sale - Surplus property with an individual or aggregate current market value under \$5,000 may be sold as follows:

 - a.** The bureau obtains three written or verbal price quotations prior to final sale;
 - b.** The bureau negotiating the sale keeps written records of the price quotations, the amounts, and if necessary, the reason why three quotations could not be obtained;
 - c.** The bureau sells the surplus property to the highest bidder meeting all conditions of the sale; and
 - d.** The bureau applies the proceeds of the sale to its property disposition expenses in the following order: storage, transportation, publication fees and other costs of safekeeping and sale, and then to the City fund owning the property at the time of sale unless otherwise directed by the City Council.
 - 3.** Public Sale - The City Council may authorize the sale of surplus property through an external auction service. If the City does not have a contract with an external auction service, the bureau may conduct a public auction subject to the following conditions:

 - a.** The bureau shall give notice of such public auction at least once within ten days prior to the date of the auction in a newspaper of general circulation published in the City; such notice shall give the time and place of the auction;
 - b.** The bureau shall sell the surplus property to the highest bidder meeting all conditions of the sale; and

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- c. The bureau applies the proceeds of the sale to its property disposition expenses in the following order: storage, transportation, publication fees and other costs of safekeeping and sale, and then to the City fund owning the property at the time of sale unless otherwise directed by the City Council.
- Public Sale through State - Surplus property may be sold pursuant to an established intergovernmental agreement with the State of Oregon Surplus Property Program. When surplus property is sent to the State Surplus Property Program for sale on behalf of the City, a minimum sale price shall first be established when appropriate. Any revenue received from the sale of surplus property through the State Surplus Program shall be credited to the bureau that owned the surplus property.
- Donation - Surplus property may be donated to the State of Oregon Surplus Property Program, other public agencies, or to charitable organizations certified under the Internal Revenue Code Section 501(c)(3) as follows:
- a. Donations with an individual or aggregate current market value of \$5,000 or less must be approved by the Commissioner-In-Charge, or designee, of the bureau that owns the property.
 - b. Donations with an individual or aggregate current market value of more than \$5,000 must be approved by the City Council, by ordinance.
 - c. The City shall provide the recipient of donated property with appropriate documentation transferring ownership of the property to the recipient. The recipient shall agree to hold harmless, defend and indemnify the City of Portland, its officers, agents and employees from any claims, demands, actions and suits (including attorney fees) arising from its use or receipt of the surplus property.
 - d. The Director of the Bureau or Office that owned the surplus property shall complete and retain a donation form for each donation made during the fiscal year and submit all forms to the City Auditor at the end of the fiscal year. The donation form shall contain:
 - (1) A description of the surplus property donated; and,
 - (2) The name of the recipient of the surplus property; and,
 - (3) The originating bureau; and,

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- (4)** The estimated market value of the surplus property at the time of donation.
- E.** Unusable Surplus Property: A Commissioner-In-Charge, or designee, may dispose of surplus property if it is determined that the surplus property is unusable, inoperable or not reasonably repairable, hazardous, or is of insufficient value to warrant a transfer, sale, or donation as prescribed in this Section. In addition to disposing of unusable property in accordance with existing federal, state, or local disposal regulations, every effort shall be made to recycle or otherwise dispose of property in an environmentally sound manner.
- F.** Exempt Property. The following surplus property, whether usable or unusable, shall not be transferred, donated, sold, or otherwise disposed of without Council approval or as otherwise provided by City code, policy, or procedure.
- 1.** Vehicles or Vehicle Equipment.
 - 2.** Corporately-Owned Communications Equipment.
 - 3.** Contraband.
 - 4.** Firearms.
 - 5.** Intangibles.
 - 6.** Hazardous items.
 - 7.** Items of historical value.
 - 8.** Any other item deemed appropriate for exemption from this Section by the Commissioner-In-Charge of the bureau that controls the property.
- G.** Vehicles and Vehicle Equipment: The Manager of OMF Business Operations Division is authorized to dispose of vehicles and related equipment when the vehicle is no longer needed by the City. The manner of disposal shall be the most efficient and cost-effective as determined by the Manager. This includes, but is not limited to, competitive written bids, public auction, negotiated sales, or exchange. Any and all revenue, less costs of sale, received from the sale of City-owned vehicles or vehicular equipment shall be credited to the replacement account for the originating bureau.
- H.** Corporately-Owned Communications Equipment: The Chief Technology Officer is authorized to dispose of corporately-owned communications equipment maintained by the Bureau of Technology Services when such equipment is no longer needed by the City. The manner of disposal shall be the most efficient and cost-effective as determined by the Director. This includes, but is not limited to,

competitive written bids, public auction, negotiated sales, or exchange. Any and all revenue, less costs of sale, received from the sale of corporately-owned communications equipment shall be credited to the replacement account for the originating bureau.

- I. Artificial Turf: The Chief Administrative Officer (CAO) is authorized to donate or arrange for recycling of artificial turf from City-owned spectator facilities when such turf no longer meets venue performance standards. The CAO shall comply with the provisions of this Section for all other means of disposing of the artificial turf.

5.36.011 Donations of Surplus Personal Property.

(Repealed by Ordinance No. 179813, effective January 6, 2006.)

5.36.015 Disposition of Unclaimed and Found Personal Property.

(Added by Ordinance No. 153293; amended by Ordinance No. 167825, effective June 22, 1994.)

- A. Unclaimed Property: Unless directed otherwise by State law or a specific provision of this Code, all tangible personal property not owned by the City, that is under the control of a bureau and not reclaimed after notice has been sent, by the bureau in possession, to all parties who reasonably appear to have an interest in such property, of their right to claim such property within a specified period of time, shall become the property of the City, designated as surplus property, and, shall be disposed of as provided by this Chapter.
- B. Found Property: All tangible personal property not owned by the City that is found by a bureau member and turned into the bureau, shall not become the property of the City until the requirements of the state law regarding the rights and duties of finders and owners of lost property are satisfied. After the requirements of State law are satisfied, found property shall be retained by the bureau which found it if the property is usable by the bureau. If the property is not usable by the bureau which found it, the bureau shall dispose of the property as surplus property as provided by this Chapter.

5.36.020 Sale of Buildings for Removal from City Property.

Whenever a Commissioner determines that a building or other structure assigned to a bureau under his control must be removed, he may authorize the Purchasing Agent to sell such building or other structure for removal by the purchaser. The Purchasing Agent shall use the method of sale which he finds most in the public interest. The Purchasing Agent shall specify terms and conditions of sale, except that such terms shall not include credit, and he shall fix the amount of bond or cash deposit to be given by the purchaser to guarantee removal of the building or structure and clearance of debris from the premises.

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5.36.025 Purchase and Resale by the City of Tax-Foreclosed Property.

(Added by Ordinance No. 162023; Amended by Ordinance Nos. 179813 and 181483, effective January 18, 2008.)

- A.** The provisions of this Section apply to property which meets each of the following conditions:
 - 1.** Property that has outstanding City liens;
 - 2.** Property that has been foreclosed by a county for collection of delinquent taxes; and
 - 3.** Property that has been purchased by a bidder at a county sheriff's sale.
- B.** The OMF Business Operations Division may purchase and sell property described in this Section without public notice or sale provided:
 - 1.** The Council adopts an ordinance authorizing the OMF Business Operations Division to purchase property. The ordinance shall include a legal property description; the total amount of outstanding taxes and costs; the total amount of outstanding city liens, accrued interest, penalties and costs; and the source of funds to be used to purchase the property;
 - 2.** Property will be sold to the successful bidder at a county sheriff's sale; and
 - 3.** The Council adopts an ordinance authorizing the property sale and setting forth sale terms. The ordinance shall include the name and address of the successful bidder at the county sheriff's sale and the terms of the City sale. The Council may adopt sale terms and provisions as a part of the ordinance authorizing the purchase of property.
- C.** Sale contracts and other legal documents related to the sale shall be reviewed and approved by the City Attorney prior to the sale. Upon approval as to form by the City Attorney, the Mayor and City Auditor shall be authorized to sign a deed transferring title to the property.
- D.** Proceeds from the sale shall be deposited in the City fund which incurred the expense of purchasing the property from the county unless otherwise directed by the Council in the ordinance authorizing the purchase and sale of the property.
- E.** The OMF Business Operations Division is authorized to adopt administrative rules and procedures necessary to carry out the provisions of this Section.

5.36.030 Loans of Personal Property Owned by the City.

(Amended by Ordinance No. 180917, effective May 26, 2007.) Each Commissioner and each officer or employee of the City is and shall be hereby prohibited from loaning any

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personal property owned by the City to any other person either gratuitously or for a consideration, without the consent of the Council expressed by ordinance. However, in the event of extraordinary circumstances involving hazard to the general public occasioned by fire, flood, earthquake, or other public disaster, the Commissioner of any department may permit equipment in his department to be used without the consent of the Council during such extraordinary circumstances upon the written order of the Commissioner; provided that the Chief of Portland Fire & Rescue may lend or rent to the owner or operator of property damaged by fire, flood, earthquake or other public disaster such equipment of Portland Fire & Rescue as may be temporarily needed to prevent further damage to such property, and such owner or operator so borrowing or renting such equipment, shall agree with the City:

- A. To hold the City, its officers, agents and employees harmless for any loss or damage caused to the person or property of third persons while such equipment is in the possession of such owner or operator;
- B. To waive any claim for damage to the person or property of such owner or operator arising in whole or in part from the use of such equipment; and
- C. To return such equipment to Portland Fire & Rescue in as good condition as when received, reasonable wear and tear excepted. Such agreement shall be in writing on forms approved by the City Attorney and shall be filed with the Auditor of the City. Any rentals collected by Portland Fire & Rescue under such agreements shall be transmitted by Portland Fire & Rescue to the City Treasurer within 24 hours after receipt by the Bureau, the rentals to be credited to the General Fund.

5.36.035 Lost or Stolen City Property.

(Added by Ordinance No. 151849; effective June 25, 1981.) Any City employee charged with the care or having custody of any City property which is lost or stolen shall immediately, upon discovery that such property has been lost or stolen, report such loss or theft in writing to his bureau or division head. The bureau or division head shall upon receipt of such report, immediately notify the Accounting Division in writing of such loss or theft. The Accounting Division shall make such investigation and report and recommendation as may be deemed appropriate.

5.36.040 Parking Meter Fund Equipment.

All vehicles, equipment, and other things heretofore purchased or which may be purchased in the future from the Parking Meter Fund for the use of any bureau having service to perform in connection therewith, are and shall be assigned to the bureau where used. They shall be inventoried in connection with and as a part of the vehicles, articles, and equipment of such bureau.

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5.36.050 Use of City Automobiles for Transporting Firing Squads.

The Commissioner In Charge of any bureau or department having an automobile available shall have the authority to make use of the same in transporting firing squads for veteran's funerals.

5.36.060 Use of Water Bureau Property by Bureau of Shops.

The Bureau of Shops shall have the use of the following described property owned by the Bureau of Water:

Lots 1, 2, 3, 4, 10, 11, and the west 40.92 feet of Lot 14; also that portion of Lot 5 lying west of a line drawn from the southeast corner to the northwest corner of said Lot 5; also a portion of Woodward Avenue now vacated, more particularly described as follows:

Beginning at a point in the north line of Lot 14, Water Bureau Addition, said point being north 73 degrees 35'45" west a distance of 26.19 feet from the southeast corner of said Lot 5; thence north 73 degrees 35'45" west 29.91 feet; thence south 89 degrees 44'30" west 92.29 feet to the northwest corner of Lot 10; thence north 0 degrees 15'30" west 50 feet to the southwest corner of Lot 4; thence north 89 degrees 44'30" east 80 feet to the southeast corner of Lot 4; thence south 73 degrees 35'45" east 40 feet to the southeast corner of Lot 5; thence to the point of beginning, all in Water Bureau Addition, in the City of Portland, Multnomah County, State of Oregon, according to the duly recorded plat thereof on file in the office of the clerk of said county and state.

The General Fund shall pay to the Bureau of Water the sum of \$1 per year for the use of such property and the Bureau of Shops shall have the right to construct a building on such real property and maintain the same.

5.36.070 Equipment Pool Rotary Account.

(Repealed by Ordinance No. 182389, effective January 2, 2009.)

5.36.080 Zoological Specimens.

The Director of the City Zoo be, and he hereby is, invested with the authority to accept for and on behalf of the City such gifts and donations of zoological specimens hereafter tendered as in his judgment will be beneficial to the Zoo and of interest to the public; all such gifts and donations and the acceptance thereof to be in writing, signed by the giver or donor and by the Director of the Zoo, substantially as shown in Exhibit "A" hereto attached and by reference made a part hereof. The past actions of the Director as respects the authority herein given, are hereby ratified and adopted.

Exhibit "A"
PORTLAND ZOOLOGICAL PARK
Zoological Specimen Release

IN CONSIDERATION OF THE CITY'S ACCEPTANCE OF THE SPECIMEN HEREIN DESCRIBED, I HEREBY GIVE AND DONATE TO THE CITY OF PORTLAND, FOR THE PURPOSES OF THE MUNICIPAL ZOO, THE FOLLOWING ANIMAL:

Species. Sex. Age.
Physical Condition

How Long in Possession
Where Obtained
.
Special Remarks.
.
.
AND I HEREBY RELINQUISH ALL CLAIM TO SAID SPECIMEN AND/OR ITS
PROGENY:
Signed
Address
Date
Accepted for the Zoo by:
Signed
Date
Object Number

5.36.090 Gifts and Loans of Property.

- A. Whenever any real or personal property or the use thereof shall be offered to the City by way of donation, gift, grant, lease, loan or any other manner made available to the City by any person, firm, or corporation for the purpose of bestowing a gift or benefit upon the City, the Mayor hereby is authorized to accept any and all such real or personal property or the use thereof. The Mayor also hereby is authorized to execute any necessary agreement or document and to agree to any reasonable terms and conditions for the gift, grant, lease, loan or other use of such real or personal property. Provided, however, that any such grant, lease or loan by which the City shall be obligated in an amount exceeding \$250 shall first be approved by the Council by special ordinance.

- B. It shall be the duty of all bureau chiefs to promptly report to the Commissioner In Charge, the receipt of any gift, contribution, donation or other use of personal property from any person, firm or corporation for and on behalf of the City so that the Commissioner may cause such property to be promptly included in the City inventory.

5.36.100 Use of City Property for Elections.

The Commissioner In Charge of any property or premises of the City hereby is authorized to permit the use of such premises or facilities as polling places for any election held by the State, county or any municipal corporation.

5.36.110 Use of City Property for Air Quality Measuring Stations.

The Commissioner In Charge of any particular parcel of real property owned by the City is hereby authorized to grant permission in writing to any governmental body to install on said real property on a temporary basis an air quality measuring station; provided, however,

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that no such written permission shall be granted unless and until the requesting governmental body has stated in writing that the temporary installation will be accomplished without injury or damage to the City property and that said governmental body will reimburse City for all costs or expenses to City incident to the installation.

5.36.115 Designation of “Persons In Charge” for Purposes of Excluding Persons From City Property.

(Added by Ordinance No. 161538, effective February 4, 1989.)

- A.** For purposes of ordering persons to leave City property, each Commissioner In Charge is authorized to designate persons in charge of City property within that Commissioner’s assigned bureaus and departments or to which that Commissioner otherwise has authority. The designation shall be made in writing, and any person so designated shall be a “person in charge” as that term is defined in ORS 164.205(5) until the designation is removed by the Commissioner In Charge or the designated person ceases to be an employee or officer of the City of Portland.
- B.** City elected officials and the administrator of each City bureau shall advise the Commissioner In Charge on the selection of individuals to be designated as “persons in charge” of City property, and shall advise the Commissioner In Charge of the City property over which such individuals exercise control. They shall also advise the Commissioner In Charge when the list of designated “persons in charge” is in need of amendment.
- C.** The Commissioner In Charge shall maintain a list of all persons who have been designated as “persons in charge” of City property. Upon request, the City shall provide a copy of the list to the District Attorneys of Multnomah, Clackamas and Washington counties.
- D.** For purposes of this Section, “City property” shall include all real property either owned by the City or in which the City has a property interest.

**CHAPTER 5.40 - DEMANDS AND
DISBURSEMENTS**

Sections:

- 5.40.010 Drawing Checks in Payments of Claims.
- 5.40.020 Certain Demands to be Submitted to Council.
- 5.40.030 Appropriation to be Charged for All Demands.
- 5.40.040 Requisitions Required.
- 5.40.070 Funds Held for Benefit of Police Contributions Committee.
- 5.40.080 Requisition of Funds for Purchasing Police Evidence.

5.40.010 Drawing Checks in Payments of Claims.

(Amended by Ordinance Nos. 139226 and 173369, effective May 12, 1999.) The Mayor and the Auditor shall have the authority to draw checks on City funds upon approved requisition, duly executed contract, or order of the Council when the Auditor has determined that payment is legally due and payable.

5.40.020 Certain Demands to be Submitted to Council.

(Amended by Ordinance No. 173369, effective May 12, 1999.) All demands for expenses of litigation, damages, relief and other demands of like character, except as hereinafter provided, shall be examined by the Auditor and submitted to the Council by him with any recommendations, explanations or information he may deem pertinent thereto. When the demands are approved by the Council, checks shall be drawn in payment thereof.

5.40.030 Appropriation to be Charged for All Demands.

The Auditor hereby is directed to charge all demands for the furnishing of supplies, materials, equipment, etc. to appropriations therefor.

5.40.040 Requisitions Required.

Before any obligation is incurred under the provisions of this Chapter, except emergency purchases as provided in Section 5.32.030 and except specific payments directed by the Council, a requisition properly signed shall be presented to the Auditor in order that he may determine that the proposed expenditure is budgeted and that appropriation is available therefor. Each requisition shall state in detail the articles or services to be purchased and appropriation accounts proposed to be charged.

5.40.050 Payment of the City's Contribution to the Public Employees Retirement Board and the State Industrial Accident Commission.

(Repealed by Ordinance No. 139226, effective January 20, 1975.)

5.40.070 Funds Held for Benefit of Police Contributions Committee.

No money held by the City Treasurer in the Trustee Fund for the benefit of Police Contributions Committee shall be disbursed by him except on written request of the Chief of Police who shall first be advised in writing by the Secretary of the Affirmative Action of the above-named Committee to pay a sum certain to a particular named donee. The

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Treasurer shall, not later than January 15th of each year, furnish to the Chief of Police a statement showing the amounts received by him for the benefit of the Police Contributions Committee and the amounts paid out by him, if any, and to whom paid. The Chief of Police shall immediately advise the Committee of the contents of the report of the City Treasurer. The Committee shall, not later than January 31st of each year, advise each donor as to the portion of his donation that is tax deductible.

5.40.080 Requisition of Funds for Purchasing Police Evidence.

The Chief of Police is hereby authorized to requisition funds in advance of expenditure for the purchase of evidence against the illegal sale of liquor, gambling or other violations of laws. Each advancement shall be on a memorandum requisition approved by the Commissioner In Charge of the Bureau of Police and charged to the appropriation of the Bureau of Police for evidence procurement. The requisition shall be accompanied by an affidavit signed by the Chief of Police which shall state that the amount of cash to be advanced will be used only for the purpose of evidence against the illegal sale of liquor, gambling or other violations of laws. There shall be no further formal accountability for such funds beyond the affidavit. However, the Chief of Police shall maintain sufficient confidential records to be able to provide a confidential accounting to the Commissioner In Charge on his request.

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**CHAPTER 5.44 - EXECUTION OF
CONTRACTS AND BONDS**

(Repealed by Ordinance Nos. 174509 and 174904,
effective January 1, 2001.)

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**CHAPTER 5.48 - CHARGES FOR SERVICES
PERFORMED**

Sections:

- 5.48.010 Authorization.
- 5.48.020 Application and Deposit.
- 5.48.030 Accounting Procedure.
- 5.48.035 Bureau of Emergency Communications - Recordings - Rates.
- 5.48.036 Office of City Attorney and OMF Risk Management Division - Records - Rates.
- 5.48.040 Collection of Money Due the City.
- 5.48.050 Improvements Without Assessment.
- 5.48.060 Interdepartmental Services Authorized.
- 5.48.070 Accounting Procedure for Interdepartmental Services.

5.48.010 Authorization.

Each Commissioner shall have authority to direct his subordinate employees to perform duly authorized services for private persons or other governmental agencies for all of which services a reasonable charge shall be made as provided in Section 5.48.030.

5.48.020 Application and Deposit.

Before any department or bureau of the City shall perform any service for a private person or other governmental agency, it shall be the duty of the department or bureau to obtain wherever practicable an application in writing requesting such service. A deposit may be required when in the judgment of the head of the department or bureau it shall be deemed necessary to guarantee the payment of the service to be performed. The application shall be retained by the department or bureau performing such services.

5.48.030 Accounting Procedure.

(Amended by Ordinance Nos. 132116, 137528, 138042 and 182377, effective December 26, 2008.) Unless the charge for services performed for private persons or governmental agencies other than the City is specifically fixed by the Charter or by action of the Council, all such services shall be charged for on the basis of actual costs, which shall be computed as follows:

A. Labor.

1. The amount for salaries and wages shall be either:

- a.** Actual time computed at the applicable hourly payroll rate when the services being provided require less than the full time of an employee on an annual basis, or
- b.** Annual salary including vacation, sick leave, holiday and other leave with pay when the services being provided require the full time of an employee on an annual basis.

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2. To the amount for salaries and wages computed under paragraph A.1.a. above, add for the indirect cost of vacation, sick leave, holiday and other leave with pay and for the cost of disability, retirement and insurance as follows:
 - a. For other than sworn police personnel add 39 percent of salaries and wages.
 - b. For sworn police personnel add 42 percent of salaries and wages for labor provided at straight time. Add only 15 percent for labor provided at overtime rates.
3. To the amount for salaries and wages computed under paragraph A.1.b. above, add only for disability, retirement and insurance as follows:
 - a. For other than sworn police personnel add 21 percent of salaries and wages.
 - b. For sworn police personnel add 23 percent of salaries and wages provided at straight time only.
- B. Materials consumed shall be at actual cost including delivery to the City. The Bureau of Water Works shall charge an additional 5 percent for stock handling.
- C. Services from other City bureaus shall be at actual cost determined in accordance with Section 5.48.070.
- D. Services provided from non-City sources shall be at actual cost to the City.
- E. Motorized equipment, trailers, etc., shall be actual time at rates for each particular class of equipment established by the Commissioner In Charge.

5.48.035 Bureau of Emergency Communications-Recordings-Rates.

(Added by Ordinance No. 143377; effective March 30, 1977.) The Bureau of Emergency Communications is authorized to charge the following rates or the rate established by a court in a particular case for services rendered in locating and delivering particular segments of tape recordings for court use:

- A. Labor.
 1. Ten dollars per hour (straight time) for staff time expended for salaries and wages. After FY 1976-77 this rate shall be set equal to the 4-year rate for a police sergeant as approved in the official compensation plan of the City of Portland.

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2. Plus 42 percent of the foregoing straight time amount or 15 percent of the foregoing for labor provided at overtime rates for indirect costs for the vacation, sick leave, holiday and leave with pay, and for the cost of disability, retirement and insurance.

B. Material Costs.

1. In addition to the foregoing amount, there shall be charged for material costs, \$6.22 per hour for the time City's recording equipment is in use.

C. General Overhead.

1. To the total of the above there shall be added 10 percent for general overhead.

5.48.036 Office of City Attorney and OMF Risk Management Division - Records - Rates.

(Added by Ordinance No. 151447; Amended by Ordinance No. 181483, effective January 18, 2008.) In making public records available for inspection by members of the public and in providing the members of the public with copies thereof, the office of City Attorney and the OMF Risk Management Division shall charge therefor on the basis of actual costs of making available and copying the records, as set out in Section 5.48.030. This Section shall not apply to those cases in which the charge would be \$5 or less, in which cases the charge shall be the amount set out in Section 5.60.020.

5.48.040 Collection of Money Due the City.

(Amended by Ordinance Nos. 147159, 149198, 165955 and 181483; effective January 18, 2008.) The Office of Management and Finance of the City shall bill for all services performed for other persons by the City and for all City accounts receivable, contracts receivable and grants receivable except for bills and statements regularly sent by the Bureau of Water Works, the City Treasurer, the OMF Risk Management Division, the Assessment Division of the City Auditor's Office and payments made under leases managed by the OMF Business Operations Division.

It shall be the duty of the officers of various departments, bureaus and divisions of the City to furnish the Office of Management and Finance, daily, a list or journal of all charges that are to be billed, together with supporting data.

If payment of a City bill sent by the Office of Management and Finance is not received within 30 days after the date of billing, it shall be delinquent. It shall be the duty of the Office of Management and Finance to pursue collection of these delinquent accounts using appropriate collection methods. When collection efforts do not result in payment, invoices will be forwarded to the City Attorney for collection, or in appropriate cases to the City Auditor's Office to submit to the Council an ordinance assessing the unpaid bill upon property chargeable therewith. The Director of the Bureau of Administrative Services may select delinquent accounts to refer to a collection agency if the director deems such referral appropriate.

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Interest of 1 percent per month shall be charged on all bills which remain unpaid for 30 days or more after the invoice billing date. Interest shall be computed from the invoice date and compounded monthly.

The Director of the Bureau of Administrative Services may add a rebill charge to delinquent accounts. The rebill charge shall be the greater of \$5.00 or 25 percent of the amount which is delinquent, up to a maximum charge of \$25.00. The rebill charge may be reassessed every 60 days, until the account is paid, assessed, canceled or waived.

The Director of the Bureau of Administrative Services may offer an early payment incentive discount of up to 2 percent on any or all invoices paid within 10 days of the billing date.

5.48.050 Improvements Without Assessment.

(Amended by Ordinance No. 144020; effective July 11, 1977.)

A. Whenever the City is requested to construct an improvement without using assessment procedures, and the improvement is to be constructed under contract in the name of the City, the person or agency submitting the request shall make an advance deposit into the Trustee Fund to protect the City against loss on account of obligations to be assumed in connection with the improvement. The advance deposit shall cover the following items:

1. Estimated amount of the contract for the improvement;
2. A fee for engineering and superintending equal to the engineer's estimate of the cost of providing such services. Use accounting procedure 5.48.030.
3. Overhead of City in advertising for bids, preparing the contract, disbursing funds, etc., at 1/2 percent of the estimated contract amount with a minimum of \$100.

Additional deposits may be required by the Commissioner In Charge at any time he may deem necessary to protect the City.

B. Advertising for bids and executing contract shall be authorized only by the City Council. In no event shall a contract be awarded for more than 93 percent of the funds on deposit.

C. The deposited funds shall be disbursed by the City Treasurer on order of the Commissioner In Charge of the improvement project and after approval by the City Auditor. Disbursements shall be made as follows:

1. Contract payments shall be paid directly to the contractor;
2. Engineering fees and overhead shall be paid to the appropriate fund as revenue after the final cost of the contract has been determined.

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3. Prior to the issuance of the certificate of completion by the City Engineer the fees charged to the permittee will be adjusted to agree with the actual costs of services as recorded by the City Engineer. The remaining balance, if any, after payment of all costs shall be returned to the permittee. If additional funds are required of the permittee, they shall be paid prior to the issuance of the certificate of completion.

5.48.060 Interdepartmental Services Authorized.

(Amended by Ordinance No. 182377, effective December 26, 2008.) Each Commissioner shall have power and authority, in the direction of activities of their department, to use the officers, employees, material, and equipment in different bureaus or divisions of such department whenever in their judgment the most efficient and economical administration of the affairs of their department requires. Each Commissioner shall also have authority to direct their subordinate employees to perform duly authorized services for other bureaus or departments. The appropriations carrying the cost of such services shall be reimbursed by calculating the cost of such services.

5.48.070 Accounting Procedure for Interdepartmental Services.

(Amended by Ordinance No. 182377, effective December 26, 2008.) Unless a specific charge for interdepartmental services is fixed, reduced or waived by the Council, through ordinance or policy, all such services shall be charged on the same basis as work performed for private persons as provided in Section 5.48.030, except that stock handling costs under Subsection 5.48.030 B. shall not be added.

CHAPTER 5.50 - COLLECTIONS SECTION

(Chapter added by Ordinance No. 147159, effective
February 1, 1979.)

Sections:

- 5.50.010 Collections Section.
- 5.50.020 Compromise Authorization.
- 5.50.030 Money Collected.

5.50.010 Collections Section.

(Amended by Ordinance No. 181483, effective January 18, 2008.)

- A.** A Collections Section shall be established within the OMF Risk Management Division. This Section shall be responsible for the investigation, billing, collection and compromise of accounts receivable generated by losses suffered by the City including, but not limited to, vehicle accidents, street light and traffic accidents, property damage for vandalism or negligence and theft, and claims by the City for services rendered without a formal contract including, but not limited to property board ups, but not any claim for which the City may impose a lien. If necessary, the Collections Section may assign individual accounts to outside collection agencies. This Section shall also be responsible for gathering cumulative data necessary for establishing methods to remove or reduce the causes of such losses in the future.
- B.** The bureau sustaining the loss or damage shall send a report to the Collections Section within 2 working days from the date of loss or damage. The bureau shall supply all information relating to the loss to the Collections Section and shall cooperate with and assist the Collections Section in the investigation and collection of such loss or damage.
- C.** The Collections Section shall recommend that the City Attorney institute suit in appropriate cases. The City Attorney shall institute legal proceedings for the City in any court or tribunal upon direction of the Council or with the approval of the Commissioner of Finance and Administration and for good cause shown.
- D.** Nothing in this Chapter shall be applicable to accounts receivable arising under any contract.

5.50.020 Compromise Authorization.

The Collections Section with the approval of the Commissioner of Finance and Administration is authorized and directed to effect compromises in all cases where in the judgment of the collections Section, substantial justice can thus be achieved. These compromises are authorized in all cases involving an original claim of \$5,000 or less.

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Where the amount of the original claim is greater than \$5,000 but less than \$10,000, the Collections Section with the approval of the Commissioner of Finance and Administration is authorized to accept compromises which provide for payment to the City of not less than 50 percent of the amount of the original claim. Where the amount of the original claim is greater than \$10,000, the Collections Section with the approval of the Commissioner of Finance and Administration is authorized to effect compromises which provide for payment to the City of not less than 75 percent of the original claim. Where the amount of the original claim is greater than \$5,000, lesser amounts than herein specified may be accepted in compromise only with Council approval. The Collections Section with the approval of the Commissioner of Finance and Administration is authorized to cancel accounts receivable invoices of under \$5,000 in amount or accept promissory notes or confessions of judgment where in the judgment of the Collections Section, substantial justice can thus be achieved.

All compromises shall be in writing utilizing forms approved by the City Attorney.

5.50.030 Money Collected.

All monies collected by the Collections Section will be credited to the appropriate City fund less a service charge of 15 percent for all claims for damages to its property against any third party tort-feasors arising out of an accident or incident. A 25 percent service charge will be required if necessary to assign to an outside collection agency. This service charge will be credited to the Insurance and Claims Fund. Financial records of amounts recovered will be cumulated and maintained by the Collections Section indicating the bureau and fund for which such amounts are recovered.

CHAPTER 5.52 - PETTY CASH AND CHECKS

(Chapter amended by Ordinance No. 173369,
effective May 12, 1999.)

Sections:

- 5.52.010 Petty Cash and Change Accounts.
- 5.52.020 Cancellation of Checks and Issue of in Lieu Checks.
- 5.52.030 Cancellation of City Assessments on Mortgage records.
- 5.52.040 When Checks Are to Be Canceled.
- 5.52.050 Drawing Checks on Charter Appropriations.

5.52.010 Petty Cash and Change Accounts.

(Amended by Ordinance Nos. 135063, 138943, 141163, 146673, 152320, 162106; 169321 and 177676, effective July 9 2003.)

- A.** Council by ordinance has authorized various offices of the City government to have petty cash and change funds. The Chief Administrative Officer shall approve establishment, closure, and administer changes to these funds, effective July 9, 2003. Petty cash accounts shall be for incidental expenditures and change cash accounts shall be for the purpose of making change at authorized locations and activities.
- B.** The amount of each purchase from petty cash accounts shall not exceed \$100 unless approved in writing by the Bureau Manager.
- C.** A petty cash account exceeding \$1,000 may be maintained as a checking account designated "City of Portland, Bureau of _____, (Title of Account.)" Such accounts shall be the responsibility of the individual bureaus/agencies, which will:
 - 1.** Authorize in writing three signatures for each account.
 - 2.** Require two signatures on each check.
 - 3.** Establish a dollar limit for each check.
 - 4.** Establish a control system for the account.
 - 5.** Provide for audit procedures.

The City Treasurer shall provide technical assistance to the bureaus/agencies in the establishment of such accounts.

- D.** Reimbursement from petty cash accounts may be made to employees for the purchase of safety shoes and/or rain gear as provided in labor contracts with the

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City. Such reimbursements for these specific purchases shall be restricted to the \$100 limitation for petty cash purposes.

5.52.020 Cancellation of Checks and Issue of in Lieu Checks.

(Amended by Ordinance No. 173369, effective May 12, 1999). The Mayor and Auditor shall have the authority to cancel any City check issued for the payment of money and to issue in lieu thereof one or more checks; provided, that in lieu checks shall be drawn against the same fund and shall not exceed in the aggregate the amount of the check cancelled; and provided further, that such in lieu checks shall state on the face thereof the numbers and date of the check in lieu of which they are issued. In the event that a check is claimed to have been lost, stolen, or destroyed the payee or holder shall promptly give notice to the City Treasurer to stop payment and file with the Auditor a request for a new check which shall include a statement of facts concerning the claimed loss, theft or destruction of the check. The Mayor and the Auditor shall have the authority to issue a new check in place of the lost check; provided, however, that before delivery of the substitute check, the Auditor shall require from the payee a document relieving the City, its officers and employees from all harm in connection with the drawing and delivery of the substitute check, which document shall be approved as to form by the City Attorney.

5.52.030 Cancellation of City assessments on Mortgage Records.

The City Auditor is hereby authorized and empowered to cancel when paid, any and all assessments which have been or may be entered in the mortgage records for the cost of constructing sewers, drains, and all works necessary therefor by the City. Such cancellations may be made by endorsing a cancellation on the margin of the record as in case of release of mortgage or by executing and acknowledging a formal instrument of cancellation. Such cancellation shall be made only where payment has been duly received by the City Treasurer and duplicate copy of the receipt for such payment has been presented to the City Auditor.

5.52.040 When Checks Are to Be Canceled.

(Amended by Ordinance No. 173369, effective May 12, 1999.) At the close of each fiscal year the Auditor of the City is hereby authorized and directed to cancel all checks the date of which shall be in excess of 6 years prior to the time of such cancellation.

5.52.050 Drawing Checks on Charter Appropriations.

(Amended by Ordinance No. 173369, effective May 12, 1999.) The Mayor and the Auditor shall draw checks on the appropriations provided for by Section 2-108 and Section 2-105 (14) of the Charter when a memorandum requisition for funds has been submitted to the Auditor which has been signed personally by the Commissioner of Finance and Administration. The proceeds from the checks shall be held by the Commissioner of Finance and Administration for disbursement.

5.52.060 Establishing Checking Account and Providing for Payment of Certain Refunds by Check.

(Repealed by Ordinance No. 177676, effective July 9, 2003.)

CHAPTER 5.56 - AMBULANCE SERVICE

Sections:

- 5.56.010 Police Radio Dispatch Service.
- 5.56.020 Acceptance by Ambulance Companies.

5.56.010 Police Radio Dispatch Service.

In order to prevent a duplication or multiplicity of ambulance service at the scene of any emergency or disaster, the Bureau of Police Radio Dispatcher will notify by direct phone furnished by the ambulance operator, the ambulance nearest the emergency or disaster scene. In consideration for the emergency dispatching service herein provided for, the private ambulance operators shall pay to the City the sum of \$600 per month. Each ambulance operator shall pay monthly a sum equal to \$600 divided by the number of ambulance companies participating in the dispatching service.

All monies due the City by the terms of this Section shall be paid by the 10th day of the month following the month in which dispatching service was furnished. All such money received by the City shall be credited to the General Fund Revenue Account, police charges, Code 432.

5.56.020 Acceptance by Ambulance Companies.

No monies shall be paid out or received by the City under the authority contained in this Chapter until the ambulance company requesting payment from the City or offering payment to the City shall have executed an acceptance of the terms of this Chapter in writing in form approved by the City Attorney.

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**CHAPTER 5.60 - MISCELLANEOUS
CHARGES**

Sections:

- 5.60.010 Charges For Architectural Services.
- 5.60.040 Employee Lists Furnished by Accounting Division Manager.
- 5.60.050 Licensees' Lists Furnished by License Bureau.
- 5.60.110 Driving City Cars to and from Work
- 5.60.120 Lien Accounting System Access.

5.60.010 Charges For Architectural Services.

(Replaced by Ordinance No. 136092; effective March 1, 1973.) Services performed by the Bureau of Architectural Planning for a service financed from a City fund other than the General Fund or by another governmental agency shall be charged for at the rate of 165 percent of the salary rates of the individuals working on the project. Services which are to be provided shall be undertaken only on approval of the Commissioner In Charge. Services to be charged for shall be authorized only after it has been determined that funds are available for payment.

5.60.020 Public Records Copy Charges.

(Repealed by Ordinance No. 156910, effective December 26, 1984.)

5.60.040 Employee Lists Furnished by the Accounting Division Manager.

(Amended by Ordinance No. 155770, effective April 4, 1984.)

- A. Upon written application, the Accounting Division Manager may furnish to any applicant a list of names of City employees.
- B. The Accounting Division Manager may charge a fee for providing such information with such fee determined by the Accounting Division Manager to be reasonable and approximating the cost to the City of providing the information.
- C. The information provided by the Accounting Division Manager pursuant to this Section shall be limited to names of employees only, and shall not include addresses, or phone numbers.
- D. This Section is not intended to prevent, nor is it related to, the verification of personal information provided voluntarily by employees to others.

5.60.050 Licensees' Lists Furnished by License Bureau.

Upon written application accompanied by the fee hereinafter set out, the Bureau of Licenses may furnish to any applicant a list of licensees. The fee for such list shall be as follows:

- A. For any list containing the names of not more than 15,000 licensees, the fee shall be \$250;

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- B.** For any list containing the names of more than 15,000 licensees, the fee shall be in addition to the above, \$1 for each 100 names or fraction thereof.

No list of names of licensees shall be furnished to any person not a City employee without the prior approval of the City Licenses Director.

5.60.110 Driving City Cars to and from Work.

(Amended by Ordinance Nos. 141835, 142504, 154639, 157641; 168313, 173369, and 176872, effective August 28, 2002.)

- A.** Employees authorized to drive City vehicles to and from their place of residence shall pay to the City a rental charge for each accounting period of use.

If there is more than one City employee commuting in the same vehicle, the charge to the passenger will be equal to that of the driver. It shall be the responsibility of bureaus to report to the Accounting Division vehicles used as commuting vehicles.

Payroll deductions for rental charges shall be made from the employee's second payroll check of the month. Submission of the Personal Use of City Vehicle form is required upon vehicle assignment, cancellation, or when reduction is requested by Friday of the payroll submission week.

- B.** Credit will be given when total consecutive working days of nonuse exceed working days.
- C.** Requests for authorization to drive City vehicles to and from work must be approved by the employee's bureau manager and the employee's Commissioner In Charge.

5.60.120 Lien Accounting System Access.

(Added by Ordinance No. 159619; amended by Ordinance No. 176577, effective July 1, 2002.) Access to the City's automated Lien Accounting System shall be provided by internet access. Fees for use of the System by internet will be assessed on a per search basis. The City Auditor shall set the fee per search and the fee may be adjusted annually. Agencies and individuals not affiliated with the City of Portland shall be billed monthly for searches on the System.

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**CHAPTER 5.64 - MISCELLANEOUS FISCAL
PROVISIONS**

Sections:

- 5.64.010 Fiscal Agency in New York City.
- 5.64.020 Appointment of Deputy Auditors.
- 5.64.030 Treasurer to Cash Credit Union Checks.
- 5.64.040 Bureau of Water Works Accounts.
- 5.64.050 Execution of Releases from Claims for Damages.
- 5.64.060 Cancellation of Refund Checks.
- 5.64.070 Refunds.
- 5.64.090 Investment of Available Funds.
- 5.64.100 Determination of City's Subrogation for Time Loss Payments.
- 5.64.110 Procedure upon Obtaining Real Property with Outstanding Liens, Assessments or Accumulated Interest.

5.64.010 Fiscal Agency in New York City.

The National Bank of New York, New York City, State of New York, shall be the fiscal agency in New York City for the City.

5.64.020 Appointment of Deputy Auditors.

The Auditor of the City shall have the authority to appoint as his deputies with power to act for and in his behalf any and all persons employed in the Office of the Auditor of the City. The authority hereby conferred shall in no way affect the classifications or salaries of employees so appointed, the authority being conferred merely for the purpose of facilitating the transactions of business in the office of the City Auditor.

5.64.030 Treasurer to Cash Credit Union Checks.

The City Treasurer is hereby authorized and directed to accept and cash checks properly drawn by the City Employees' Credit Union, signed by the Treasurer and countersigned by the President and Vice President. It shall be the duty of the Secretary of the City Employees' Credit Union to file with the City Treasurer annually at the time of election of officers of the credit union a certificate showing the name of the President, Vice-president and Treasurer of the Credit Union. In the event any change is made in the organization of the Credit Union whereby any other officers or individuals are authorized to sign or countersign checks, the same shall be immediately transmitted to the City Treasurer by the Secretary by the filing with the City Treasurer of a certificate so stating. In the event any change in officers is made at any time during the year the same shall be immediately transmitted to the City Treasurer in like manner.

5.64.040 Bureau of Water Works Accounts.

The Auditor of the City is hereby directed to exercise the same supervision and authority over the accounts and financial affairs of the Bureau of Water Works as he is authorized, directed, and required by the Charter and ordinances of the City to exercise over other bureaus.

5.64.050 Execution of Releases from Claims for Damages.

The City Treasurer, or Deputy Treasurer, in the absence or inability to serve of the City Treasurer, is hereby authorized upon receiving payment in full of claims for damages, to execute and deliver on behalf of the City a formal release and discharge of and from any further liability upon such claim; provided, that such release be first approved by the City Attorney.

5.64.060 Cancellation of Refund checks.

The City Treasurer shall cancel outstanding refund checks after 6 years. The amount represented by such checks shall be transferred from the refund account to the General Fund. In order that persons having refunds due which are represented by outstanding refund checks may not be precluded from establishing their right to such refund in the future, any person entitled to a refund, for which refund a check has been issued and has not been presented for payment within 6 years, and which refund has been canceled under the provisions of this Section, may petition the Council at any time for the allowance of such refund. The Council may after hearing upon such claim allow and pay the amount of such refund from the General Fund. Such payment however shall be made only by ordinance.

5.64.070 Refunds.

(Amended by Ordinance No. 173369, effective May 12, 1999.)

- A. The Mayor and Auditor are authorized to draw checks making refunds for any purpose except as provided in Subsection B below. A check may be drawn when a properly signed memorandum requisition is presented which contains a statement showing the necessity for the refund and the amount thereof, or which is supported by such statement. The statement shall bear the approval of the bureau head responsible for determining the amount of refund and he shall initiate the necessary requisition. A refund in any amount may be paid from petty cash if funds are available and if the required statement is submitted.
- B. The Mayor and Auditor are authorized to draw checks for the refund of assessments paid in error after such refunds have been properly recorded in the Auditor's refund register, provided that no refund shall be made on account of assessments paid where the description of property assessed is found to be erroneous unless such refund is first authorized by Council.
- C. A refund shall be charged against appropriations if the amount to be refunded was previously credited to a budgetary fund. It shall be charged to the fund receipts previously credited if the amount to be refunded was credited to a nonbudgetary account.

5.64.090 Investment of Available Funds.

The City Treasurer hereby is authorized to invest any uninvested surplus balance to the credit of the General Fund or any sinking fund or special fund in interest bearing securities

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such as may be lawfully held by the City under Section 7-105 of the City Charter. The Treasurer may purchase such securities on the open market and may bid on new issues of such securities. The Treasurer may sell such securities on the open market, if there is an established market therefor, as necessary to meet the cash needs of the various funds.

The authority herein granted to the Treasurer may only be exercised with the approval of the Commissioner of Finance and Administration and, in the case of the investment of sums held in special funds or sinking funds, with the approval of Commissioner In Charge of the budget of such sinking fund or special fund.

5.64.100 Determination of City's Subrogation for Time Loss Payments.

The City Attorney shall determine the amount of any City claim under Charter Section 2-608 for time loss payments made to any officer or employee of the City. In making such determination the City Attorney shall consider the amount of time loss paid by the City, the amount of recovery, the nature and degree of the injury, the costs and expenses incident to the injury or to the recovery of damages, the testimony and evidence insofar as the same is conveniently available, the legal factors involved and all other facts and circumstances which he finds relevant to the particular situation. A tentative determination of the City claim may be made prior to recovery if the City Attorney finds it to be appropriate to assist in settlement of the claim of the officer or employee against another person. Such determination by the City Attorney on the basis of settlement or adjudication of the claim of the officer or employee shall in each case be deemed the amount of the City's claim by subrogation.

5.64.110 Procedure Upon Obtaining Real Property with Outstanding Liens, Assessments or Accumulated Interest.

In all cases where the City acquires a parcel of real property by purchase, gift, trade or otherwise, and the City is obligated to pay an outstanding lien and/or assessment with or without accumulated interest, the officer or Commissioner In Charge of the department or bureau acquiring the real property shall be responsible for the payment of the outstanding lien and/or assessment with accumulated interest, if any, from the appropriate fund at the time of acquisition.

**CHAPTER 5.68 -PROFESSIONAL,
TECHNICAL AND EXPERT SERVICE
CONTRACTS**

(Chapter replaced by Ordinance No. 177244,
effective July 1, 2003.)

Sections:

- 5.68.010 Definition.
- 5.68.015 General Requirements – PTE Manual.
- 5.68.020 Personal Services Contracts.
- 5.68.030 Public Announcement of Requirements.
- 5.68.035 Authority to Obligate City for Professional, Technical or Expert Services.
- 5.68.050 Review by City Attorney.
- 5.68.060 Outside Legal Services.
- 5.68.070 Procedure for Selection of Bond Counsel.
- 5.68.080 Contractor's Compliance with Workers' Compensation Requirements.

5.68.010 Definition.

(Amended by Ordinance Nos. 182213, 184427, 185065 and 187373, effective October 14, 2015.)

- A. For the purposes of this Chapter, "professional, technical and expert" refers to any individual or group, excluding regular City employees, who, for a fee, provides services or gives professional advice regarding matters in the field of their special knowledge or training. This includes but is not limited to: planners, architects, engineers, lawyers, accountants, doctors, dentists, ministers, and counselors in investments, insurance, advertising, graphics, training, public relations, communications, software, data processing and management systems. Such contracts may include incidental materials such as written reports, architecture or engineering renderings, and similar supplemental materials. The Chief Procurement Officer has authority to classify services not specifically addressed in this provision as professional services if those services require professional advice in a field of special knowledge or training similar to those listed above.
- B. "QBS Consultant" means an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor or provider of Related Services. A QBS Consultant includes a business entity that employs Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors or providers of Related Services, or any combination of the foregoing.
- C. "Estimated Fee" means City's reasonably projected fee to be paid for a QBS Consultant's services under the anticipated Contract, excluding all anticipated reimbursable or other non-professional fee expenses. The Estimated Fee is used

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solely to determine the applicable Contract solicitation method and is distinct from the total amount payable under the Contract.

- D.** “Price Agreement”, for purposes of the QBS Rules is limited to mean an agreement related to the procurement of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under agreed-upon terms and conditions and possibly at a set price with:
- 1.** No guarantee of a minimum or maximum purchase; or
 - 2.** An initial order or minimum purchase, combined with a continuing QBS Consultant obligation to provide Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services in which the City does not guarantee a minimum or maximum additional purchase.
- E.** "Project" means all components of a City's planned undertaking that gives rise to the need for a QBS Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under a Contract.
- F.** “Transportation Planning Services” include Project-specific transportation planning involved in categorical exclusions, environmental assessments, environmental impact statements and other documents required for compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services do not include transportation planning for corridor plans, transportation system plans, interchange area management plans, refinement plans and other transportation plans not associated with an individual Project which will require compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services also do not include transportation planning for Projects not subject to the National Environmental Policy Act, 42 USC 4321 et. seq.
- G.** “Related Services” means personal services, other than architectural, engineering, photogrammetric, mapping, Transportation Planning or land surveying services, that are related to planning, designing, engineering or overseeing public improvement projects or components of public improvements, including, but not limited to, landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services, and owner’s representation services or land-use planning services.

5.68.015 General Requirements– PTE Manual.

(Amended by Ordinance Nos. 182213 and 184427, effective February 23, 2011.) The Chief Procurement Officer of Procurement Services shall create and publish a Professional, Technical and Expert (PTE) Services Manual that shall govern selection and award of PTE contracts. The Chief Procurement Officer may amend the PTE Manual to ensure that the interests of the public and PTE contractors are fully served and that the process promotes accountability and competition among all segments of the citizens of Portland. The PTE Manual shall include procedures providing for adequate notice of contract award to potential contractors and shall provide the exclusive means by which selection decisions may be protested before the contract is executed.

5.68.020 Personal Services Contracts.

(Amended by Ordinance Nos. 179802, 182213, 184427 and 187373, effective October 14, 2015.)

- A.** This Chapter applies to City procurement of professional, technical and expert services.
- B.** The following services, designated as Personal Services Contracts, are exempt from the selection process outlined in the City's Professional, Technical and Expert Services Manual and can be made by direct appointment under this Chapter:

 - 1.** Processing of any claim for workers' compensation benefits;
 - 2.** Physician or medical personnel to determine any prospective or current City employee's ability to work or return to work;
 - 3.** Determining any reasonable accommodation that may be made to any job classification in the City; and
 - 4.** Veterinary physician, specialist, or medical personnel required to determine any prospective or current City-owned service animal's ability to work or return to work, or providing general medical upkeep to a City-owned service animal;
 - 5.** Performing artists, whether vocal, instrumental, or visual required by the City to provide a paid performance of their work for an audience determined by the City;
 - 6.** A one-time payment or gratuity granted in recognition of a special service in which propriety or competitive selection process is not feasible and made without the giver recognizing themselves as having any liability or legal obligation for services;

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7. Golf Course Management Agreements (including concessions and club house operations) of a duration not to exceed five years for the parks under the jurisdiction of the City of Portland Bureau of Parks and Recreation.
 8. Modification by the licensor of intellectual property licensed to the City.
 9. The City Attorney's retention of expert witnesses, consultants to assist the City Attorney's Office in providing legal advice to the City, and outside legal counsel.
- C. If any emergency as defined in the PTE Manual exists the Chief Procurement Officer may authorize selection of a contractor without following the requirements of this Chapter.
- D. If the services or expertise required for a project are only available from a "sole source" as defined in the PTE Manual, then the Chief Procurement Officer may authorize selection of a contractor without following these requirements.
- E. The Chief Procurement Officer shall include all emergency and sole source contracts in periodic reports to the City Council.
- F. If professional, technical or expert services are required in conjunction with the acquisition of goods, services, public improvements, construction services or some combination thereof, the Chief Procurement Officer may permit the acquisition of such services through the provisions of Chapter 5.33 or 5.34 of this Code instead of this Chapter.

5.68.030 Public Announcement of Requirements.

(Amended by Ordinance Nos. 182213 and 184427, effective February 23, 2011.) The Professional, Technical and Expert Services Manual shall set forth the procedures to be followed by all bureaus in announcing and advertising City PTE solicitations. The procedures in the Manual shall be designed to make information about such solicitations readily available to interested PTE contractors, including state certified minority, women and emerging small business (M/W/ESB) firms and Disabled Veteran owned or controlled firms as defined in ORS 408.225. From time to time, the City may adopt programs designed to promote competition, enhance economic opportunity and stimulate hiring among all of Portland's citizens. When such programs are adopted, the Chief Procurement Officer shall take steps to ensure that PTE contractors wishing to enter into contracts with the City are aware of their requirements.

5.68.035 Authority to Obligate City for Professional, Technical or Expert Services.

(Amended by Ordinance Nos. 182213 and 184427, effective February 23, 2011.)

- A. All professional, technical or expert services contracts or purchase orders shall be in writing in a form approved by the City Attorney as provided in Section 5.68.050. The Chief Procurement Officer, or designee, is authorized to execute contracts for

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PTE services required by the City in any amount not exceeding \$100,000 without the need for an ordinance specifically authorizing the contract if the contract is included within the current fiscal year budget of the bureau seeking the contract.

- B.** The Chief Procurement Officer has authority to execute amendments to such contracts, provided the amendments do not, in the aggregate, exceed 25 percent of the original contract amount. Otherwise, the original contract or contract amendment must be approved by the City Council. Except for contracts executed with outside counsel, contracts executed pursuant to Subsection 5.68.020 B.4. may be amended in excess of 25 percent without Council approval provided the City Attorney and the Chief Procurement Officer both approve the amendment. Periodic reports of such actions shall be provided to City Council by the City Attorney's Office.
- C.** The Chief Procurement Officer is authorized, but not required, to waive any procedural irregularities in the PTE selection process provided the irregularities had no material affect on the selection of the proposed contractor.
- D.** The provisions of Section 5.68.035 also apply to the procurement of services and contracts for services referenced in Subsection 5.68.020 B.

5.68.040 Process for Services Costing Under and Over The Formal Bid Threshold.

(Repealed by Ordinance No. 182213, effective September 24, 2008.)

5.68.050 Review by City Attorney and Chief Procurement Officer.

(Amended by Ordinance Nos. 182213, 184427 and 187373, effective October 14, 2015.)

- A.** The Chief Procurement Officer shall review and approve the form of all Requests for Proposals, Requests for Qualifications and other similar solicitation documents for all PTE contracts estimated to exceed \$100,000, prior to issuance. Further review by the City Attorney will be at the Chief Procurement Officer's discretion.
- B.** The City Attorney or designee shall approve the form of all PTE contracts and shall ensure that all required documentation, including, but not limited to insurance, is present before the contract is executed. Such approval shall occur before work begins.

5.68.060 Outside Legal Services.

(Amended by Ordinance Nos. 179802, 180659, 182213 and 184427, effective February 23, 2011.)

- A.** Except as specifically exempted by this Section, and in addition to the other requirements of this Chapter for professional, technical and expert service contracts, the following procedures and requirements shall apply to any contracts

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for legal services to be provided by attorneys outside of the Office of the City Attorney.

1. All City bureaus and agencies shall submit in writing to the City Attorney all requests for legal services from outside the City Attorney's Office before any agreement is made to obtain any such outside legal services.
2. The Chief Procurement Officer has the authority to sign and approve contracts and contract amendments for outside counsel to the same extent as other contracts for professional, technical and expert services. However, all billings and invoices for outside legal counsel's services shall be directed to the City Attorney for review and approval prior to payment.
3. The Chief Procurement Officer shall not process any purchase requisition for outside legal services without the written approval of the City Attorney or designee.
4. The Accounts Payable Division shall not process for payment any billing or invoice for outside legal services without the written approval of the City Attorney or designee.
5. This Section does not apply to selection of bond counsel, who are selected in accordance with Section 5.68.070 of this Code. However, all billings and invoices of bond counsel shall be directed to the City Attorney for review and approval prior to payment.

5.68.070 Procedure for Selection of Bond Counsel.

(Amended by Ordinance No. 182213, effective September 24, 2008.)

- A.** At the time a bureau determines it will need bond counsel for a project or series of projects, the bureau will notify the City Attorney. The City Attorney or designee shall notify each counsel listed in the Oregon Section of the Bond Buyer's Directory of Municipal Bond Dealers (Red Book), requesting that those interested in serving as bond counsel for the project or series of projects submit proposals.

The notice shall indicate the nature of the project or series of projects, the type and approximate amount of bonds, the approximate date for the sale or sales of bonds, the bond counsel services required, and the date proposals are due.

- B.** Those counsel interested shall provide the following information to the City Attorney:
1. A statement of the fee arrangement proposed by the firm.
 2. Such other information as the City Attorney deems appropriate.

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- C.** On receipt of the proposals the City Attorney shall refer them to a consultant selection committee consisting of the City Attorney or designee; the Chief Administrative Officer or designee; and the Bureau Director or designee. The Committee shall consider only firms that are listed in the Red Book. The Committee may interview any or all firms, including more than once. The Committee may authorize firms to modify their proposals during the interview period.
- D.** The Consultant Selection Committee shall select a law firm to serve as bond counsel for the project or series of projects. The selection shall be based on fee, experience, or such other criteria as the Committee deems appropriate.

5.68.080 Contractor's Compliance with Workers' Compensation Requirements.

Prior to the performance of any work under a professional, technical or expert services contract awarded by the City, a contractor shall comply with the Workers' Compensation Law, ORS Chapter 656, as it may be amended, and if Workers' Compensation Insurance is required by ORS Chapter 656, shall maintain coverage for all subject workers as defined by ORS Chapter 656, and shall maintain a current, valid certificate of Workers' Compensation Insurance on file with the City Auditor for the entire period during which work is performed under the contract.

5.68.090 Selection of Architectural, Engineering and Land Surveying Consultants for PTE Contracts.

(Repealed by Ordinance No. 185065, effective January 1, 2012.)

5.68.100 Direct Contracts with Architects, Engineers and Land Surveyors.

(Repealed by Ordinance No. 185065, effective January 1, 2012.)

5.68.110 Two-Tiered Selection Process.

(Repealed by Ordinance No. 185065, effective January 1, 2012.)

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CHAPTER 5.72 - ECONOMIC DEVELOPMENT PROJECTS

(Chapter added by Ordinance No. 145441; amended
by Ordinance Nos. 149771, 155942, 157012; and
157226 effective May 13, 1985.)

Sections:

- 5.72.010 Purpose.
- 5.72.020 Definitions.
- 5.72.030 Economic Development - Applications.
- 5.72.040 Economic Development - Initial Review, Standards.
- 5.72.050 Housing - Applications.
- 5.72.060 Housing - Initial Review, Standards.
- 5.72.070 Initial Determination of Eligibility, Final Approval, Appeals.
- 5.72.080 General Conditions; Document Preparation and Review.
- 5.72.090 Application Processing, Financial Considerations.
- 5.72.100 Administrative Fees.
- 5.72.110 Bond Issuance.
- 5.72.120 Reporting Requirements.

5.72.010 Purpose.

The purpose of this Chapter is to provide necessary procedures and standards to carry out the powers granted to the City by Chapter 772, Oregon Laws of 1977 (ORS 280.410 to 280.485) as amended. This Chapter shall be liberally construed in order to carry out this purpose.

5.72.020 Definitions.

(Amended by Ordinance Nos. 166682 and 172567, effective August 12, 1998.) As used in this Chapter unless the context requires otherwise:

- A. “Economic development project”** includes any properties, real or personal, used or useful in connection with a revenue producing enterprise. “Economic development project” shall not include any facility or facilities designed primarily for the operation, transmission, sale, or distribution of electrical energy. “Economic development project” also includes multiple unit residential housing development on land having an assessed valuation of \$8 per square foot or more on September 13, 1975, land within a designated urban renewal or redevelopment area formed pursuant to ORS Chapter 457, land within an area designated as a Housing and Community Development target neighborhood pursuant to the Housing and Community Development Act of 1974, or projects which benefit low or moderate income tenants, or address slum and blight as defined by the 1974 Housing and Community Development Act.

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- B.** “**Eligible project**” means an economic development project found by the City to meet standards adopted pursuant to this Chapter. “Eligible project” includes multiple unit residential housing development which increases available housing units through new construction, rehabilitation of nonresidential buildings, or provides for rehabilitation of residential buildings.
- C.** “**City**” means the City of Portland.
- D.** “**Costs**” as applied to any project must conform to all applicable Internal Revenue Service regulations and may include:
1. The cost of construction and reconstruction.
 2. The cost of acquisition of property, including rights in land and other property, both real and personal and improved and unimproved and the cost of site improvements.
 3. The cost of demolishing, removing or relocating any buildings or structures on lands so acquired, including the cost of acquiring any lands to which the buildings or structures may be moved or relocated.
 4. The cost of eligible machinery and equipment and related financing charges.
 5. The cost of engineering and architectural surveys, plans and specifications.
 6. The cost of financing charges and interest prior to and during construction, and if deemed advisable by the City for a period not exceeding 1 year after completion of construction.
 7. The cost of consultant and legal services, other expenses necessary or incident to determining the feasibility or practicability of constructing a project, administrative and other expenses necessary to or incident to the construction of the project, including, but not limited to, costs of relocation and moving expenses according to a project plan developed by the City, and the financing of the construction of the project thereof, including reimbursement to any state or other governmental agency or any lessee of such project for the expenditures made with the approval of the City that would be costs of the project under this Chapter had they been made directly by the City, and any costs incurred after bond issuance by the City for audits or monitoring.
- E.** “**Qualified historic project**” shall mean a project which includes the restoration or rehabilitation of a structure or structures designated as a City of Portland Historic Landmark. Such rehabilitation or restoration shall require the approval of the City

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of Portland Landmarks Commission to assure conformance with the Secretary of the Interior's standards for historic preservation projects.

5.72.030 Economic Development - Applications.

- A.** The Portland Development Commission shall be responsible for receipt of applications and review and processing thereof. Applications shall be in a form established by the Portland Development Commission and shall include, in addition to other information deemed necessary by the Portland Development Commission:
 - 1.** Company/applicant information.
 - 2.** Project information.
 - 3.** Description of labor force at existing and proposed locations.
 - 4.** Financial information.
 - 5.** Environmental control information.
 - 6.** Any information required by law or otherwise which is reasonable and necessary to effectuate the purposes of this Chapter.
 - 7.** An agreement to indemnify and hold harmless the Portland Development Commission and the City of Portland, its officers and employees, from any and all liability for loss or damage to the company or any third person or entity arising from or alleged to have arisen from the processing of this application or any error or omission in any official statement or representation related to the contemplated financing.
- B.** The applicant must certify by letter that the issuance of revenue bonds is an inducement to locate, retain, or expand the project in Portland.
- C.** The requirements herein shall be considered to be minimums, and the Portland Development Commission and the City reserve the right to add additional requirements on a case-by-case basis. Likewise, the requirements herein stated pertain only to the Commission and the City and are not exclusive. Qualified bond counsel or the original purchaser may make additional requirements.

5.72.040 Economic Development -Initial Review, Standards.

- A.** Upon receipt of an application, the Portland Development Commission shall review the application to determine whether the application should be further processed. In reaching such a determination, the Portland Development Commission staff may request additional information from the applicant as well as assemble any and all data deemed relevant to the decision.

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- B.** The Portland Development Commission shall consider the following:
1. Economic feasibility and general benefits to the City of the proposed project.
 2. Density of use and potential impact in the area affected by the proposed project.
 3. Land use, transit, and transportation facilities in the vicinity of the proposed project.
 4. City's ability to supply or support other needed services resulting from the Economic Development Project.
 5. Effect of proposed project on balanced economic development of the City.
 6. Employment and property tax income from the project.
 7. Employment opportunities. City and Portland Development Commission will use employment agreements when and where appropriate.
 8. Suitability of proposed area in the City for the particular type of proposed development project.
 9. Conformance with Internal Revenue Service regulations and the Oregon Revised Statutes.
- C.** No application shall be recommended for City Council approval unless the Portland Development Commission determines that the proposed project does not conflict with adopted City plans and policies, and conforms to the following uses:
1. Manufacturing or other industrial production.
 2. Agricultural development or food processing.
 3. Transportation or freight facilities.
 4. Warehousing or distribution.
 5. A project for the primary purpose of reducing air, water, or solid waste pollution.
 6. Other activities that represent new technology or types of economic enterprise that the City determines are needed to diversify the economic base of the community.

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7. Parking in close proximity to the Portland Performing Arts Center. Such a parking facility may include space for retail and commercial uses in addition to parking.
8. Commercial uses when a part of a qualified historic project or publicly initiated urban development project.

5.72.050 Housing - Applications.

- A. The Portland Development Commission shall be responsible for receipt of applications and review and processing thereof, including, but not limited to, advice of bond counsel and legal advice. Applications shall be in a form established by the Portland Development Commission and shall include, in addition to other information deemed necessary by the Portland Development Commission:
 1. The applicant's name, address and telephone number.
 2. A brief description of the applicant's company history and past relevant performance.
 3. A legal description of the property upon which the project will be located.
 4. A detailed description of the project including the number, size and type of dwelling units; dimensions of structures; parcel size, proposed lot coverage with buildings, and amount of open space; type of construction; public and private access; parking and circulation plans; water, sewer, and other utility plans; landscaping; expected uses; and economic feasibility studies and market information including rent levels proposed.
 5. A description of the existing use of the property including a proposed relocation plan for any persons who would be displaced from existing housing by the project; and for any businesses which would be displaced.
 6. A site plan and supporting maps, which show in detail the development plan of the entire project, showing streets, driveways, sidewalks, pedestrian ways, off-street parking and loading areas; location and dimension of structures; use of the land and structure; major landscaping features; design of structures; and existing and proposed utility systems including sanitary sewers, storm sewers, water, electric, gas and telephone lines.
 7. Any other information required by law or otherwise which is reasonable and necessary to effectuate the purposes of this Chapter.
 8. The approximate amount of bond proceeds and allocation to eligible costs.

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9. An agreement to indemnify and hold harmless the Portland Development Commission and the City of Portland, its officers and employees, from any and all liability for loss or damage to the company or any third person or entity arising from or alleged to have arisen from the processing of this application or any error or omission in any official statement or representation related to the contemplated financing.

5.72.060 Housing - Initial Review, Standards.

(Amended by Ordinance No. 177259, effective February 19, 2003.)

- A. Upon receipt of an application, the Portland Development Commission shall review the application to determine whether the application should be further processed. In reaching such a determination, the Commission may request additional information from the applicant as well as assemble any and all data deemed relevant to the decision.
- B. The Portland Development Commission shall, after review and comment by all relevant City bureaus, recommend approval, approval with conditions, or denial of the application, after consideration of the following:
 1. The economic feasibility of the project, with and without the use of revenue bonds.
 2. The need for housing resulting from the project.
 3. The general benefits to the City of the proposed project.
 4. The City's ability to supply or support other needed services required by the project.
 5. Employment and property tax income from the project.
 6. Suitability of the project as proposed in the specific proposed location.
 7. (Amended by Ordinance No. 157998; Nov. 21, 1985.) Projects applying for permanent financing must be determined to provide housing at rent or price levels 85 percent of which shall be affordable by households with incomes up to 150 percent of the area median income.
 8. Projects in the downtown, particularly the RX Zone, designated urban renewal or redevelopment areas shall receive highest priority.
 9. Conformance with Internal Revenue Service Regulations and the Oregon Revised Statutes.

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10. No application shall be recommended for approval unless the Portland Development Commission, after review and comment by all relevant City bureaus, determines that the project does not conflict with adopted City plans and policies.
 11. Projects applying for construction financing may be at rent or price levels up to 150 percent of median income, but must have available a firm commitment for long-term project financing.
- C. No project may be approved which would result in the conversion of existing occupied residential rental units to condominium or cooperative projects.
- D. The applicant, to be eligible for financing assistance under this program, must agree not to discriminate against any purchaser or tenant who is a parent or legal guardian with whom a child resides or is expected to reside, except in projects designed exclusively for households, the heads of whom are 62 years of age or older; or in projects designed for households, the heads of whom are 55 years of age or older, if the project meets the requirements of the applicable federal law.
- E. Revenue bonds may be issued secured by revenues from mortgage payments from individual owners of condominium and cooperative units within multiple unit housing projects which are newly constructed, rehabilitated from other uses or rehabilitated in abandoned residential buildings. Applications for such projects shall be considered by the Portland Development Commission if:
 1. No individual or company may have more than one loan outstanding at any one time under this program for individual condominium or cooperative units.
 2. No mortgage loan funds under this program may be used for refinancing by existing owners, and no loans may be assumed by persons not eligible for condominium or cooperative units.
- F. The applicant shall submit a relocation plan for any households, individuals, or businesses which may be displaced by the proposed project. The Portland Development Commission will be responsible for analysis of that proposal and recommendation of that plan, that plan with amendments, or an alternative plan. The relocation plan shall assure that such households, individuals, or businesses are relocated to affordable housing of comparable or better quality.

5.72.070 Initial Determination of Eligibility, Final Approval, Appeals.

- A. The Portland Development Commission staff, within 60 days after a complete application is filed with the Commission, shall prepare a written recommendation of approval, approval with conditions or denial of the application.

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- B.** If Portland Development Commission staff recommends approval or approval with conditions of the application, the Commission shall, within 60 days of receipt of the application and recommendation, recommend by resolution that City Council approve, approve with conditions, or deny the application. This resolution shall include consideration of any required relocation plan. The Council shall, by resolution, approve, approve with conditions, or deny the application. Council approval or conditional approval of an application shall authorize the Portland Development Commission to process the application and to execute a letter of intent with the applicant.
- C.** Final approval shall take place after receipt and review by the Portland Development Commission of all requested and required final documents. All documents to be approved by the Portland Development Commission must be received in final form and received by the Commission 14 days prior to a scheduled Commission meeting. If the Commission determines that the documents comply with the rules and policies established within this Chapter, the Commission shall, by resolution, recommend issuance of the bonds in accordance with those final documents and further recommend that City Council adopt an ordinance authorizing issuance of the bonds in accordance with those documents.
- D.** If the Portland Development Commission staff recommends denial of the application, they shall notify the applicant in writing. The applicant may appeal by filing written notice thereof with the Portland Development Commission staff within 14 days of receipt of the notice of rejection. Upon receipt of the appeal, the Portland Development Commission shall, within 45 days, recommend by resolution, approval, approval with conditions or denial of the appeal.

5.72.080 General Conditions; Document Preparation and Review.

(Amended by Ordinance No. 166682, effective June 30, 1993.)

- A.** The following general conditions prevail in the issuance of all industrial development revenue bonds:

 - 1.** City of Portland economic development revenue bonds may be sold at public or private sale, and the bonds may mature at any time or times within the useful life of the project. For public sales, special approval may be required.
 - 2.** Any bond authorized under this Chapter which is to be sold by public sale must be rated by either a nationally recognized rating agency as Investment Grade.
 - 3.** Bonds sold through a private sale do not require a rating. For purposes of this Chapter, “private sale” means a sale of all of the bonds to persons or entities that qualify as “accredited investors” under 15 USC Section 77b

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(15) (I) or 17 CFR Section 230.215. The purchasers must also certify, in a manner satisfactory to the City, that they have the financial sophistication, knowledge and experience in financial matters to evaluate the investment in the bonds and the appropriateness of that investment for them, and that they have received all the information required to make an informed judgement about the purchase of the bonds. Bonds which are sold through a private sale may be resold or transferred only to persons or entities that qualify as accredited investors and that provide the certification described in the preceding sentence.

4. The City of Portland does not guarantee the bonds and is not subject to any liability for their repayment.
 5. The terms and conditions of the issuance and purchase of an industrial revenue bond issue are to be agreed upon by the applicant and bond purchaser with the concurrence of the Portland Development Commission (acting on behalf of the City.)
 6. Where residential rental property is assisted under this Chapter, construction of the project must begin within 9 months from the date of bond issuance.
 7. Applicant will be required to keep the Portland Development Commission advised of the schedule for document preparation and approval, and to provide drafts of documents to the Commission upon request of the Commission.
- B.** The following general conditions prevail regarding the preparation of all bond documents:
1. Bond counsel will be designated by the Portland Development Commission. Procedures for selecting bond counsel established by Section 5.68.080 of this Code shall not apply to projects initiated pursuant to this Chapter. The applicant will submit their recommendation of bond counsel.
 2. Bond counsel will advise the Portland Development Commission of all federal and state procedural requirements as they apply to issuance of the bonds.
 3. Bond counsel must be an Oregon law firm or other mutually acceptable bond counsel recognized in the Bond Buyers Directory of Municipal Bond Dealers of the United States.
 4. The trustee chosen by the applicant, and approved by the Commission, must be a bank or trust company doing business in the State of Oregon with trust powers.

5. All documents to be approved by the Portland Development Commission must be in final form and received by the Portland Development Commission 14 days before the Commission meeting at which it will be acted upon.

5.72.090 Application Processing, Financial Considerations.

- A. Upon receipt of a resolution approving the application, the Portland Development Commission shall consider:

1. The bond market for the types of bonds proposed for issuance.
2. The terms and conditions of the proposed issue.
3. Whether the applicant is financially responsible and fully capable and willing to fulfill its obligations under the agreement of lease, or contract, including the obligation to pay rent in the amounts and at the times required, the obligation to operate, repair and maintain at its own expense the project leased, or sold, and to serve the purposes of this Chapter and such other responsibilities as may be imposed under the lease or contract. In determining financial responsibility of the applicant consideration shall be given to the lessee's or purchaser's ratio of current assets to current liabilities, net worth, earning trends, coverage of all fixed charges, the nature of the industry or business involved, its inherent stability, any guarantee of the obligations by some other financially responsible corporation, firm or person, and other factors determinative of the capability of the lessee or purchaser, financially and otherwise, to fulfill its obligations consistently with the purposes of this Chapter and Chapter 772, Oregon Laws of 1977 (ORS 280.410 to 280.485.)
4. Such other relevant factors as the Development Commission considers necessary to protect the financial integrity of the City.

If the Development Commission shall determine that a bond issue is financially feasible it shall designate the underwriter, trustee and bond counsel and shall enter into appropriate agreements with each to carry out the provisions of this Chapter and Chapter 772, Oregon Laws of 1977 (ORS 280.410 to 280.485) subject to the approval of the Council pursuant to Section 5.72.110 of this Chapter. In reaching its determination, the Development Commission may appoint a Bond Review Committee to assist it in its deliberations, and may set administrative procedures from time to time as necessary.

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5.72.100 Administrative Fees.

(Amended by Ordinance Nos. 160540, 160608; and 166996, effective September 29, 1993.)

- A.** The applicant agrees to pay all applicable City and Portland Development fees and expenses associated with the application whether or not the bonds are issued. A minimum application fee of \$500 shall be assessed to all projects at the time of filing the formal application with the Commission. In addition, the Commission shall be reimbursed in full for all direct and indirect costs incurred in the project. The fees shall be paid as follows:
- 1.** \$500 at the time of filing a formal application with the Portland Development Commission.
 - 2.** The balance at the time of closing of the bond issue. In the event the financing is not completed, costs incurred to date by the Commission shall be subject to immediate reimbursement.
- B.** Upon issuance of the bond, the applicant will pay the Portland Development Commission a one-time issuance fee equal to seven dollars per 1,000 dollars of the face amount of the bonds for ongoing administration of the bonds. On bonds issued prior to March 23, 1988, the annual administration fee will henceforth be seventy-five cents per 1,000 dollars of the outstanding principal, billed yearly in advance. On bonds issued prior to March 23, 1988, the Portland Development Commission and applicants of outstanding issues may enter into an agreement to pay a one-time fee in lieu of the annual administration fee.
- 1.** For refunding bonds issued under ORS Chapter 280 for economic development projects, if the one-time issuance fee has been paid in accordance with subsection (b) for the bonds being refunded, and the Portland Development Commission determines the refunding will not generate additional ongoing administration costs, the fee or an equitable portion thereof may be waived. Nothing in this subsection (1), however, should be construed to eliminate or limit the applicant's responsibility to pay all fees and expenses of the City and the Portland Development Commission described in subsection (a) of this section in connection with issuing the refunding bonds.

5.72.110 Bond Issuance.

Upon receipt of the recommendation of the Portland Development Commission, the Council may by ordinance authorize the issuance of bonds in an amount equal to the costs of the proposed project, pursuant to Chapter 772, Oregon Laws of 1977, if it determines that the proposed issue meets the requirements of said Act and this Chapter.

5.72.120 Reporting Requirements.

- A.** Beginning no later than 12 months following the issuance of bonds by the City, and continuing annually for a period as long as the bonds are outstanding, the Portland Development Commission shall require each project owner of the assisted project to submit a written report which describes:

 - 1.** Number of current employees by job category.
 - 2.** Total assessed value and property taxes paid during the most recent period for the assisted facility or facilities.
- B.** In addition to the foregoing, owners of multi-family projects assisted under this Chapter are required to report annually the number of residential units occupied by individuals or families who, at the date of reporting, have low or moderate incomes.

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**CHAPTER 5.73 - ARTS EDUCATION AND
ACCESS INCOME TAX**

(Chapter added by Resolution No. 36939 (approved
at November 6, 2012 election); effective December
5, 2012.)

Sections:

- 5.73.010 Definitions.
- 5.73.020 Tax Imposed.
- 5.73.030 Net Revenues Distribution.
- 5.73.040 Intergovernmental Agreements.
- 5.73.050 Citizen Oversight Committee.
- 5.73.060 Audits.
- 5.73.070 Effective Dates.
- 5.73.080 Revenue Division Responsibilities.
- 5.73.090 Limitation on Costs.
- 5.73.100 Confidentiality.
- 5.73.110 Frivolous Filing, False Filing and Hacking.

5.73.010 Definitions.

(Amended by Ordinance Nos. 185827, 185960, 187339 and 187610, effective April 1, 2016.) For the purposes of this paragraph, the following definitions apply unless the context requires a different meaning.

- A. “Catchment” means the geographical area from which an elementary school within a District draws its students.
- B. “Charter School” means a school offering a comprehensive institutional program as defined under ORS Chapter 338. The charter school will be included in the School District if sponsored by the School District or the State Board of Education, provided that the School District is the Fiscal Agent for state school funds for the Charter School and the Charter School has both Portland catchment and Portland k-5 students.
- C. “Director” means the Director of the Revenue Division, or authorized designee.
- D. “Gross Revenues” means the total of all revenue received by the City of Portland from the Arts Education and Access Income Tax without regard to collection, administrative or other costs.
- E. “Income-earning resident” means a resident who has income of \$1,000 or more in the tax year.

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- F.** “Net Revenues” means the revenue remaining after interest, collection, administrative and other costs and refunds are deducted from Gross Revenues.
- G.** “Portland K-5 Students” means students that reside within the geographical boundary of the City of Portland, Oregon that attend Kindergarten through 5th grade in public schools.
- H.** “Resident” or “resident of the City” means:
- 1.** An individual who is domiciled in this City unless the individual:
 - a.** Maintains no permanent place of abode in the City;
 - b.** Does maintain a permanent place of abode elsewhere; and
 - c.** Spends in the aggregate not more than 30 days in the taxable year in the City; or
 - 2.** An individual who is not domiciled in the City but maintains a permanent place of abode in the City and spends in the aggregate more than 200 days of the taxable year in the City unless the individual proves that the individual is in the City only for a temporary or transitory purpose. For purposes of this Subsection, a fraction of a calendar day shall be counted as a whole day.
- I.** “Resident” or “resident of the City” does not include:
- 1.** An individual who is a qualified individual under section 911(d)(1) of the Internal Revenue Code for the tax year;
 - 2.** A spouse of a qualified individual under section 911(d)(1) of the Internal Revenue Code, if the spouse has a principal place of abode for the tax year that is not located in the City; or
 - 3.** A resident alien under section 7701(b) of the Internal Revenue Code who would be considered a qualified individual under section 911(d)(1) of the Internal Revenue Code if the resident alien were a citizen of the United States.
- J.** “Schools” means those educational institutions defined as schools by the Oregon Department of Education, but do not include on-line schools.
- K.** “School Districts” means the Portland Public, David Douglas, Centennial, Parkrose, Reynolds and Riverdale school districts.

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5.73.020 Tax Imposed.

A tax of \$35 is imposed on the income of each income-earning resident of the City of Portland, Oregon who is at least eighteen years old. No tax will be imposed on filer(s) within any household that is at or below the federal poverty guidelines established by the federal Department of Health and Human Services for that tax year.

5.73.030 Net Revenues Distribution.

(Amended by Ordinance No. 187339, effective October 16, 2015.) Net Revenues will be paid by the Revenue Division to the Arts Education and Access Fund for distribution by the City as follows:

- A.** First, funds shall be distributed to the School Districts for the purpose of hiring certified arts or music education teachers for elementary school students for Kindergarten through 5th grade (K-5). Distribution shall be based on a ratio of one teacher for every 500 K-5 students at schools that serve Portland K-5 students, except that Charter schools shall be funded based on a ratio of one teacher for every 500 Portland K-5 students served by the Charter school. Students attending schools that receive no distribution of funds shall not be counted. In the event that a school has less than 500 K-5 students, or in the case of Charter schools, less than 500 Portland K-5 students, funds shall be distributed on a pro rata basis based on the number of students attending that school. Funds shall not be distributed to:
 - 1.** Elementary schools within the School Districts that have no Portland K-5 students; and
 - 2.** Elementary schools within the School Districts that have Portland K-5 students enrolled, but whose catchment does not overlap with the City of Portland's geographical boundaries.
- B.** Any funds remaining after distribution to the School Districts shall be distributed to the Regional Arts & Culture Council (RACC). The City shall execute a contract amendment with RACC to ensure the funds are spent as follows:
 - 1.** Up to 95 percent of the remaining funds shall be distributed to RACC for grants to support non-profit Portland arts organizations that demonstrate artistic excellence, provide service to the community, show administrative and fiscal competence and provide a wide range of high-quality arts programs to the public. RACC will make the determination as to which arts organizations shall be supported, in accordance with their contract with the City. In the event that RACC distributes less than 95 percent of the funds to non-profit Portland arts organizations, the remaining funds shall be distributed for the purpose of providing grants and programs as described in Subsection 2. below.

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2. A minimum of 5 percent of the remaining funds shall be distributed to RACC for the purpose of providing grants and programs to non-profit arts organizations, other nonprofits and schools that will give access to high-quality arts experiences to Kindergarten through 12th grade students (K-12) and for grants and programs that will make arts and culture experiences available to Portland residents, with particular emphasis on programs directed to communities who are underserved by local arts providers.
3. These funds are in addition to existing and ongoing financial support from the City to RACC.

5.73.040 Intergovernmental Agreements.

The City will execute Intergovernmental Agreements (IGAs) with the School Districts and will amend its contract with RACC and require them to provide independently audited financial statements each year that show how the funds received pursuant to this program are spent.

5.73.050 Citizen Oversight Committee.

(Amended by Ordinance No. 185827, effective December 19, 2012.) The City will appoint a citizen oversight committee that is representative of the City's diverse communities to ensure the Arts Education and Access Fund is being implemented as required, to review expenditures made and to report their findings in a public record to the City Council on an annual basis. The committee shall be comprised of a minimum of 10 and a maximum of 20 members, including, if possible, a member of the Tax Supervising and Conservation Commission.

5.73.060 Audits.

The City will receive copies of annual independent audits or other documentation regarding expenditures by RACC and the School Districts each year. The Arts Education and Access Fund also will be part of the City's independent annual audit report, the results of which will be made available to the public.

5.73.070 Effective Dates.

This tax will be effective beginning with the tax year 2012 and shall continue each year thereafter. Payment of the tax each year is due on the date on which state taxes are due, not including any extensions of time that might be requested or received.

5.73.080 Revenue Division Responsibilities.

(Amended by Ordinance No. 187339, effective October 16, 2015.) The Revenue Division shall:

- A. Receive the Gross Revenues derived from the Arts Education and Access Income Tax and distribute the Net Revenues in accordance with the IGAs and RACC contract;

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- B.** Keep accurate records of the funds;
- C.** Report to the City Council by way of a public record on all funds received and directed to the School Districts and RACC;
- D.** Adopt administrative rules necessary to implement tax collection and administration.
- E.** If necessary, contract with public or private agencies to fulfill any of its duties in regard to this Arts Education and Access Income Tax and the Arts Education and Access Fund; and
- F.** Accept any and all gifts and donations to the Arts Education and Access Fund.

5.73.090 Limitation on Costs.

(Amended by Ordinance Nos. 185960 and 187339, effective October 16, 2015.)

- A.** The Revenue Division's first year start-up costs are capped at \$600,000. Ongoing administrative costs are capped at an average 5 percent or less of Gross Revenues over a five year period.
- B.** The City's contract amendment with RACC will require RACC to:
 - 1.** Limit any additional RACC arts education coordination costs incurred as a result of receiving funds to a maximum of 3 percent of Net Revenues;
 - 2.** Ensure that highly qualified persons will coordinate and work with the School Districts in the provision of high quality arts and/or music education;
 - 3.** Seek additional funds from other sources for arts education and access to supplement the goals of the Arts Education and Access Fund;
 - 4.** Provide quality oversight to the programs of the School Districts as well as the expenditures made by RACC; and
 - 5.** Coordinate between School Districts and arts organizations to ensure high quality arts education for Portland students.

5.73.100 Confidentiality.

(Added by Ordinance No. 185827; amended by Ordinance Nos. 187339 and 187610, effective April 1, 2016.) It is unlawful for any City employee, agent or elected official, or for any person who has acquired financial information pursuant to Chapter 5.73 or the Division's administrative rules to divulge, release or make known in any manner any financial information submitted or disclosed to the City under the terms of the Arts

Education and Access Income Tax, unless otherwise required by law. This Section does not prohibit:

- A.** Disclosure to the taxfiler or authorized representative of the taxfiler;
- B.** Disclosure of general statistics in a form which would prevent the identification of financial information regarding an individual taxfiler;
- C.** Disclosure to the City Attorney's Office to obtain payment on unpaid accounts or to receive legal advice; or
- D.** Disclosure to an outside collection agency for collection of any unpaid account balance receivable. Assignment to an outside collection agency permits the Division to collect a reasonable collection fee, above and beyond any amount otherwise owed to the Division;
- E.** Disclosure as otherwise required by law.

5.73.110 Frivolous Filing, False Filing and Hacking.

(Added by Ordinance No. 185827, effective December 19, 2012.)

- A.** A \$250 penalty will be assessed if a taxfiler takes a "frivolous position" in respect to preparing the taxfiler's tax return. A tax return is considered frivolous if a taxfiler does not provide information on which the substantial correctness of the self-assessment may be judged or if the tax return contains information that on its face indicates that the self-assessment is substantially incorrect. Examples of "frivolous positions" as provided in Oregon Administrative Rule 150-316.992(5)(2) are hereby adopted by direct reference.
- B.** A \$250 penalty will be assessed if a taxfiler willfully makes or provides false statements related to their tax return filing.
- C.** The provisions of PCC Subsection 7.02.850 regarding Hacking apply.

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**CHAPTER 5.74 - ACQUISITION OF PUBLIC
ART**

(Chapter replaced by Ordinance No. 161537;
amended by Ordinance Nos. 168591 and 179869,
effective February 10, 2006.)

Sections:

5.74.010	Purpose.
5.74.020	Definitions.
5.74.030	Dedication.
5.74.040	Public Art Trust Fund.
5.74.050	Siting.
5.74.060	Guidelines.
5.74.070	Ownership.
5.74.080	Decisions.
5.74.090	Implementation.

5.74.010 Purpose.

It is the purpose of this Chapter and the policy of the City of Portland to dedicate two percent of the total Eligible Costs or two percent of the total Eligible Funds of all Improvement Projects (whichever is less) to the selection, acquisition, fabrication, installation, maintenance, management, deaccessioning, community education, documentation and registration of Public Art.

5.74.020 Definitions.

(Amended by Ordinance No. 178946, effective January 7, 2005.

A. As used in this Chapter:

1. Improvement Project means any project paid for wholly or in part by a Participating Bureau in which the Participating Bureau's contribution of Eligible Funds equals \$50,000 or more for the construction, rehabilitation, remodeling, improvement or purchase for a public use of any building, structure, park, public utility, street, sidewalk or parking facility or any portion thereof within the limits of the City of Portland.
2. Maintenance and repair does not constitute an Improvement Project.
3. Improvement Projects which are developed privately and leased back to the City of Portland are not exempt from the provisions of this Chapter.
4. The purchase of improved or unimproved property by the Portland Development Commission solely for resale or redevelopment, in which

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property is not otherwise to be put to a governmental use, shall not constitute an Improvement Project subject to the provisions of this Chapter.

- B.** Eligible Costs means the Participating Bureau's capitalized costs for completion of an Improvement Project, including costs for capitalized tenant improvements. Eligible Costs do not include costs for: design and engineering, administration, fees and permits, building demolition, relocation of tenants, environmental testing, environmental remediation, non-construction contingency or indirect costs, such as interest during construction, advertising and legal fees. When an improvement project involves the acquisition of real property, costs attributable to land acquisition are not Eligible Costs, while costs attributable to improvements on the real property are Eligible Costs.
- C.** Eligible Funds means a Participating Bureau's monetary contribution to an Improvement Project. The following are not Eligible Funds: private development revenue, federal and state grants that preclude Public Art as an object for expenditure, Local Improvement District revenue, Water Operating Fund revenue, Water Construction Fund revenue, Sewer Systems Operating Fund revenue, Sewer Systems Construction Fund revenue and revenue from any other funding source subject to legal restrictions which preclude Public Art as an object for expenditure.
- D.** Public Art means original artwork which is accessible to the public and/or public employees, and which has been approved as public art by the Regional Arts and Culture Council, acting on behalf of the City of Portland.
- E.** Participating Bureau means a City of Portland Bureau or Commission that funds an Improvement Project within the meaning of this Chapter.
- F.** Selection Panel means a group responsible for reviewing proposed Public Art and making recommendations to the Regional Arts & Culture Council on the selection of Public Art. Selection Panels shall include a representative of the Participating Bureau, the Improvement Project architect or engineer, artists and citizens.

5.74.030 Dedication.

(Amended by Ordinance No. 187570, effective March 4, 2016.) Any City of Portland official or employee acting on behalf of a Participating Bureau who authorizes or appropriates expenditures for an Improvement Project shall include in the capital improvement program of the City's capital budget, and disburse to the Regional Arts & Culture Council, a monetary contribution for Public Art equal to Two percent (2%) of the total Eligible Costs or two percent of the total Eligible Funds of the Improvement Project, whichever is less. The City Budget Office and the Portland Development Commission shall each adopt administrative rules and procedures to implement this section, which to the greatest extent practicable shall set forth the same procedures to be followed by all Participating Bureaus, including the Portland Development Commission.

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5.74.040 Public Art Trust Fund.

The Regional Arts & Culture Council shall maintain a special fund called the Public Art Trust Fund into which funds dedicated to Public Art pursuant to section 5.74.030 shall be deposited.

- A.** Such funds shall be deposited into the Public Art Trust Fund, and shall be allocated as follows:
 - 1.** 63 percent shall be used by the Regional Arts & Culture Council for costs associated with Public Art including, but not limited to the acquisition, fabrication, and installation of Public Art.
 - 2.** 27 percent shall be used by the Regional Arts & Culture Council for costs associated with Public Art, including, but not limited to costs of selection, project management, community education and registration of Public Art.
 - 3.** 10 percent shall be used by the Regional Arts & Culture Council for the maintenance, conservation and deaccessioning of Public Art.
- B.** Such funds shall be deposited in separate accounts within the Public Art Trust Fund if separate accounting is requested by the Participating Bureau or required by law.
- C.** Disbursements from the Public Art Trust Fund shall be made by the Regional Arts & Culture Council.
 - 1.** Disbursements shall be made according to the terms of this Chapter and any guidelines adopted hereunder by the Regional Arts & Culture Council.
 - 2.** If an Improvement Project is funded by revenue sources whose expenditure is restricted by the City Charter or other law, the Regional Arts & Culture Council, prior to making a disbursement for Public Art from such a restricted account in the Public Art Trust Fund, shall adopt written findings demonstrating that the proposed disbursement complies with all applicable restrictions.
 - 3.** The Regional Arts & Culture Council will report annually to Participating Bureaus on the disbursement of funds from the Public Art Trust Fund.

5.74.050 Siting.

Public Art selected pursuant to this Chapter may be sited in, on or about any Improvement Project or other property owned, leased, or rented by, donated to, or otherwise made available to the City of Portland in accordance with any restrictions placed on siting by the Participating Bureau.

5.74.060 Guidelines.

The Regional Arts & Culture Council shall, after consultation with Participating Bureaus, adopt guidelines to:

- A. Provide for annual reporting to Participating Bureaus;
- B. Develop an annual plan for Public Art that takes into account the views of the Participating Bureau;
- C. Provide a method for the appointment of representatives to Selection Panels;
- D. Determine a method or methods of selecting and contracting with artists for the design, execution and siting of Public Art;
- E. Determine the dedication and disbursement process for the Public Art Trust Fund;
- F. Determine a process for the ongoing care, maintenance and conservation of Public Art;
- G. Determine a process to deaccession art;
- H. Set forth any other matter appropriate to the administration of this Chapter.

5.74.070 Ownership.

All Public Art acquired pursuant to this Chapter shall be acquired in the name of the City of Portland, and title shall vest in the City of Portland.

5.74.080 Decisions.

Except as limited by other sections of this Chapter, the Regional Arts & Culture Council's decisions as to the acquisition, fabrication, installation, deaccessioning, management, community education and registration of Public Art, and disbursement of the Public Art Trust Fund, shall be final.

5.74.090 Implementation.

(Amended by Ordinance No. 187570, effective March 4, 2016.) The Regional Arts & Culture Council, or its designee, shall implement the provisions of this Chapter, in cooperation with the City Budget Office and all Participating Bureaus.

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**CHAPTER 5.75 - CLAIMS UNDER ORS
CHAPTERS 195 AND 197**

(Replaced by Ordinance No. 181640, effective
February 28, 2008.)

Sections:

- 5.75.010 Purpose.
- 5.75.020 Definitions.
- 5.75.030 Filing an Amended Claim.
- 5.75.040 Review of Amended Claim by Program Manager.
- 5.75.050 Hearing on Amended Claim by City Council.
- 5.75.060 Filing a New Claim.
- 5.75.070 Review of New Claim by Program Manager.
- 5.75.080 Hearing on New Claim by City Council.
- 5.75.090 Claim Processing Fee.
- 5.75.100 Determination of Common Law Vested Right.
- 5.75.110 Hearing on a Common Law Vested Right By City Council.

5.75.010 Purpose.

The purpose of this Chapter is to establish a procedure by which owners of private real property located within the City of Portland may file claims pursuant to Chapters 195 and 197 of the Oregon Revised Statutes as amended by Ballot Measure 49 (November 6, 2007) (referred to in this chapter as "Measure 49") and to provide for consideration of claims by the City Council.

5.75.020 Definitions.

- A. Appraisal.** A written statement prepared by a person certified under ORS chapter 674 or a person registered under ORS chapter 308 that complies with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institution Reform, Recovery and Enforcement Act of 1989.
- B. Approved Measure 37 Claim.** A claim filed under ORS 197.352 and approved by the City Council before December 6, 2007.
- C. Department.** The Oregon Department of Land Conservation and Development.
- D. Exempt Land Use Regulation.** A land use regulation that:
 - 1. Restricts or prohibits activities commonly and historically recognized as public nuisances under common law;
 - 2. Restricts or prohibits activities for the protection of public health and safety;
 - 3. Is required in order to comply with federal law;

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4. Restricts or prohibits the use of property for the purpose of selling pornography or performing nude dancing; or
- E. **Land Use Regulation.** A provision of the City of Portland comprehensive plan, zoning ordinance or land division ordinance that restricts the residential use of private real property zoned for residential use.
- F. **Measure 37.** A ballot measure adopted by the voters of the State of Oregon and effective on November 6, 2004 that was codified as Oregon Revised Statutes (ORS) 197.352 and that required, under certain circumstances, the payment of just compensation to landowners if a government land use regulation restricted the use of property and reduced its value, or, in the alternative, authorized the government to remove, modify, or not apply one or more challenged regulations.
- G. **Owner.** A person who is:
 1. The owner of fee title to the property as shown in the deed records of the county where the property is located;
 2. The purchaser under a land sale contract, if there is a recorded land sale contract in force for the property; or
 3. If the property is owned by the trustee of a revocable trust, the settlor of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner.
- H. **Program Manager.** The person authorized to administer and oversee the processing of claims under this Chapter.
- I. **Protection of Public Health and Safety.** A law, rule, ordinance, order, policy or permit or other governmental authorization that restricts a use of property in order to reduce the risk or consequence of fire, earthquake, landslide, flood, storm, pollution, disease, crime or other natural or human disaster or threat to persons or property including, but not limited to, building and fire codes, health and sanitation regulations, solid or hazardous waste regulations and pollution control regulations.
- J. **Reduction in Value.** A decrease in fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after enactment, plus interest, adjusted by any ad valorem property taxes not paid as a result of any special assessment of the property under ORS 308A.050 to 308A.128, 321.257 to 321.390, 321.754 or 321.805 to 321.855, plus interest, offset by any severance taxes paid by the claimant and by any recapture of potential additional tax liability that the claimant has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703.

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- K. Waiver.** Action by the Portland City Council to modify, remove or not apply one or more land use regulations found to have caused a reduction in value.

5.75.030 Filing an Amended Claim.

- A.** A person may amend a Measure 37 claim that was filed with the City of Portland on or before June 28, 2007.
- B.** To qualify for compensation or waiver, a person filing an amended claim under this section must establish that:
- 1.** The claimant is an owner of the property;
 - 2.** All owners of the property have consented in writing to the filing of the claim;
 - 3.** The property is located, in whole or in part, within the City of Portland;
 - 4.** On the claimant's acquisition date, the claimant lawfully was permitted to establish at least the number of single family dwellings on the property that are authorized under Measure 49;
 - 5.** The property is zoned for residential use;
 - 6.** A land use regulation prohibits the establishment of a single-family dwelling;
 - 7.** The establishment of a single-family dwelling is not prohibited by a land use regulation described in ORS 197.352(3);
 - 8.** The land use regulation described in paragraph 6 of this section was enacted after the date the property, or any portion of it, was brought into the Metro Urban Growth Boundary;
 - 9.** The land use regulation described in paragraph 6 of this section was enacted after the date the property, or any portion of it, was annexed to the City of Portland;
 - 10.** The enactment of the land use regulation caused a reduction in the fair market value of the property; and
 - 11.** The highest and best use of the property was residential use at the time the land use regulation was enacted.
- C.** A person filing an amended Measure 37 claim under this section must submit the following information:

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1. The name, street address and telephone number of the claimant and all other persons and entities with an interest in the property;
 2. A title report issued no more than 30 days prior to submission of the claim that shows the claimant's current real property interest in the property, the deed registry of the instrument by which the claimant acquired the property, the location and street address and township, range, section and tax lot number(s) of the property, and the date on which the owner acquired the property interest;
 3. A written statement signed by all owners of the property, or any interest in the property, consenting to the filing of the claim;
 4. A reference to any and all specific, existing land use regulations the claimant believes reduced the value of the property and a description of the manner in which the regulation prohibits the residential use of the property;
 5. A copy of the city land use regulations that applied to the property at the time the challenged land use regulations became applicable to, or were enforced against, the property;
 6. An appraisal showing the fair market value of the property one year before the enactment of the land use regulation and one year after enactment, and expressly determining the highest and best use of the property at the time the land use regulation was enacted;
 7. A description of the claimant's proposed use of the property if the Council chooses to waive a land use regulation instead of paying compensation;
 8. If the property is or has been enrolled in one or more of the special assessment programs listed in Section 5.75.020 J., information regarding tax amounts not paid as a result of the program or programs; and
 9. A statement whether the claimant filed a claim with other public entities on or before June 28, 2007, involving the same property and a copy of any decision made by the entity on the claim.
- D.** The Program Manager shall notify all claimants who filed claims on or before June 28, 2007, and whose claims were not decided by the City Council prior to December 6, 2007, that they may amend their claims under this section and shall provide a form for amended claims. A claimant must submit an amended claim under this section to the Program Manager within 120 days after the date of notice under this paragraph or the claimant is not entitled to relief.

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5.75.040 Review of Amended Claim by Program Manager.

- A.** The Program Manager shall review a claim filed under Section 5.75.030 to ensure that it provides the information required by Subsection 5.75.030 C. If the Program Manager determines that the claim is incomplete, the Program Manager shall, within 21 days after the filing of the claim, provide written notice of the incompleteness to the claimant. If the Program Manager does not notify the owner that the claim is incomplete within the prescribed 21 days, the claim shall be considered complete on the date it was filed with the City of Portland.
- B.** The Program Manager shall review the claim for compliance with the requirements of Subsection 5.75.030 B. and prepare a tentative determination of compliance not later than 90 days after the filing of a complete claim. The Program Manager shall provide written notice to the claimant, the Department, and owners of property within 200 feet of the claim property of the tentative recommendation as to whether the claimant qualifies for the number of single-family dwellings the City of Portland proposes to authorize. The written notice shall inform recipients they have 15 days to submit evidence or argument to the Program Manager in response to the tentative recommendation. The Program Manager shall make a final recommendation on the claim within 135 days of the date the claimant notifies the Program Manager of the claimant's intent to continue the claim.
- C.** The Program Manager's recommendation to approve or deny a claim under Subsection B of this section shall be in writing and shall be supported by a brief explanation for the basis of the recommendation.

5.75.050 Hearing on Amended Claim by City Council.

- A.** The Auditor shall schedule each amended claim for consideration by City Council at a regularly scheduled City Council meeting. After considering the report and final recommendation by the Program Manager and any other material the Council determines is relevant, the Council shall make its final determination and adopt a final decision and order that explains the determination.
- B.** The City Council shall take final action within 180 days of receipt of a claim.
- C.** The City Council's decision shall be in writing and shall be supported by a brief explanation of the basis for the decision.
- D.** The Program Manager shall provide notice of the date, time and location of the public hearing at least 30 days before the hearing to the claimant, the Department, and owners of property within 200 feet of the claim property.

5.75.060 Filing a New Claim.

- A.** A person may file a claim after June 28, 2007, and will qualify for compensation or waiver, if:
1. The claimant is an owner of the property and all owners of the property have consented in writing to filing of the claim;
 2. The claimant's desired use of the property is a residential use;
 3. The claimant's desired use of the property is restricted by a land use regulation enacted after January 1, 2007;
 4. The enactment of the land use regulation has reduced the fair market value of the property; and
 5. The highest and best use of the property was residential use at the time the land use regulation was enacted.
- B.** A person filing a claim under this section must submit the fee for processing the claim prescribed in Section 5.75.090 and the following information:
1. The name, street address and telephone number of the claimant and all other owners of the property;
 2. A title report issued no more than 30 days prior to submission of the claim that shows the claimant's current real property interest in the property; the deed registry of the instrument by which the claimant acquired the property; the location and street address and township, range, section and tax lot number(s) of the property; the date on which the owner acquired the property interest; and any exceptions and encumbrances to title;
 3. A written statement signed by all owners of the property consenting to the filing of the claim;
 4. A citation to the land use regulation the claimant believes is restricting the claimant's desired use of the property;
 5. A description of the specific single-family residential use of the property that the claimant desires to carry out, but cannot because of the land use regulations;
 6. An appraisal showing the fair market value of the property one year before the enactment of the land use regulation and one year after enactment, and expressly determining the highest and best use of the property at the time the land use regulation was enacted;

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7. If the property is or has been enrolled in one or more of the special assessment programs listed in Measure 49, Section 9(6), information regarding taxes not paid as a result of the program or programs; and
 8. A statement whether the claimant filed a claim with other public entities on or before June 28, 2007, involving the same property and a copy of any decision made by the entity on the claim.
- C. A person filing a claim under this section must file the claim within five years after the challenged land use regulation was enacted.

5.75.070 Review of New Claim by Program Manager.

- A. The Program Manager shall review the claim to ensure that it provides the information required by Section 5.75.060. If the Program Manager determines that the claim is incomplete, the Program Manager shall, within 60 days after the filing of the claim, provide written notice of the incompleteness to the claimant. If the Program Manager does not notify the owner that the claim is incomplete within the prescribed 60 days, the claim shall be considered complete on the date it was filed with the Program Manager.
- B. A claim filed under this section shall not be considered complete until the claimant has submitted the information required by this section. If the claimant fails to submit a complete claim within 60 days after the notice prescribed in Subsection A, the claim shall be deemed withdrawn.
- C. The Program Manager shall conduct a preliminary review of a claim to determine whether it satisfies all of the following prerequisites for full evaluation of the claim:
1. The property lies within the City of Portland's jurisdictional boundary;
 2. The land use regulation that is the basis for the claim is a provision of a city land use regulation; and
 3. The claimant acquired an interest in the property before the effective date of the land use regulation and has continued to have an interest in the property since the effective date.
- D. If the claim fails to satisfy one or more of the prerequisites in subsection C of this section, the Program Manager shall prepare a report to that effect and recommend to the City Council that it dismiss the claim following a public hearing under Section 5.75.080.
- E. If the claim satisfies each of the prerequisites in Subsection C of this section, the Program Manager shall complete the review of the claim to determine whether it satisfies the criteria in Section 5.75.060.

- F.** The Program Manager may commission an appraisal or direct other research in aid of the determination whether a claim meets the requirements of ORS 197.352 and to assist in the development of a recommendation regarding appropriate relief for a valid claim.
- G.** The Program Manager shall prepare a written report with the determinations required by Subsection E of this section and the reasoning to support the determination. The report shall include a recommendation to the City Council on the validity of the claim and, if valid, whether the City of Portland should compensate the claimant for the reduction of value or waive the regulation. If the Program Manager recommends compensation or waiver, the report shall recommend any conditions that should be placed upon the compensation or waiver to help achieve the purpose of this chapter and the policies of the City of Portland's comprehensive plan. If the Program Manager recommends waiver, the report shall recommend the specific number of single-family dwellings the City of Portland should authorize commensurate to the reduction in fair market value of the property.
- H.** The Program Manager shall provide the report to the City Council, the claimant, Metro, and other persons who request a copy.

5.75.080 Hearing on New Claim by City Council.

- A.** The City Council shall hold a public hearing on a claim prior to its final determination. The Program Manager shall schedule the hearing for a date within 180 days after the filing of a completed claim.
- B.** The Program Manager shall provide notice of the date, time and location of the public hearing at least 30 days before the hearing to the claimant and owners of the subject property, owners and occupants of property within 100 feet of the subject property, the Department, Metro, and Multnomah County. The notice shall indicate that:

 - 1.** A copy of the Program Manager's recommendation is available upon request;
 - 2.** Judicial review of the City of Portland's final determination is limited to the written evidence and arguments submitted to the City of Portland prior to or at the public hearing; and
 - 3.** Judicial review is available only for issues that are raised with sufficient specificity to afford the City of Portland an opportunity to respond in its final determination.

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- D.** After the close of the public hearing the City Council shall make its final determination on the claim and enter an order with findings of fact and conclusions of law, based upon the record made before the City of Portland, that explain the determination. The Program Manager shall mail a copy of the final determination to the claimant, Multnomah County, and any person who submitted written or oral testimony prior to the close of the public hearing.
- E.** The City Council will make its final determination within 180 days of the date the claim is complete.

5.75.090 Claim Processing Fee.

A claimant shall pay a \$250 fee to file a claim under Sections 5.75.030 and 5.75.060 of this Chapter. A claim will not be considered complete until the fee is paid. For any claims submitted on or after December 2, 2004 for which a fee was not paid at the time of claim submittal, the Program Manager may bill the owner for the fee at any time during the claim review process and prior to a final decision on the claim.

5.75.100 Determination of Common Law Vested Right.

- A.** A person with an approved Measure 37 claim may apply for a determination that the person has a common law vested right to continue and complete a use or development allowed by an approved Measure 37 claim consistent with Measure 49.
- B.** An applicant seeking to establish a common law vested right for an approved Measure 37 claim must submit the following information:
 - 1.** The name, mailing address, and telephone number of the applicant.
 - 2.** A legal description and tax lot numbers of the subject property as well as a street address for the property, if any.
 - 3.** A copy of the approved Measure 37 claim decision from the City of Portland and, if appropriate, the State of Oregon.
 - 4.** Additional information sufficient to address each of the factors listed in Subsection C of this Section.
- C.** The factors to be considered by the Program Manager and the City Council in determining whether the applicant has a common law vested right to continue and complete a use or development allowed by an approved Measure 37 claim are:
 - 1.** The amount of money spent on developing the use in relation to the total cost of establishing the use.
 - 2.** The good faith of the property owner.

3. Whether the property owner had notice of the proposed change in law before beginning development.
 4. Whether any improvements could be used for other allowed uses.
 5. The kind of use, and the location and cost of the development.
 6. Whether the property owner's acts are more than mere contemplated use or preparation, such as the leveling of land, boring test holes, or preliminary negotiations with contractors or architects.
 7. Other relevant factors.
- D.** The Program Manager shall review the application to ensure that it provides the information required by Subsections B and C of this Section. If the Program Manager determines that the application is incomplete, the Program Manager shall, within 30 days after the filing of the application, provide written notice of the incompleteness to the applicant. If the applicant fails to respond or submit the missing information within 30 days of the date of the Program Manager's notice, the application shall be considered complete on the date it was filed with the City of Portland.
- E.** The Program Manager shall prepare a written report with the determinations required by Subsections B and C of this section and the reasoning to support the determination. The report shall include a recommendation to the City Council on whether the applicant has established a common law vested right to continue and complete a use or development allowed by an approved Measure 37 claim.
- F.** The Program Manager shall provide the report to the City Council, the claimant, Metro, and other persons who request a copy.

5.75.110 Hearing on a Common Law Vested Right By City Council.

- A.** The City Council shall hold a public hearing on an application for a common law vested right to continue and complete a use or development allowed by an approved Measure 37 claim prior to its final determination. The Program Manager shall schedule the hearing for a date within 90 days after the filing of a completed application.
- B.** The Program Manager shall provide notice of the date, time and location of the public hearing at least 30 days before the hearing to the applicant and owners of the subject property, owners and occupants of property within 100 feet of the subject property, and the Department. The notice shall indicate that:
1. A copy of the Program Manager's recommendation is available upon request;

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2. Judicial review of the City of Portland's final determination is limited to the written evidence and arguments submitted to the City of Portland prior to or at the public hearing; and
 3. Judicial review is available only for issues that are raised with sufficient specificity to afford the City of Portland an opportunity to respond in its final determination.
- C.** After the close of the public hearing the City Council shall make its final determination on the application and enter an order with findings of fact and conclusions of law, based upon the record made before the City of Portland, that explain the determination. The Program Manager shall mail a copy of the final determination to the claimant, the Department, and any person who submitted written or oral testimony prior to the close of the public hearing.
- D.** The City Council will make its final determination within 120 days of the date the claim is complete.

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**CHAPTER 6.05 - TOURISM IMPROVEMENT
DISTRICT**

(Chapter added by Ordinance No. 185443, effective
July 20, 2012.)

Sections:

- 6.05.010 Portland Tourism Improvement District.
- 6.05.020 Definitions.
- 6.05.030 License Required.
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6.05.010 Portland Tourism Improvement District.

The Portland Tourism Improvement District includes all hotels, as defined in Section 6.05.020, with 50 or more rooms within the Portland City limits.

6.05.020 Definitions.

(Amended by Ordinance Nos. 187339 and 187828, effective July 15, 2016.)

- A.** “Division” means the Revenue Division of the City of Portland Bureau of Revenue and Financial Services, along with its employees and agents;
- B.** “Division Director” and “Director” mean the Director of the Revenue Division of the City of Portland Bureau of Revenue and Financial Services, or his or her designee;
- C.** “District” means the Portland Tourism Improvement District as described in this Chapter;
- D.** “Notice” means a written document mailed by the Division by first class mail to the last known address of a hotel as provided to the Division in the latest application or return on file at the Division; or, if mailed to a hotel who is not a licensee, then to the last known address of the hotel as provided to the Portland Water Bureau or, if that Bureau has no address record, as provided to the Revenue Division in the

latest business license tax return on file at the Division or, if none, then to such address as may be determined following reasonable investigation;

- E.** “Hotel” means any structure, or any portion of any structure which is occupied or intended or designed for transient occupancy for 30 days or less for dwelling, lodging, or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club, and also means space or portion thereof so occupied, provided such occupancy is for less than a 30-day period.
- F.** “Engaged in hotel management activities” means:
- 1.** Being financially responsible for a water service provided to a hotel;
 - 2.** Being financially responsible for operation of a hotel business;
 - 3.** Being financially primarily responsible for the indicia of management of a hotel, in cases not covered by Subsection 1. or 2. Indicia of management of property include, in order of importance, but need not be limited to:
 - a.** Being responsible for waste disposal service provided to a hotel;
 - b.** Being responsible for providing fire insurance for a hotel;
 - c.** Being responsible for repair and maintenance of a hotel;
 - d.** Being responsible for operation of heating, ventilating, and air conditioning equipment that serves a hotel; and
 - e.** Being responsible for the operation and maintenance of fire prevention and suppression equipment that serves a hotel.
- G.** "City Council" means the City Council of the City of Portland, Oregon.
- H.** "Rent" means the consideration charged by the hotel, whether or not received by the hotel, for the occupancy of guest rooms only, valued in money, goods, labor, credits, property or other consideration valued in money, without any deduction.
- I.** “Management Corporation” means an incorporated nonprofit organization that is responsible for the promotion of Portland on a year-round basis; manages tourism-related economic development plans, programs, and projects; and represents tourism-related businesses.

- J.** “Person” means a natural person, partnership, joint venture, association, club, trust estate, corporation (for profit or not-for-profit), or any other entity or combination of entities capable of engaging in hotel management activities within the District.
- K.** “Licensee” means a person licensed to engage in hotel management activities within the District under this Chapter.
- L.** “Room” means each portion of a hotel which may be rented or is intended to be rented to a separate transient lodger or lodging party, other than rooms containing no sleeping accommodations and intended to be used for purposes other than sleeping and living accommodations such as, meetings, recreation, education, business or other purposes. In rooms with multiple beds where each bed may be rented or is intended to be rented to a separate transient lodger, such as bunk and dormitory style rooms, each bed is counted as a room under this definition. This definition is included for purposes of determining if a hotel is included in the District.

6.05.030 License Required.

(Amended by Ordinance No. 187828, effective July 15, 2016.) Any person engaged in hotel management activities of any hotel with 50 or more rooms within the District shall obtain a license for such activities covering each license year, or if application is made after the beginning of a license year, then for the balance of the license year. Only one person need obtain a license for each hotel in the District. The term license as used in this Chapter, shall not be construed to mean a permit and no physical license will be issued. The license fees prescribed herein are for the privilege of engaging in the activity of hotel property management in the District, and the revenues collected will be used as provided herein. The payment of a license fee required hereunder and the acceptance of such fee and issuance of a license by the Division shall not entitle a licensee to engage in any activities not in compliance with all the requirements of this Code, including but not limited to the requirements of Title 7, and all other applicable laws.

6.05.040 License Transfer.

(Amended by Ordinance No. 187828, effective July 15, 2016.)

- A.** Except as provided in this Section, no license shall be transferred or assigned from one person to another.
- B.** The Division shall allow transfer of a license for the balance of its term to a successor or transferee who continues the acts that constituted hotel management activities requiring a license under this Chapter. Any transfer shall be reported to the Division in writing or on a form provided by the Division and shall be effective when the Division approves the transfer as complete. The licensee shall be responsible for any license fee installments which become payable prior to the Division’s approval; and the transferee shall be responsible for any license fee installments which become payable after the Division’s approval.

6.05.050 License Term.

(Amended by Ordinance No. 187828, effective July 15, 2016.)

- A.** Each license issued under this Chapter shall be dated as of the first day of the month in which the license is issued or was required to have been obtained. Each license issued under this Chapter shall expire on the first September 30 following the date on which the license was issued.
- B.** Any person under license who wishes to continue engaging in hotel management after the expiration of a license term must file a license renewal at least 30 days before the license expires or such other time as is established by Division rule.

6.05.060 Portland Tourism Improvement District License Rate.

The license assessment established by this Chapter for hotel management activities in the Portland Tourism Improvement District for a license year shall be calculated as follows:

- A.** Gross rent charged by the hotel;
- B.** Minus rent received from any occupant for a stay of more than 30 successive calendar days (rent derived from stays by a person who pays for lodging on a monthly basis, irrespective of the number of days in such a month, shall also be subtracted);
- C.** Minus rent received from stays by any person housed through an emergency shelter or disaster program where the rent is paid with government assistance funds; and
- D.** Minus rent received from stays by any Federal Government employee traveling on official government business, who presents an official Government Exemption Certificate or official travel authorization.
- E.** Multiplied by .02 (two percent).

6.05.070 Due Date; Returns and Payments.

(Amended by Ordinance No. 187828, effective July 15, 2016.)

- A.** The assessment imposed by this Chapter is due and payable on the 15th day of the following month for the preceding three months; and are delinquent on the last day of the month in which they are due. If the last day of the month falls on a holiday or weekend, amounts are delinquent on the first business day that follows. The Division has the authority to classify and/or direct the hotels for determination of applicable collection periods. The initial return under this Chapter may be for less than three months preceding the due date based on the date of license issuance; thereafter returns shall be made for the applicable quarterly period, unless other reporting periods are required by the Division.

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- B.** On or before the 15th day of the month following each quarter of collection, a return for the preceding quarter assessment on a form prescribed by the Division shall be filed. The return shall be filed in such form as the Division may prescribe by every person liable for payment of the assessment.
- C.** Returns shall show the amount of assessment owed for the quarter. The Division may require returns to show the total rentals upon which the assessment was calculated, gross receipts of the hotel for such period and an explanation in detail of any discrepancy between such amounts, and the amount of rents exempt, if any.
- D.** The person required to file the return shall cause to be delivered the return, together with the remittance of the amount of assessment due, to the Division at its office, either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the day of delivery for determining delinquencies.
- E.** For good cause shown, the Division may extend, the time for making any return or payment of the assessment for a period not to exceed one month. No further extension shall be granted, except by the Division Director. Any person granted an extension shall pay interest at the rate of 1.25 percent per month on the amount of assessment due without proration for a portion of a month. If an extension is granted and the assessment and interest due is not paid by the end of the extension granted, then the interest shall be added to the assessment due for computation of penalties and additional interest designed elsewhere in this Chapter.
- F.** The Division, if deemed necessary in order to ensure payment or facilitate collection by the Division of the amount of assessments in any individual case, may require returns and payment of the amount of assessments for other than quarterly periods.

6.05.080 Disposition of License Fees.

(Amended by Ordinance No. 187828, effective July 15, 2016.) The Division shall forward revenues collected, minus any amount withheld to cover administrative costs incurred by the Division to the Management Corporation, which shall manage funds pursuant to Section 6.05.120.

6.05.090 Authority of Director to Adopt Rules, Procedures, and Forms.

(Amended by Ordinance No. 187828, effective July 15, 2016.)

- A.** The Director may adopt administrative rules, procedures, and forms to implement the provisions of this Chapter.
- B.** Adoption of Rules.
 - 1.** Prior to the adoption of any rule by the Director pursuant to this Section, a public hearing shall be conducted. The Director shall give reasonable public

notice of a proposal to adopt rules not less than 10, nor more than 30, days before the public hearing. The notice shall include the place, time, and purpose of the public hearing, a brief description of the proposed rules, and the location at which copies of the full text of the proposed rules may be obtained.

2. During the public hearing, the Director shall hear statements or receive written comment concerning the proposed rules. The Director shall either adopt the proposed rule, modify it, or reject it, taking into consideration the comments received during the public hearing. If a substantial modification is made, additional public review shall be conducted, but no additional public notice shall be required if an announcement is made at the hearing of a future hearing for a date, time and place certain at which the modification will be discussed. Unless otherwise stated, all rules shall be effective upon adoption by the Director. All rules adopted by the Director shall be filed in the Division's office. Copies of all current rules shall be made available to the public upon request.
3. The Director may adopt an interim rule without prior public notice upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties, including the specific reasons for such prejudice. Any rule adopted pursuant to this paragraph shall be effective for a period of no longer than 180 days.

6.05.100 Late Penalties and Interest.

(Amended by Ordinance No. 187828, effective July 15, 2016.)

- A. Original Delinquency. Any Licensee that has not been granted an extension of time for remittance of the assessment due and which fails to remit any assessment imposed by this Chapter prior to the delinquency date shall pay a late penalty of 10 percent of the amount of the assessment due in addition to the amount of the assessment.
- B. Continued Delinquency. Any Licensee which has not been granted an extension of time for remittance of assessments due, and which failed to pay any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent shall pay a second delinquency late penalty of 15 percent of the amount of the assessment due plus the amount of the 10 percent late penalty first imposed and any interest assessed.
- C. Fraud. If the Division determines that the nonpayment of any remittance due under this Chapter is due to fraud or intent to evade the provisions thereof, a penalty of 25 percent of the amount of the assessment shall be added thereto in addition to the late penalties stated in Subsections A. and B. of this Section.

- D.** Interest. In addition to the late penalties imposed, any Licensee that fails to remit any assessment imposed by this Chapter shall pay interest at the rate of 1 percent per month or fraction thereof without proration for portions of a month, on the amount of the assessment due from the date on which the remittance first became delinquent until paid. Interest shall be compounded monthly.
- E.** Late Penalties and interest merged with assessment. Every penalty imposed and such interest as accrues under the provisions of this Section shall be merged with and become a part of the assessment herein required to be paid. If delinquency continues, requiring additional penalty and interest calculations, previously assessed penalty and interest are added to the assessment due. This amount becomes the new base for calculating new penalty and interest amounts.
- F.** Petition for Waiver. Any Licensee that fails to remit the assessment herein levied within the time herein stated shall pay the penalties herein stated, provided, however, the hotel may petition the Division for waiver of the penalty or any portion thereof and the Division may, if a good and sufficient reason is shown, waive and refund or credit to another period the penalty or any portion thereof.

6.05.105 Business License Appeals Board; Hearings Officer; Appeal; Rules.

(Added by Ordinance No. 187828, effective July 15, 2016.) Any person engaged in hotel management activities aggrieved by a decision of the Division or Director made pursuant to this Chapter may appeal to the Business License Appeals Board or Hearings Officer as allowed in City Code Section 6.04.140 by filing a notice of appeal with the Division Director within 10 days of the service of the notice of a decision. Any hearing will be scheduled by the Business License Appeals Board or Hearings Officer in accordance with rules pertaining to such appeals. The procedures and rules of City Code Section 6.04.140 will apply to any such appeal.

6.05.110 Civil Penalties.

(Amended by Ordinance No. 187828, effective July 15, 2016.)

- A.** The Director may impose a civil penalty of up to \$500 for failure to file a return or pay any assessment within 60 days of the Due Date provided in Section 6.05.070.
- B.** The determination of a violation and imposition of a civil penalty under this Section shall be subject to appeal pursuant to Section 6.05.105.

6.05.120 Revenues and Programs.

(Amended by Ordinance No. 187828, effective July 15, 2016.)

- A.** Revenues shall be used only for programs which promote overnight tourism and improve the lodging business environment. Programs shall be designed to benefit hotels paying the assessment. Programs may include:

1. Internet, radio, television, and print advertising;
 2. Branding efforts;
 3. Sales promotions;
 4. Sponsorship of special events which attract out-of-town visitors; and
 5. Other programs designed to increase overnight stays at hotels.
- B.** Revenues shall be forwarded to and managed by a comprehensive destination marketing organization operating in Portland, which shall be the Management Corporation. The Management Corporation shall:
1. Prepare and submit to the City Council, and make available to lodging businesses, an annual report on expenditures and activities;
 2. Manage funds in accordance with the provisions of this Chapter;
 3. Not be considered a public entity for any purpose; nor shall its Board members be considered public officials for any purpose; and
 4. Enter into an Agreement with the City of Portland relative to management of district funds.
- C.** The Portland Tourism Improvement District is intended to provide supplemental funding for marketing programs above and beyond those currently provided. Portland Tourism Improvement District funds shall supplement the existing funding of one percent of transient lodging tax dedicated to promotion, solicitation, procurement and service of convention business and tourism in the City of Portland.

6.05.130 Portland Tourism Improvement District Periodic Sunset Review.

(Amended by Ordinance No. 187828, effective July 15, 2016.) During 2021 and each 10th year thereafter, the City Council shall conduct a public hearing or hearings to determine whether the Portland Tourism Improvement District assessment should be terminated. Prior to the first such hearing in 2021 and each 10th year thereafter, the Division shall mail notice of the hearing to the then current Portland Tourism Improvement District hotels under this Chapter.

6.05.140 Severability.

If any portion, clause, or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, and if such portion, clause, or phrase is not so substantial that the City Council would not have adopted this Chapter without it, then the remaining portions, clauses, and phrases shall not be affected but shall remain in full force and effect.

6.07.140 Forms and Regulations.

- A.** The Director is authorized to prescribe forms and promulgate rules, policies and regulations to aid in the making of returns, the ascertainment, assessment and collection of the marijuana tax and to provide for:
- 1.** A form of report on sales and purchases to be supplied to all Sellers;
 - 2.** The records that Sellers providing, mixing, serving, or handling marijuana and marijuana-infused products must keep concerning the tax imposed by PCC 6.07.

6.07.150 Invalidity.

If any section, clause, phrase, sentence or part of this Chapter shall for any reason be adjudged unconstitutional, invalid or unenforceable, it shall only void that part, clause, phrase or section so declared and the remainder shall remain in full force and effect.

**CHAPTER 6.08 – CONSTRUCTION EXCISE
TAX**

(Chapter added by Ordinance No. 187855, effective
August 1, 2016.)

Sections:

6.08.010	Purpose.
6.08.020	Definitions.
6.08.030	Administration and Enforcement Authority.
6.08.040	Administrative Authority Rulemaking.
6.08.050	Imposition of Tax.
6.08.060	Exemptions.
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6.08.100	Enforcement by Civil Action.
6.08.110	Refunds.
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6.08.130	Dedication of Revenue.

6.08.010 Purpose.

This Chapter establishes a Construction Excise Tax on commercial and residential improvements to provide funding for affordable housing in the City of Portland. Chapter 6.08 of the City Code shall be known as the Construction Excise Tax.

6.08.020 Definitions.

(Amended by Ordinance No. 187975, effective September 7, 2016.) As used in this Chapter, unless the context requires otherwise:

- A. “Commercial”** means any structure designed or intended to be used, or actually used, for occupancy for other than residential purposes.
- B. “Construct” or “Construction”** means erecting, constructing, enlarging, altering, repairing, improving, or converting any building or structure for which the issuance of a building permit is required pursuant to the provisions of Oregon law.
- C. “Improvement”** means any improvements to real property resulting in a new structure, additional square footage added to an existing structure, or the addition of living space to an existing structure.
- D. “Mass Shelters”** means a structure that contains one or more open sleeping areas, or is divided only by non-permanent partitions, furnished with cots, floor mats, or bunks. Individual sleeping rooms are not provided. The shelter may or may not have food preparation or shower facilities. The shelter is managed by a public or

non-profit agency to provide shelter. For mass shelters, “affordable” means that shelter is provided on a daily basis without a fee. The number of beds is determined by the maximum number of people who can be given overnight accommodations at one time on the site.

- E. “Median family income”** means median family income by household size for the Portland Metropolitan Statistical Area as defined by the United States Department of Housing and Urban Development as adjusted for inflation and published periodically.
- F. “Net Revenue”** means revenues remaining after the administrative fees described in Section 6.08.130 are deducted from the total Construction Excise tax collected.
- G. “Residential”** means structure designed or intended to be used, or actually used, for occupancy for residential purposes including any residential structure, dwelling, or dwelling unit.
- H. “Value of Improvement”** means the total value of the improvement as determined by the construction permit or building permit for the Improvement. The Bureau will calculate the total value by determining the value per square foot based on building type using the International Code Council Building Valuation Data Tables and multiplying that value by the area of the new structure or additional square footage from the exterior surface of the outside wall.

6.08.030 Administration and Enforcement Authority.

- A.** The Bureau of Development Services is responsible for the administration of this Chapter as described in Sections 6.08.050 and 6.08.060. In exercising the responsibilities of this section, the Bureau of Development Services may act through designated representatives.
- B.** Except as provided in Subsection 6.08.030 A., the Portland Housing Bureau is responsible for administration and enforcement of this Chapter. In exercising the responsibilities of this Section, the Portland Housing Bureau may act through designated representatives.

6.08.040 Administrative Authority Rulemaking.

- A.** The Director of the Portland Housing Bureau may adopt procedures, forms and written policies for administering the Construction Excise Tax. Authority granted to the Director of the Portland Housing Bureau under this Chapter 6.08 may be delegated, in writing, to employees or agents of the Portland Housing Bureau. The Director of the Portland Housing Bureau may adopt rules related to matters within the scope this Chapter 6.08, conforming to the intent and purpose of this Chapter

6.08. Adoption of rules by the Director shall follow the procedures set forth in this Section.

B. Permanent rules.

1. Prior to the adoption of a permanent rule, the Director will:
 - a. Publish a notice in a newspaper of general circulation in the City. The notice must be published not less than thirty days before the hearing. The notice must identify the place, time and purpose for the hearing; a brief description of the subjects covered by the proposed rule; the final date for acceptance of written comments; the location to submit comments and the location where copies of the full set of the proposed rules may be obtained. A copy of the notice will be provided to the Office of Neighborhood Involvement at least thirty days before the hearing.
 - b. At the hearing, a designee of the Director will hear testimony and receive written comments regarding the proposed rules. The designee will provide a recommendation to the Director. The recommendation will take into consideration the comments received.
 - c. The Director will review the recommendation of the designee and may either adopt the proposed rule, modify or reject it.
 - d. If a substantial modification is made to the proposed rule, the Director may adopt the modification as an Interim Rule or provide additional public review prior to adoption.
2. Unless otherwise stated, all rules will be effective two weeks after adoption by the Director.

C. Interim rules.

1. The Director may adopt interim rules without prior notice upon a finding that a failure to act promptly will result in a serious threat of injury or hazard to the public health or public or private property. The rule will include specific reasons for the finding.
2. Interim rules may be effective for a period of no longer than 180 days.
3. Not more than 30 days after adoption of an interim rule, public notice of interim rules must be given by publication in a newspaper of general circulation and notice sent to the Office of Neighborhood Involvement.

Such notice must also identify the location at which copies of the full set of the interim rules may be obtained.

- D.** All final and interim rules must be filed in the offices of the Portland Housing Bureau's Director. All final and interim rules will be made available to the public at the Development Services Center, and posted on the City's website.

6.08.050 Imposition of Tax.

- A.** Each person who applies to construct a commercial improvement in the City of Portland shall pay a commercial construction excise tax in the amount of 1 percent of the value of the improvement.
- B.** Each person who applies to construct a residential improvement in the City of Portland shall pay a residential construction excise tax in the amount of 1 percent of the value of the improvement.
- C.** The construction excise tax shall be due and payable prior to the issuance of any building permit by the Bureau of Development Services.

6.08.060 Exemptions.

(Amended by Ordinance No. 187975, effective September 7, 2016.)

- A.** No tax imposed under this Chapter shall be imposed upon the following improvements:
- 1.** Improvements when the value of improvement is less than or equal to \$100,000;
 - 2.** Residential housing units guaranteed to be affordable, under guidelines established by the United States Department of Housing and Urban Development, to households that earn no more than 80 percent of the median household income, for a period of at least 60 years following the date of construction of the residential housing;
 - 3.** Owner occupied residential properties qualifying under the property tax exemption program under Portland City Code Chapter 3.102.
 - 4.** Private school Improvements;
 - 5.** Public Improvements as defined in ORS 279A.010;
 - 6.** Public or private hospital Improvements;
 - 7.** Improvements to religious facilities primarily used for worship or education associated with worship;

8. Agricultural buildings, as defined in ORS 455.315 (2)(a);
 9. Facilities operated by a not-for-profit corporation and that are:
 - a. Long term care facilities, as defined in ORS 442.015;
 - b. Residential care facilities, as defined in ORS 443.400;
 - c. Continuing care retirement communities, as defined in ORS 101.020; or
 10. Mass Shelters.
- B.** Until June 30, 2018, no tax shall be imposed under this Chapter 6.08 on accessory dwelling units as defined by PCC 33.910.
- C.** The Portland Housing Bureau may require any person seeking an exemption to demonstrate that the person is eligible for an exemption and to establish all necessary facts to support the exemption.

6.08.070 Failure to Pay.

The Bureau of Development Services may not issue a building permit to any person who has failed to pay the tax required by Section 6.08.050.

6.08.080 Statement of Entire Value of Improvement Required.

It is a violation of this Chapter 6.08 for any person to fail to state or to misstate the full value of the improvement.

6.08.090 Interest and Penalties for Failure to Comply.

(Amended by Ordinance No. 187975, effective September 7, 2016.)

- A.** Interest. If the Director of the Portland Housing Bureau determines that a person has failed to pay to the City all or any part of the construction excise tax due under this Chapter 6.08, interest shall be due on the entire unpaid amount, assessed at the rate of .833 percent simple interest per month or fraction thereof (10 percent per annum), computed from the original due date of the fee to the 15th day of the month following the date of the underpayment. Interest amounts properly assessed in accordance with this Section may not be waived or reduced by the Director.
- B.** Penalties. In addition to assessing interest, the Director of the Portland Housing Bureau may assess a penalty of five percent of the otherwise applicable tax liability upon:
1. Any person that initially qualifies for an exemption under Subsections 6.08.060 A.2., 6.08.060 A.3. and 6.08.060 A.10. and the housing units subsequently fail to qualify for the exemption;

2. Any person who intentionally fails to state the full value of an improvement.
- C. Penalties and interest merged with tax. Any accrued interest and imposed penalties under the provisions of this Section shall be merged with and become a part of the construction excise tax required to be paid under this Chapter 6.08. If delinquency continues, requiring additional penalty and interest calculations, previously assessed penalty and interest are added to the tax due. This amount becomes the new base for calculating new interest amounts.

6.08.100 Enforcement by Civil Action.

The construction excise tax, and any assessed interest and penalties, due and owing under this Chapter 6.08 constitutes a debt owing to the City by the person liable for the tax as set forth in Section 6.08.050.

6.08.110 Refunds.

- A. The Portland Housing Bureau shall issue a refund to any person who has paid a construction excise tax the amount of the tax actually paid:
 1. If the person establishes that the tax was paid for improvements that were otherwise eligible for an exemption under Section 6.08.060.
 2. If the person establishes that construction of the improvements was not commenced and the associated building permit has been cancelled by the Bureau of Development Services;
 3. Upon a determination by either the Director of the Portland Housing Bureau or the Code Hearings Officer that the amount of any construction excise tax, penalty, or interest has been erroneously collected or paid to the City under this Chapter 6.08.
- B. The Portland Housing Bureau shall either refund all amounts due under this section within 30 days of a complete application for the refund or give written notice of the reasons why the application has been denied. Claims for refunds shall be made upon forms provided by the Portland Housing Bureau. The request for the refund must be submitted within three years from the date of payment of the construction excise tax.
- C. Denial of an application for refund may be appealed as provided for in Section 6.08.120.

6.08.120 Appeals.

- A. Administrative Review. Any written determination issued by either the Bureau of Development Services or the Portland Housing Bureau applying the provisions of this Chapter 6.08, believed to be in error may be reviewed by the Director of the

Portland Bureau of Housing if requested in writing by the recipient. The request for administrative review must be received within 10 days of the determination, and must include all documentation supporting the request. The Director's determination in the administrative review shall be served by regular mail.

- B.** Appeals. Any written determination from either the Bureau of Development Services or the Portland Housing Bureau applying the provisions of this Chapter 6.08 regarding liability for payment of construction excise taxes, the valuation of may appeal such determination of the Director to the Code Hearings Officer of the City as provided in Chapter 22.10 of this Code.
- C.** The filing of any notice of appeal shall not stay the effectiveness of the written determination unless the Code Hearings Officer so directs.

6.08.130 Dedication of Revenue.

- A.** The Bureau of Development Services may retain up to 4 percent of the taxes collected for payment towards the Bureau's administrative expenses related to collection and distribution of the tax.
- B.** For the tax imposed on residential improvements, the net revenues will be distributed as follows:
 - 1.** Fifteen percent of net revenue will be remitted to the Oregon Department of Housing and Community Services to fund home ownership programs.
 - 2.** Fifty percent of net revenue will be transferred to the Portland Housing Bureau Inclusionary Housing Fund to fund finance-based incentives for programs that require affordable housing.
 - 3.** Thirty-five percent of net revenue will be transferred to the Housing Bureau Inclusionary Housing Fund to support the production and preservation of affordable housing units at and below 60 percent median family income.
- C.** For the tax imposed on commercial improvements, 100 percent of net revenue will be distributed to the Housing Bureau Inclusionary Housing Fund to support the production and preservation of affordable housing units at and below 60 percent median family income.

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**CHAPTER 16.30 - TOWING & DISPOSITION
OF VEHICLES**

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16.30.001 Purpose.

This Section describes when a vehicle may or will be towed for parking violation(s), the manner of the towing, storage of the vehicle, and the release or disposition of the vehicle.

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16.30.100 Authority to Tow Vehicles and Establish Hearing Procedures.

(Amended by Ordinance Nos. 170923 and 187925, effective September 2, 2016.)

- A.** Any parking enforcement officer, police officer, or other officer authorized by the City Council or by City Code may order a vehicle towed as provided in this Title.
 - 1.** Impoundment of a vehicle does not preclude issuance of a citation for violation of this Title.
 - 2.** Stolen vehicles may be towed from public or private property and stored at the expense of the vehicle owner.
- B.** The authority to establish procedures in this Title for the disposition of towed vehicles is authorized by Oregon law. Disposition of vehicles towed under authority of this Title must follow the procedures established by this Title.
- C.** If any person tows a vehicle from the public streets without authority under the City Code, the City Towing Coordinator may assess a civil penalty of up to \$1,000 for each vehicle towed to be paid to the City Towing Coordinator and deposited to the City's general fund.

16.30.200 Vehicle Towing.

16.30.210 When a Vehicle May be Towed.

(Amended by Ordinance Nos. 172788, 179141 and 187261, effective July 15, 2015.) A vehicle may be towed and held at the expense of the owner or person entitled to possession thereof from:

- A.** Any public right-of-way, city owned or operated property, parking lot, public park or other public place or property, when:
 - 1.** The vehicle is parked in violation of a temporary or permanent parking restriction;
 - 2.** The vehicle is parked unlawfully or in a manner that may be hazardous to traffic;
 - 3.** The vehicle is parked on City-owned or operated property without express City permission;
 - 4.** The vehicle was used in committing a traffic or parking violation for which an unserved warrant or citation is on file with the clerk of the Circuit court;
 - 5.** The vehicle has been reported stolen;

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6. The vehicle or its contents is to be used as evidence in traffic or criminal prosecutions;
 7. The vehicle is in possession of a person taken into custody by a law enforcement agency;
 8. The vehicle is parked in a space that is marked as reserved for disabled persons unless such vehicle conspicuously displays appropriate decals, insignia, or registration plates as required by state statutes;
 9. The vehicle is parked in violation of any parking regulation;
 10. The vehicle is an abandoned vehicle, as defined in 16.90.005; or
 11. The vehicle is stored on the street in violation of 16.20.170.
- B.** Permanent parking restrictions may be enforced by tow 24 hours after placement in any meter or non meter areas.
- C.** Private property if:
1. The vehicle is parked or stopped without the permission of the person in control of such property; or
 2. In violation of this Title.
- D.** Temporary parking restrictions may be enforced by tow 24 hours after placement in any non meter area.
- E.** Temporary parking restrictions may be enforced by tow in any meter district if the space reservation device and/or signs are in place, and verified during the prior day before or:
1. By 12:30 p.m. if the meters are in effect until 6 p.m. within the meter district; or,
 2. By 1:30 p.m. if the meters are in effect until 7 p.m. or later within the meter district.

16.30.220 Towing Without Prior Notice.

(Amended by Ordinance Nos. 165980, 170912, 176352, and 176442, effective May 1, 2002.) Any authorized officer may, without prior notice, order a vehicle towed, when:

- A.** The vehicle is impeding or likely to impede the normal flow of vehicular or pedestrian traffic;

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- B.** The vehicle is illegally parked in a conspicuously posted restricted space, zone, or traffic lane where parking is limited to designated classes of vehicles or is prohibited in excess of a designated time period, or during certain hours, or on designated days, or at any time and place the vehicle is interfering or reasonably likely to interfere with the intended use of such a space, zone, or traffic lane;
- C.** The vehicle is parked in front of a rural-type mailbox and has been cited within the previous 30 days for violation of Section 16.20.130 E;
- D.** The vehicle poses an immediate danger to the public safety;
- E.** The vehicle is illegally parked within 10 feet of a fire hydrant.
- F.** A police officer reasonably believes that the vehicle is stolen;
- G.** A police officer reasonably believes that the vehicle or its contents constitute evidence of any offense, if such towing is reasonably necessary to obtain or preserve such evidence;
- H.** The vehicle was in possession of a person taken into custody by a law enforcement officer and no other reasonable disposition of the vehicle is available;
- I.** The vehicle is parked or stopped in violation of 16.20.120 A and the vehicle alarm system disturbs, injures, or endangers, or is likely to disturb, injure, or endanger, the peace, quiet, comfort, repose, health, or safety of the public or any person; or
- J.** The vehicle is in the possession of a person arrested for any felony traffic offense, as defined by Oregon Revised Statutes.
- K.** A police officer has probable cause to believe that the vehicle's operator has committed any of the following offenses:
 - 1.** Driving uninsured (ORS 806.010);
 - 2.** Driving while suspended or revoked (ORS 811.175 or ORS 811.182);
 - 3.** Operating a vehicle without driving privileges or in violation of license restrictions (ORS 807.010) and the operator's license has been expired for 60 days or more, or that the operator has not had a valid driver's license within the previous 60 days.
 - 4.** Driving while under the influence of intoxicants (ORS 813.010);
 - 5.** Fleeing or attempt to elude police officer (ORS 811.540);
 - 6.** Speed racing on highway (ORS 811.125); or

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7. Reckless driving (ORS 811.140).

L. A police officer has probably cause to believe that the vehicle has been used or is possessed for the purpose of being used to commit or conceal the commission of one or more of these offenses:

1. Prostitution (ORS 167.007), Promoting prostitution (ORS 167.012), or Compelling prostitution (ORS 167.017) or any attempt, solicitation or conspiracy of one of these offenses; or
2. Unlawful delivery of imitation controlled substance (ORS 475.991), Unlawful possession, delivery, or manufacture of controlled substance (OR 472.992), Unlawful distribution of controlled substance to minors (ORS 475.995), Unlawful manufacture or delivery of controlled substance within 1,000 feet of school (ORS 475.999), or any attempt, solicitation, or conspiracy of one of these offenses.

16.30.225 Towing with 24 Hour or 72 Hour Notice.

(Added by Ordinance No. 166947; amended by Ordinance Nos. 170923, 172788 and 179141, effective March 23, 2005.)

- A. A vehicle may be towed 24 hours after notice of intent to tow has been affixed to or placed on the vehicle if the vehicle is an abandoned vehicle which is an immediate threat to the public health or safety because of its condition.
- B. A vehicle may be towed 72 hours after notice of intent to tow has been affixed to or placed on the vehicle if the vehicle is an abandoned vehicle; or
- C. A vehicle may be towed 72 hours after notice of intent to tow has been affixed to or placed on the vehicle if the vehicle is in violation of 16.20.120 H or I or 16.20.170.
- D. Notice shall be mailed after tow as provided in 16.30.320.

16.30.230 When Notice Required Before Towing.

(Repealed by Ordinance No. 172788, effective November 13, 1998.)

16.30.240 Towing and Immobilization upon Order of Circuit Court.

(Amended by Ordinance Nos. 173369 and 187925, effective September 2, 2016.)

- A. Vehicles that have been used in the commission of a traffic or parking violation, for which an unserved warrant or citation is on file with the Multnomah County Circuit Court, may be immobilized and towed upon order of the court.

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- B.** For the purposes of this Section, “immobilized” means the application of a device commonly known as a “boot”, which clamps and locks on to the wheel and impedes vehicle movement.
- C.** Any officer authorized by the City Council or by City Code to order a vehicle tow is authorized to immobilize a vehicle or order a vehicle immobilized as provided in this Section.

16.30.300 Notice of Vehicle Tow.

16.30.310 Notice Prior to Tow.

(Amended by Ordinance No. 172788, effective November 13, 1998.)

- A.** Except where shorter notice is allowed by this title, notice for vehicles which require prior notice before towing must be provided by:
 - 1.** Affixing a tow warning to the vehicle at least 10 days prior to the tow; and
 - 2.** Mailing a notice to the registered owner(s) and any other persons who reasonably appear to have an interest in the vehicle within 48 hours, Saturdays, Sundays, and holidays excluded, after the tow warning is affixed to the vehicle.
- B.** The tow warning and the mailed notice will state that:
 - 1.** The vehicle is parked in violation of City Code;
 - 2.** The City intends to tow and remove the vehicle if the violation is not corrected; and
 - 3.** A hearing is available to contest the validity of the intended tow, and the method of requesting a hearing, including the date by which a hearing may be requested.
- C.** If a timely request for hearing is received pursuant to Subsection 16.30.400, the vehicle will not be towed until the Tow Hearings Officer makes a determination.

16.30.320 Notice After Vehicle Tow.

- A.** After a vehicle has been towed pursuant to this Chapter, notice will be provided to the registered owner(s) and any other person(s) who reasonably appear to have an interest in the vehicle. Notice will be mailed to such persons within 48 hours after the tow of the vehicle, Saturdays, Sundays, and holidays excluded, and will state:
 - 1.** That the vehicle has been towed;

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2. The location of the vehicle and that it may be reclaimed only upon evidence that the claimant is the owner or person entitled to possession;
 3. The address and telephone number of the person or facility that may be contacted for information on the charges that must be paid before the vehicle will be released and the procedures for obtaining the release of the vehicle;
 4. That the vehicle and its contents are subject to a lien for the towing and storage charges; that if the vehicle is not claimed within 15 days after the mailing date of the notice, the vehicle and its contents will be subject to sale by the City or the towing and storage facility where the vehicle is located and that failure to reclaim the vehicle within such time will constitute a waiver of all interest in the vehicle; and
 5. Unless notice of the availability of a hearing to contest the tow has been provided prior to towing as prescribed in Section 16.30.310, the notice will state that a hearing may be requested to contest the validity of the tow and will set forth the time in which a hearing must be requested and the method of requesting a hearing.
- B.** If a vehicle has been reclaimed prior to the mailing of the notice, no notice need be mailed or provided, but the person or persons reclaiming the vehicle must be provided with written notice of the opportunity for a hearing to contest the tow pursuant to Section 16.30.350.
- C.** In those circumstances in which it can reasonably be anticipated that mailing of notice may hinder or prevent the apprehension of a suspect in an ongoing criminal investigation, the mailing of notice may be delayed until such time as will not prejudice that investigation or apprehension.

16.30.340 Unidentifiable Vehicle.

No notice need be mailed pursuant to Subsections 16.30.310 or 16.30.320 when:

- A.** A vehicle does not display license plates or other identifying markings by which the registration or ownership of the vehicle can be determined, or;
- B.** When the identity of the owner of the vehicle is not available from the appropriate motor vehicle licensing and registration authority and when the identity and address of the owner and/or other persons with an interest in the vehicle cannot otherwise be reasonably determined.

16.30.350 Notice to Contest Tow When Vehicle Claimed.

Written notice of the opportunity to contest the validity of the tow of a vehicle, together with a statement of the time in which a hearing may be requested and the method of requesting a hearing, must be given to each person who seeks to redeem a vehicle which

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has been towed pursuant to this Chapter. This information will be made available by the tow company or other facility holding such vehicle.

16.30.400 Tow Hearing Procedure.

16.30.410 Request for Hearing.

(Amended by Ordinance No. 170923, effective March 21, 1997.)

- A.** After a vehicle has been towed pursuant to subsection 16.30.220 or 16.30.225 and prior to towing pursuant to subsection 16.30.230, the owner(s) and any other persons who reasonably appear to have an interest in the vehicle are, upon timely application filed with the Tow Hearings Officer, entitled to request a hearing to contest the validity of the tow or intended tow of the vehicle.

 - 1.** In the case of a vehicle towed pursuant to Subsection 16.30.220 or 16.30.225, such application must be filed with and received by the Tow Hearings Officer not later than 10 days after the vehicle was towed.
 - 2.** In the case of a vehicle proposed to be towed pursuant to Subsection 16.30.230, such application must be filed with and received by the Tow Hearings Officer not later than 10 days after the affixing of the tow warning to the vehicle.
- B.** The Tow Hearings Officer may, for good cause shown, grant a request for hearing filed after the foregoing time requirements have expired. If the mailing of the towed vehicle notice was delayed pursuant to Subsection 16.30.310, the Tow Hearings Officer will grant a request for hearing received and filed within 10 days of the mailing date of the notice or 10 days of the date the vehicle was reclaimed, whichever first occurs.
- C.** The request for hearing must be in writing and will state the grounds upon which the person requesting the hearing believes the tow or proposed tow invalid, or, for any other reason, unjustified. The request for hearing will also contain such other information, relating to the purposes of this Chapter, as the Tow Hearings Officer may require.
- D.** The Tow Hearings Officer will set and conduct an administrative hearing on the matter within 14 days of receipt of a proper request filed pursuant to this Section. In all cases where a vehicle has been towed and not yet released, however, the Tow Hearings Officer will set and conduct the hearing within 72 hours, not including Saturdays, Sundays, or holidays, on receipt of the request.

16.30.420 Hearing Procedure.

- A. The hearing shall afford a reasonable opportunity for the person(s) requesting it to demonstrate by the statements of witnesses and other evidence, that the tow and/or storage of the vehicle was or would be invalid, or for any other reason not justified.
- B. The Tow Hearings Officer will make necessary rules and regulations regarding the conduct of such hearings, consistent with this Section.

16.30.430 When Tow Found Invalid.

If the Tow Hearings Officer finds the tow and/or storage was or would be invalid or not justified, the Tow Hearings Officer will order the vehicle:

- A. Be immediately released if already towed. The owner(s) or any other person(s) who have an interest in the vehicle are not liable for the tow and/or storage charges and any money paid for tow and/or storage charges will be returned, as appropriate.
- B. Not be towed if such vehicle is about to be towed.

16.30.440 When Tow Found Valid.

(Amended by Ordinance No. 176352, effective March 27, 2002.) If the Tow Hearings Officer finds the towing and/or storage was or would be valid, the Tow Hearings Officer will order the vehicle, if still held, continue to be held until all towing and storage charges and an administrative fee are paid.

If such vehicle is about to be towed, pursuant to Subsection 16.30.230, the Tow Hearings Officer will order such vehicle to be towed and impounded if the violation involving that vehicle has not been completely corrected.

16.30.450 Hearing Administration.

(Amended by Ordinance No. 187925, effective September 2, 2016.)

- A. The decision of the Tow Hearings Officer is a quasi-judicial decision and is final, and is not appealable to the City Council.
- B. Any person who has a hearing scheduled pursuant to this Section and fails to appear at such hearing without good cause shown, as determined by the Tow Hearings Officer, will not be entitled to have such hearing rescheduled.
- C. The owner(s) and any other person(s) who have an interest in the vehicle are only entitled to one hearing for each tow of that vehicle.
- D. Owners of vehicles towed or immobilized by order of the Multnomah County Circuit Court pursuant to Section 16.30.240 are not entitled to a hearing pursuant to this Chapter.

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- E.** The Code Hearings Officer, appointed pursuant to Title 22, will act as Tow Hearings Officer pursuant to this Chapter. Subject to the approval of the Commissioner In Charge, the Code Hearings Officer may, in writing, designate one or more persons to act as Tow Hearings Officer during the absence or unavailability of the Code Hearings Officer.

16.30.500 Fee Payments and Vehicle Release Procedure.

16.30.510 Towing and Storage Rates.

The towing and storage charges that are to be paid before release of a vehicle towed by authority of this Chapter, if towed by a private company at the request of a City officer or employee, will be the charges fixed by City contract for private towing and storage. If a vehicle is towed by City equipment and personnel, the charges will be fixed by a schedule approved by the Council.

16.30.520 Charges and Release of Vehicle.

(Amended by Ordinance Nos. 165980, 167222, 175648 and 176352, effective March 27, 2002.)

- A.** Any private company that tows and stores any vehicle pursuant to this Chapter, shall have a lien on the vehicle, in accordance with ORS 87.152, for the just and reasonable charges for the tow and storage services performed. The company may retain possession of that vehicle, consistent with this Chapter, until towing and storage charges and an administrative fee have been paid.
- B.** If the required towing and storage charges and an administrative fee have been paid, the vehicle must be immediately released to the person(s) entitled to lawful possession. A vehicle towed pursuant to Section 16.30.220 K. shall be immediately released to the person(s) entitled to lawful possession upon proof that a person with valid driving privileges will be operating the vehicle, proof of insurance and payment of towing, storage and payment of an administrative fee to the police agency. If towing and storage charges and an administrative fee have not been paid, a vehicle will not be released, except upon order of the Towing Hearings Officer.
- C.** A vehicle towed pursuant to this Chapter may only be released to the owner, or to the person who was lawfully in possession or control of the vehicle at time it was towed, or to a person who purchased the vehicle from the owner and who produces written proof of ownership. In all cases, adequate evidence of the right to possession of the vehicle as determined by the City Towing Board of Review, must be presented prior to release of the vehicle.

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16.30.530 When Tow Found Invalid.

- A. The accrued towing and storage charges assessed under Section 16.30.520, will be waived by the Hearings Officer if the tow is found to be invalid or for any other reason not justified, after a hearing has been held pursuant to Section 16.30.400.
- B. A person's inability to pay the towing and storage charges, in and of itself, is not a sufficient basis for the waiving of such charges.
- C. If the charges are owed to a private company, the City will pay them if, after a hearing, the tow is found to be invalid or for any other reason not justified and the charges have not previously been paid.

16.30.540 When Tow Found Valid.

(Amended by Ordinance No. 176352, effective March 27, 2002.) If the Tow Hearings Officer finds the towing and/or storage was valid, the person entitled to possession of the vehicle will be responsible for all towing and storage charges.

16.30.550 Storage Charges at Completion of Hearing.

After the Tow Hearings Officer makes a public determination on a vehicle tow hearing, the vehicle must be picked up by the person entitled to possession within 24 hours to avoid further storage charges. If the vehicle is not claimed within this time period, it will not be released until the additionally accrued storage charges, if any, are paid.

16.30.600 Selling Abandoned Vehicles.

16.30.610 When a Vehicle May be Sold.

- A. Whenever any vehicle is taken into custody pursuant to this Chapter, the vehicle will be held at the expense and risk of the owner or person lawfully entitled to possession.
- B. At any time within 15 days after any such notice has been sent, as required in Section 16.30.300, the owner or person lawfully entitled to possession of any such vehicle may claim the vehicle by:
 - 1. presenting satisfactory proof of ownership or right to possession; and
 - 2. paying the charges and expenses, if any, incurred in the preservation and custody of the vehicle.

16.30.620 Sale of Vehicles.

(Amended by Ordinance No. 166575, effective June 2, 1993.)

- A. As often as is necessary, the City Traffic Engineer will be provided with a list of all unclaimed vehicles which have been towed and stored by or for the City which:

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1. Have been in storage 15 days or longer and have been appraised at a value of \$750 or less, or;
 2. Have been in storage for 30 days or longer.
- B.** The City Traffic Engineer will, as soon as convenient, authorize the sale of, or sell such vehicles in accordance with the provisions of any contract authorized by the Council. If there is no such contract, the City Traffic Engineer will sell such vehicle at public auction.
1. If a vehicle is sold in accordance with the provisions of a contract, the Director of the City Traffic Engineer will ensure, at the time of sale, a certificate of sale in substantially the following form is issued to the purchaser:

“CERTIFICATE OF SALE

This is to certify that under the provisions of the Traffic Regulations of the City, I did on the day of , 19 sell to of
. for the consideration Dollars (\$) the following
described personal property:

(Brief description of property)

Dated this day of , 19

.

City Traffic Engineer

NOTE: The City of Portland assumes no responsibility as to condition or Title of the above described property. In case this sale is for any reason invalid, the liability of the City is limited to return of the purchase price.”

2. If the City Traffic Engineer decides to sell any vehicles held pursuant to this Chapter at public auction, notice of the time and place of such auction sale must be given by publication in the official paper of the City for a period of at least 10 days prior to the date of such sale. Such vehicles must be sold to the highest bidder for cash.
- C.** The proceeds of such sale will be first applied to payment of the cost of such sale and expense incurred in the preservation and custody of such vehicles and the balance, if any, will be credited to the Transportation Operating Fund of the City.

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16.30.700 Moving Vehicles For Street and Utility Maintenance and For Emergencies.

16.30.710 Authority To Move Vehicles.

(Amended by Ordinance No. 175564, effective May 9, 2001.) This Section applies when:

- A.** The City has restricted parking in an area on a temporary basis and the signs, barriers, or other notice have been removed by someone other than the owner of the vehicle to be towed so that the vehicle owner has not had notice of the parking restriction;
- B.** There is an emergency and a legally parked vehicle must be moved in order to attend to the emergency; or
- C.** Vehicles are blocking the operation of Portland Streetcar.

16.30.720 When a Vehicle May be Moved.

(Amended by Ordinance Nos. 175564 and 179141, effective March 23, 2005.) Any vehicle parked on a public right-of-way, or on City of Portland owned or operated property, may be towed according to the provisions of 16.30.730 upon the order of an authorized City official, or designee, without prior notice to the owner of the vehicle, when removal of the vehicle is required:

- A.** To provide immediate access for street or utility repair;
- B.** To facilitate the operations by fire, police, ambulance, or other emergency personnel or vehicles;
- C.** To provide safe clearance for special events such as parades, marches, or motorcades;
- D.** To provide clear access for areas specifically reserved by City permit; or
- E.** To provide clear access for operation of the Portland Streetcar.

16.30.730 Manner of Moving Vehicle.

(Amended by Ordinance No. 165594, effective July 8, 1992.)

- A.** The City officer or employee ordering a vehicle to be towed may direct that the vehicle be towed and parked at any legal parking space on the public right-of-way at any storage facility designated by the City.
- B.** The City officer or employee is not limited to the City Tow Contract rotation and may enter into agreements with any towing or other firm for removing vehicles.

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- C.** The City officer or employee ordering a vehicle to be towed pursuant to this Section will notify the Police Bureau of the location of the towed vehicle within 1 hour after the completion of the tow.
- D.** The costs of towing and storing the vehicle for a period not to exceed 72 hours will be paid by:

 - 1.** The City in the case of a tow requested by a City officer or employee, or
 - 2.** The permittee in the case of a tow requested by a permittee.
- E.** The owner of the vehicle may be charged a reasonable storage fee for the storage of the vehicle if the vehicle is towed and stored at a private storage facility and the owner fails to remove the vehicle from the private storage facility within 72 hours after the vehicle was towed.

16.30.800 Regulation of Towers.

16.30.810 Solicitation of Towing Business at Accidents Prohibited.

(Amended by Ordinance No. 165594, effective July 8, 1992.)

- A.** Except as otherwise provided herein, no person with a direct or indirect interest in any business engaged in the towing or recovery of motor vehicles for a profit nor any person employed by such a business nor any person receiving any fee or remuneration from such a business, may solicit or attempt to solicit towing business at or near the site of a motor vehicle accident.
- B.** The prohibitions set forth in Subsection A do not prohibit any person from providing or offering to provide towing services if:

 - 1.** The services are provided without charge, fee, or other remuneration;
 - 2.** The services are provided or offered at the direction or request of a police officer;
 - 3.** The services have been requested by the owner, operator, or other person in charge of the vehicle by radio or telephone communication or otherwise at a location other than the accident site; or
 - 4.** Allowed by government contract or franchise.
- C.** “Solicit or attempt to solicit towing business” means to offer or attempt to offer motor vehicle towing or recovery services for a fee or remuneration.
- D.** Violation of subsection A of this section is a traffic infraction, punishable by a fine not to exceed \$500.

16.30.820 Obstructing Traffic.

- A.** The operator of a wrecker or tow truck may stop a vehicle where it obstructs traffic when the operator:

 - 1.** Is engaged in the recovery of another vehicle; and
 - 2.** Takes the precautionary measures required by this Section.
- B.** A person commits the offense of failure to take precautions when obstructing traffic with a tow vehicle or wrecker engaged in the recovery of another vehicle if the operator does not do all of the following:

 - 1.** Determine that the recovery operation requires stopping the tow or recovery vehicle in the roadway; and
 - 2.** Activate tow vehicle warning lights described in ORS 816.280.

16.30.830 Failure to Remove Injurious Substance.

A person commits the offense of tow vehicle operator failure to remove injurious substance if the person is operating a tow vehicle that is removing a wrecked or damaged vehicle from a roadway and the person fails to remove any glass or other injurious substance dropped upon the roadway from such vehicle.

TITLE 16 VEHICLES AND TRAFFIC

CHAPTER 16.35 - DESIGNATED PARKING MANAGEMENT PLAN DISTRICTS

(Chapter added by Ordinance No. 187261, effective
July 15, 2015.)

Sections:

- 16.35.010 Purpose.
- 16.35.020 Controlling Requirements for Parking.
- 16.35.100 Upper Northwest Parking Area Regulations.
- 16.35.110 Upper Northwest Parking Definitions.
- 16.35.120 Upper Northwest Permit Violation and Enforcement.
- 16.35.130 Upper Northwest Meter Violation and Enforcement.
- 16.35.200 Central Eastside Industrial Area Permit Parking Regulations.
- 16.35.210 Central Eastside Industrial Area Permit Parking.
- 16.35.220 Central Eastside Industrial Area (CEID) Violations and Enforcement.

16.35.010 Purpose.

Chapter 16.35 is added to Title 16 to address parking challenges presented in congested inner neighborhoods of the City, while striving to maintain livability and business vitality in those designated parking districts. Parking Management Plan Districts seek to balance these various aspects through such mechanisms as residential and business parking permits, varying times for parking meters and flexibility for visitors to the districts.

16.35.020 Controlling Requirements for Parking.

Except where explicitly addressed in Chapter 16.35, the provisions of Title 16 shall control parking of motor vehicles. The Council separately establishes Parking Area Management Plans. The City Traffic Engineer has authority under Title 16 to adjust boundaries within Parking Area Management Plans for meters and permit requirements through signage within the boundaries of established Parking Area Management Plans.

16.35.100 Upper Northwest Parking Area Regulations.

Sections 16.35.100 through 16.35.130 contains regulations addressing parking within the Upper Northwest Parking Area.

16.35.110 Upper Northwest Parking Definitions.

- A. Upper Northwest Long-Term Parking Meter - Any parking meter with a designated time limit of 1 hour or more, as regulated by signage within the Upper Northwest Parking Area.
- B. Upper Northwest Metered District - The portion of all block faces which are regulated by signage as time zones requiring meter payment within Zone M.

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- 17.105.010 Tax Imposed.
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- 17.105.030 License Requirements.
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- 17.105.040 Failure to Secure License.
- 17.105.045 Amount and Payment of Tax.
- 17.105.050 Revocation of License.
- 17.105.055 Cancellation of License.
- 17.105.060 Remedies Cumulative.
- 17.105.065 Billing Purchasers.

- 17.105.070 Failure to Provide Invoice or Delivery Tag.
- 17.105.075 Transporting Motor Vehicle Fuel in Bulk.
- 17.105.080 Exemption of Weight Receipt Holders.
- 17.105.085 Exemption of Export Fuel.
- 17.105.090 Exemption of Motor Vehicle Fuel Sold or Distributed to Dealers.
- 17.105.095 Payment of Tax and Delinquency.
- 17.105.100 Monthly Statement of Dealer or Seller.
- 17.105.105 Failure to File Monthly Statement.
- 17.105.106 Refunds.
- 17.105.110 Examinations and Investigations.
- 17.105.115 Limitation on Credit for or Refund of Overpayment and on Assessment of Additional Tax.
- 17.105.120 Examining Books and Accounts of Carriers of Motor Vehicle Fuel.
- 17.105.125 Records to be Kept by Dealer and Seller.
- 17.105.130 Records to be Kept 3 Years.
- 17.105.135 Citizen Oversight Committee; Annual Audits.
- 17.105.140 Tax Effective If Passed.
- 17.105.145 Administrative Rules.

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CHAPTER 17.04 - DEFINITIONS

(Chapter replaced by Ordinance No. 185397,
effective July 6, 2012.)

Section:

17.04.010 Definitions.

17.04.010 Definitions.

(Amended by Ordinance No. 186902, effective December 26, 2014.) The following definitions apply to the entirety of Title 17. Additional section-specific definitions may be found in other sections.

- A. “Best Management Practices (BMPs)”** means operational, maintenance and other practices that prevent or reduce environmental, health or safety impacts. BMPs include structural controls, modification of facility processes, and operating and housekeeping pollution control practices.
- B. “Brownfield”** means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.
- C. “Building Permit”** means a permit required under Chapter 24 or state administrative rule to erect, construct, enlarge, alter, repair, move, improve, remove, convert, change occupancy group of, or demolish any building or structure, or to do any clearing or grading, or cause any of the same to be done.
- D. “Chief Engineer”** means the engineer with the authority to act as the official agent of the bureau or department responsible for a local or public improvement or the lawfully designated subordinate of the City Engineer. For the Bureau of Transportation this shall be the City Engineer, for the Bureau of Environmental Services this shall be the Chief Engineer of the Bureau of Environmental Services, and for the Portland Water Bureau this shall be the Chief Engineer of the Portland Water Bureau.
- E. “City Engineer”** means the duly appointed City Engineer, or designee.
- F. “Department of Environmental Quality (DEQ)”** means the Oregon Department of Environmental Quality.
- G. “Development”** means all improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, and areas devoted to exterior display, storage or activities which create the need for additional usage or construction of public infrastructure.
- H. “Director of the Bureau of Environmental Services”** means the duly appointed Director of the Bureau of Environmental Services, or the lawfully designated

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subordinate of the Director of Environmental Services acting under the orders of the Director of the Bureau of Environmental Services.

- I. “Director of the Bureau of Transportation”** means the duly appointed Director of the Bureau of Transportation, or the lawfully designated subordinate of the Director of the Bureau of Transportation acting under the orders of the Director of the Bureau of Transportation.
- J. “Dwelling Unit”** means a building or a portion of a building consisting of one or more rooms which may include sleeping, cooking, and plumbing facilities and are arranged and designed as living quarters for one family or household.
- K. “Engineer’s Estimate”** means the calculation of anticipated total dollar cost of the construction of a public or local improvement project as determined by the Chief Engineer. The estimate is used in determining the face value of performance bonds where applicable.
- L. “EPA”** means the United States Environmental Protection Agency.
- M. “Frontage”** means the length of public right-of-way adjacent to a property, measured in feet.
- N. “Lateral”** means the underground pipe that connects the plumbing system of a building or buildings to a public or private sewer.
- O. “Local Improvement”** means an improvement of, on, over or under property that is or will be owned or controlled by the public, by construction, reconstruction, remodeling, repair or replacement, when the improvement is determined by the Council to confer a special benefit on certain properties, and such properties are to be charged through assessment all or a portion of the improvement cost.
- P. “Oregon Administrative Rules (OAR)”** means the State of Oregon Administrative Rules as amended.
- Q. “Owner”** means an owner-of-record of real property according to the appropriate county’s assessment and taxation records.
- R. “Person”** means any natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, and/or the manager, lessee, agent, servant, officer, or employee of any of them.
- S. “Projected Future Curbline”** means:
 - 1. The location of the curbline as designated on City plans for street construction;
 - 2. To the edge of existing pavement; or

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3. To the appropriate width of the designated street classification as described in the Design Standards for Public Streets.
- T. “Public Improvement”** means an improvement of, on, over or under property owned or controlled by the City, or property to be controlled by the City upon plat and easement recording for approved land divisions, by construction, reconstruction, remodeling, repair or replacement, when no property is intended to be charged through assessment any portion of the improvement cost.
- U. “Public Sewer”** means the entire City sewage, sludge, and stormwater collection, conveyance, treatment, pollution reduction, reuse, and disposal systems, including all pipes, ditches, sumps, manholes, and other system components that:
1. Have been designed for the collection and transport of stormwater, wastewater, or sanitary sewage received from street inlets, sewer service laterals and common private sewer systems; and
 2. Were
 - a. Constructed by the City’s Bureau of Environmental Services; or
 - b. Accepted by the City’s Bureau of Environmental Services under Section 17.32.055.
- V. “Public Utility”** means a person currently possessing a franchise or privilege granted by the City of Portland to provide utility service, or is a City bureau charged with providing utility service, to the public to generate, transmit or provide any such service within the City, including but not limited to electricity, telecommunications, natural gas, sewer, water, stormwater, cable or pipeline services.
- W. “Public Works Project”** means any project performed or financed by a local, state, or federal government that results in the construction of a Local Improvement or a Public Improvement.
- X. “Responsible Official”** means the Official with the authority to act as the official agent of the bureau or department or the lawfully appointed subordinate of the Responsible Official. For the Bureau of Transportation, this shall be the Director of the Bureau of Transportation as defined in Section 17.04.036. For the Bureau of Environmental Services, this shall be the Director of the Bureau of Environmental Services as defined in Section 17.04.035.
- Y. “Street”** means any street as defined in the City Charter, including all area between property lines, and area dedicated to street use.

**CHAPTER 17.06 - ADMINISTRATION OF
PUBLIC WORKS PERMITTING**

(Chapter added by Ordinance No. 183483, effective
February 19, 2010.)

Sections:

- 17.06.010 Purpose and Scope.
- 17.06.015 Protection of the Public Interest.
- 17.06.020 Definitions.
- 17.06.030 Organization and Rules.
- 17.06.040 Appeals Panel and Appeals Board.
- 17.06.050 Appeals.

17.06.010 Purpose and Scope.

This Title establishes regulations affecting or relating to Public Works Permit Improvements.

17.06.015 Protection of the Public Interest.

(Added by Ordinance No. 185397, effective July 6, 2012.) No provision of this Title shall be construed to create a right in any individual to a permit which in the opinion of the City would be inconsistent with the public interest.

17.06.020 Definitions.

For the purposes of this Chapter, the following definition shall apply:

- A. **“Public Works Permit”** is a permit issued by the Bureau of Transportation in accordance with Section 17.24.030, Application for Permit, or issued by the Bureau of Environmental Services in accordance with Chapter 17.32, Sewer Regulations.

17.06.030 Organization and Rules.

- A. The Public Works Permitting Section shall administer the provisions of this Chapter.
- B. The personnel of the Public Works Permitting Section shall consist of a Public Works Permit Engineering Manager and other employees as may be allowed and provided by City Council. Such personnel may act to enforce provisions of this Title. The Public Works Permit Engineering Manager shall report to the Development Division Managers of the Bureaus of Transportation, Environmental Services, and Water.
- C. The Public Works Permitting Section shall reside in the Bureau of Transportation Budget. Each year the Bureaus of Transportation, Environmental Services, and Water shall negotiate and implement an Interagency Agreement to manage administration and operations of the Section.

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1. The Public Works Permit Engineering Manager, under the direction of the three Development Division Managers for the Bureaus of Transportation, Environmental Services and Water, and in consultation with the City Engineer and Chief Engineers of the Bureaus of Environmental Services and Water, shall establish rules and procedures for appeals. The rules may include, consistent with this Code, a description of agency decisions that are and are not subject to appeal under this Code section.

17.06.040 Appeals Panel and Appeals Board.

(Amended by Ordinance No. 185397, effective July 6, 2012.)

A. Public Works Administrative Appeals Panel (PWAAP).

1. The PWAAP shall consist of five members. No quorum is required for deliberation or decision.
 - a. The Panel shall include the three Development Division Managers or equivalent on the Bureaus of Transportation, Environmental Services, and Water or their designees.
 - b. Mayor Appointed Members.
 - (1) The Panel shall include one representative from the Development Review Advisory Committee (DRAC) and one from the City who has a strong interest or background in neighborhood land use and development activities. The Mayor may solicit nominations from the Chairs of the City's Neighborhood Association Land Use Committees or, if an association has no land use chair, the Neighborhood Chair.
 - (2) The Mayor shall appoint a qualified member and an alternate for each member. The alternate shall attend meetings and vote when the member is unavailable. Appointed Panel members and alternates shall serve a term of two years. However at the creation of the PWAAP, the initial term one DRAC and a City at large member shall be for three years to stagger membership for continuity with appointed members. The Mayor shall appoint and may remove any member or alternate from the Panel at any time.
 - (3) Members of the Panel shall be public officials within the meaning of state and local laws pertaining to ethics.
 - (4) Appointed members of the PWAAP shall serve without compensation.

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2. The PWAAP shall annually elect a Chairperson from among the three development division manager members of the Panel. Meetings of the PWAAP shall be held at the call of the Chairperson, who shall call meetings at the Public Works Permit Engineering Manager's request.

B. Public Works Board of Appeals (PWBA).

1. The Board shall consist of three members: Chief Engineers from the Bureaus of Environmental Services and Water, and the City Engineer or their designees. Two members shall constitute a quorum.
2. The Board annually shall elect a Chairperson from among the three members of the Board. Meetings of the Board shall be held at the call of the Chairperson, who shall call meetings at the Public Works Permit Engineering Manager's request.

C. Representation from the Bureaus of Fire, Parks and Recreation Forestry Division or Development Services may be called upon by the Public Works Permit Engineering Manager at any time to provide staff support related to appeals to be acted upon by the PWAAP or PWBA.

17.06.050 Appeals.

(Amended by Ordinance No. 184707, effective July 29, 2011.)

A. Unless prohibited by this Code and rules adopted by the Public Works Permit Manager, any person whose application for a Public Works Permit is denied or any person who is required pursuant to, or as a written condition of, the grant of a Public Works Permit to incur an expense for the alteration, repair, or construction of a facility in the public right of way, including but not limited to pavement, sidewalk areas, stormwater facilities or utilities may appeal to the Public Works Administrative Appeal Panel (PWAAP) by serving written notice upon the Public Works Permit Engineering Manager. The following actions are not subject to appeal:

1. Approval or denial of requests for design exceptions;
2. Previously established City standards and specifications;
3. Decisions related to the assessment of system development charges;
4. Matters subject to the authority of any other City appeal body;
5. Matters which may be appealed through City or state land use processes.

B. A permit decision, requirement or condition may only be appealed if it is in writing and only on the grounds that it is inconsistent with or contrary to City Code, rules, standards, policy, or is a misapplication or misinterpretation, thereof.

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- C.** An appellant shall serve written notice of appeal on the Public Works Permit Engineering Manager challenging an appealable permit decision, requirement, or condition. The notice of appeal shall be in such form as specified by the Public Works Permit Engineering Manager, and shall be accompanied by a fee, which shall be set on an annual basis by City Ordinance, and served within the time for appeal specified in Subsection H. of this Section.
- D.** Content of the appeal. The appeal must be submitted on forms provided by the Public Works Permit Engineering Manager. All information requested on the form must be submitted. The appeal request must include:
- 1.** The public works permit number appealed;
 - 2.** The appellant's name, address, signature, phone number;
 - 3.** The grounds for the appeal including, at a minimum, the specific City Code provision, rule, standard, or policy with which the decision, requirement, or condition is claimed to be in conflict and a detailed explanation of the alleged conflict;
 - 4.** The relief requested; and
 - 5.** The required fee.
- E.** The PWAAP may approve, approve with conditions or deny the requested relief. Any such decision must be consistent with applicable City Code, rules, standards and policies. The decision of the PWAAP, including a statement of its basis, shall be transmitted to the appellant and the relevant Bureaus in writing.
- F.** The appellant may appeal the PWAAP decision to the Public Works Board of Appeals (PWBA) by serving written notice on the Public Works Permit Engineering Manager. Failure to do so shall constitute waiver of any objections to the decision. The allowable grounds for appeal to the PWBA are as stated in Subsection B. of this Section. The request for appeal to the PWBA must include all items as stated in Subsection D. of this Section, and must be made within the time for appeal specified in Subsection H. of this Section.
- G.** The PWBA may approve, approve with conditions or deny the requested relief. Any such decision made must be consistent with applicable City Code, rules, standards and policies. If the PWBA determines that the requested relief cannot be granted without a change to City policy the PWBA may recommend such a change in writing to the Directors of the Bureaus of Transportation, Water, Environmental Services and Development Services and may incorporate the Directors' response into its final decision. The PWBA shall transmit to the appellant and the relevant Bureaus a written decision on the appeal, including a statement of its basis.

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- H.** Sequence of Appeals. The purpose of the appeals procedures is to identify and resolve appealable issues as early as possible, and to ensure an appeal is fully resolved before an applicant moves to subsequent steps in the permit review process. The following sequencing requirements apply to appeals:
- 1.** Appellant may file an appeal during any phase of the permit application and review process. However, an appeal must be submitted during the phase in which the decision is made. For example, a decision made during the 30 percent phase of plan review must be appealed prior to the start of the 60 percent phase.
 - 2.** The time required to file and process an appeal shall not increase the amount of time allowed by the City for an applicant to file and process a public works permit application. The right to appeal shall expire when the permit expires.
- I.** Decisions of the PWBA are final. They may be reviewed by the Circuit Court pursuant to ORS 34.010 to 34.102.

**CHAPTER 17.08 - LOCAL IMPROVEMENT
PROCEDURE**

(Chapter replaced by Ordinance No. 177124,
effective January 10, 2003.)

Sections:

- 17.08.010 Definitions and Scopes of Duties.
- 17.08.020 City Council Control.
- 17.08.030 Charter Provisions Applicable.
- 17.08.040 Initiation of Local Improvement Proceedings.
- 17.08.050 Petition for a Local Improvement District.
- 17.08.060 Resolution of Intent.
- 17.08.070 Local Improvement District Formation and Remonstrances.
- 17.08.080 Changes to Scope or Cost of Improvements and Notice to Proceed.
- 17.08.090 Abandonment of Local Improvement District.
- 17.08.100 Completion of Construction.
- 17.08.110 Total Cost of Local Improvement
- 17.08.120 Alternative Financing Methods.
- 17.08.130 Final Assessment and Objections.

17.08.010 Definitions and Scopes of Duties.

(Amended by Ordinance Nos. 182389 and 184957, effective November 25, 2011.)

A. The “Responsible Bureau” for a local improvement is as follows:

1. The Bureau of Transportation is the Responsible Bureau for street and other transportation improvements;
2. The Bureau of Environmental Services is the Responsible Bureau for sanitary sewer, stormwater management and other environmental improvements;
3. The Bureau of Water Works is the Responsible Bureau for water improvements; and
4. City Council shall designate the Responsible Bureau for a local improvement that is not addressed by this section.

B. “Local Improvement District Administrator” means the person designated by the Director of the Bureau of Transportation to administer the City’s local improvement district program.

C. The Responsible Engineer as identified in Section 17.04.037 is responsible for:

1. Preparing a preliminary engineer’s estimate;

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2. Preparing plans and specifications;
3. Entering into a contract for improvement construction and/or engineering;
4. Handling completion of construction and acceptance of work;
5. Preparing a final engineer's estimate; and
6. Any other work related to engineering or construction.

D. The Local Improvement District Administrator is responsible for:

1. Preparing a petition for a local improvement district and determining the validity of a petition for a local improvement district as appropriate;
2. Recommending an assessment methodology or assessment methodologies for a local improvement district to City Council;
3. Analyzing financial feasibility of a local improvement district prior to formation;
4. Preparing and filing a resolution of intent for formation of a local improvement district;
5. Publishing and posting notices for the formation hearing of a local improvement district;
6. Preparing and filing a formation ordinance for a local improvement district;
7. Responding to remonstrances against formation of a local improvement district;
8. Presenting significant changes to scope or cost of improvements to City Council after formation of a local improvement district;
9. Recommending abandonment of a local improvement district;
10. Determining the total cost of the local improvement;
11. Publishing and posting notice of final assessment for a local improvement district;
12. Preparing and filing the final assessment ordinance for a local improvement district;
13. Responding to objections against final assessment of a local improvement district; and

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14. Any other work related to processing or completing local improvement districts.

E. The City Auditor shall be responsible for:

1. Mailing notices for the formation hearing of a local improvement district at the direction of the Local Improvement District Administrator;
2. Receiving written remonstrances against the formation of a local improvement district, and forwarding such remonstrances to the Local Improvement District Administrator for a response;
3. Maintaining records of preliminary estimates of assessments;
4. Mailing notices for the final assessment hearing for a local improvement district at the direction of the Local Improvement District Administrator;
5. Receiving written objections to the final assessment for a local improvement district, and forwarding such objections to the Local Improvement District Administrator for a response;
6. Entering final assessments for a local improvement district into the docket of City Liens upon passage of an assessment ordinance for a local improvement district;
7. Mailing of notices of final assessment to property owners after passage of the assessment ordinance and entry into the docket of City Liens;
8. Determining the individual financial capacities of property owners, and whether to offer bonding, if requested; and
9. Obtaining interim financing to pay for local improvement costs prior to bonding.

17.08.020 City Council Control.

Whenever the City Council deems it expedient, it may order an improvement; when the City Council determines that such improvement will afford a special benefit to property within a particular district, the City Council shall classify it as a local improvement, and provide for payment of all or a portion of the cost thereof by imposition and collection of local assessments on the property benefited.

17.08.030 Charter Provisions Applicable.

(Amended by Ordinance No. 184957, effective November 25, 2011.) Charter provisions applicable to local improvements shall be followed by the City except where Charter provisions are contrary to state statute or the Oregon Constitution. In case of such conflict, legally applicable City Code shall apply.

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17.08.040 Initiation of Local Improvement Proceedings.

- A.** City Council may, at its discretion, initiate a local improvement proceeding by adopting a resolution of intent to undertake a capital construction project, or part thereof, based on:
 - 1.** A valid petition of support per the criteria in Section 17.08.050, signed by property owners and filed with the Local Improvement District Administrator;
 - 2.** A recommendation from the Responsible Bureau; and/or
 - 3.** Its own initiative.
- B.** Where a sewer local improvement is ordered pursuant to an Environmental Quality Commission Order and a sewer plan has been developed and adopted by the City Council, preparation of the construction plans and specifications for that improvement may begin without action by the City Council.

17.08.050 Petition for a Local Improvement District .

- A.** A petition of support may be prepared by the Local Improvement District Administrator or by owners of property that may be specially benefited by the proposed improvement.
- B.** The petition shall include:
 - 1.** The name or designation of the improvement;
 - 2.** A map or clear description of the location of the improvement;
 - 3.** The general character and scope of the improvement; and
 - 4.** A proposed assessment methodology.
- C.** The Local Improvement District Administrator shall review a petition for the proposed local improvement district to determine if the petition is valid. A petition will be considered valid only when property owned by petition signers added to property covered by waivers of remonstrance and property owned by the City represents more than 50 percent of the property in the proposed district as measured by the proposed assessment methodology. Property owned by the City, including property owned through the Portland Development Commission, shall be counted in support of formation of a local improvement district.
- D.** The Local Improvement District Administrator will not consider a petition valid if a petition for a substantially similar local improvement district has been filed in the

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previous 6 months and City Council resolved not to proceed with the substantially similar district.

- E.** In reviewing the petition, the Local Improvement District Administrator shall also identify delinquencies in taxes or City liens in the proposed district and determine the bonding capacities of the properties within the proposed local improvement district. The Local Improvement District Administrator shall analyze project financial feasibility by determining whether the sums assessed together with all unpaid sums then outstanding as assessments against the properties would exceed one-half the real market valuation of the properties as shown on the latest county tax rolls.
- F.** A petition of support will not be disqualified as a result of a subsequent transfer in property ownership. However, the new property owner has a right to remonstrate against the proposed improvement as provided in Chapter 17.08.

17.08.060 Resolution of Intent.

- A.** The Local Improvement District Administrator shall prepare and file a resolution of intent for the City Council's consideration if after the review specified in Section 17.08.050 the Local Improvement District Administrator determines a petition is valid; if a Responsible Bureau recommends initiation of a local improvement district; and/or if a member of City Council requests initiation of a local improvement district.
- B.** The resolution of intent shall include the following: the name or designation of the improvement; the location of the improvement; a map or clear description of the district boundary; the general character and scope of the improvement; a preliminary estimate of the total cost of the local improvement; the proposed assessment methodology; the proportion of funding to be borne by property owners and other sources, if applicable; the designated Responsible Bureau if the project scope is not addressed by Section 17.08.010; a statement of whether the City Council intends to construct the improvement; and direction to the Local Improvement District Administrator to do one of the following:

 - 1. Initiate formation proceedings on the proposed local improvement district; or
 - 2. Suspend proceedings on the proposed local improvement district; or
 - 3. Terminate the process for forming the proposed local improvement district.
- C.** If City Council passes a resolution of intent to construct the improvements, City Council shall direct the Local Improvement District Administrator to initiate local improvement district formation proceedings as set forth in Section 17.08.070.

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- D.** The City Council may direct that the engineering and construction work shall be done in whole or in part by the City, by a contract, by direct employment of labor, by another governmental agency, or by any combination thereof.
- E.** If a petition is not valid, but the City Council determines that an improvement should be constructed, it may initiate the proceedings by adopting a resolution of intent to construct the improvement.
- F.** If the City Council determines that some other construction, such as installation of water lines, sewer lines prior to a street improvement, installation of fire hydrants, utility lines or conduits, conduits for underground service for street lights, or any other underground construction should precede the particular proposed improvement, then the City Council may suspend the proceedings for the proposed improvement until such construction has been started or completed.
- G.** If the City Council passes a resolution to terminate the process for forming the local improvement district, no further action shall be taken by the Local Improvement District Administrator on the district for a period of 6 months, other than actions to close the project.

17.08.070 Local Improvement District Formation and Remonstrances.

- A.** Notice of Public Hearing
 - 1.** Publication Notice: Except as otherwise provided by Charter for changes to street grades, the Local Improvement District Administrator shall publish 2 notices of the City's intent to form a local improvement district by publication in a paper of general circulation in the City at least 14 calendar days before the formation hearing. The notices shall include the following information:
 - a.** The time, date and place of the formation hearing before City Council;
 - b.** The name of the proposed district;
 - c.** A description of the type and scope of improvements to be made;
 - d.** A map or description of the area proposed for inclusion in the district for which a legal description is not required;
 - e.** A preliminary estimate of the total cost of the local improvement based on the preliminary engineer's estimate;
 - f.** The methodology or methodologies by which properties will be assessed;

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- A statement that the proposal could be modified as a result of the testimony at the formation hearing and that property owners should attend the hearing to have an opportunity to testify on proposed changes;
 - A statement mentioning the right to remonstrate, who may remonstrate, how remonstrances can be made, the deadline for filing remonstrances; and where remonstrances must be filed; and
 - Contact information for the Local Improvement District Administrator.
- Posting Notice: At least 14 calendar days before the local improvement district formation hearing, the Local Improvement District Administrator shall cause to be posted conspicuously within the proposed assessment district, at least two notices headed “Notice of Proposed Improvement” in letters not less than 1 inch in height, and the notices shall contain in legible characters the information required in Section 17.08.070.A.1. The Local Improvement District Administrator shall place an affidavit of the posting of such notices within the project file, stating therein the date when and places where the notices have been posted.
- Mail Notice: At least 21 calendar days before the local improvement district formation hearing on the proposed improvement, the City Auditor, at the direction of the Local Improvement District Administrator, shall mail to the owner of each property within the proposed assessment district, a notice containing the following:
 - The information required in Section 17.08.070.A.1;
 - A description of the property; and
 - A preliminary estimate of the assessment for the property.
- A record shall be kept of the mailing, posting and publication of any notice required by this Ordinance. Any mistake, error, omission or failure with respect to publication, posting or mailing notice shall not affect City Council’s jurisdiction to proceed or otherwise invalidate the local improvement proceedings when notice is provided by at least one of the methods in this Section.

B. Remonstrances

1. If property owners choose to remonstrate against the proposed improvement such remonstrances must be received by the City Auditor by 5:00 PM seven (7) calendar days prior to the local improvement district formation hearing.

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A remonstrance must be in writing and must be delivered in person or by first class U.S. mail to the City Auditor. The City Auditor is not responsible for remonstrances sent via facsimile or via e-mail. The remonstrance shall state the reasons for the objection. Any person acting as agent or Attorney with power to act in signing the remonstrance shall, in addition to describing the property affected, file with the remonstrance a copy in writing of the authority to represent the owner or owners of property. The City Auditor will forward the remonstrance to the Local Improvement District Administrator for a response. A written remonstrance may be withdrawn at any time before the close of the City Council hearing on the formation of the District.

2. Owners of property covered by waivers of remonstrance may submit an objection; however such an objection shall not be considered for purposes of determining Council jurisdiction as provided by Chapter 9 of the City Charter for the particular type of improvement.
3. The number of remonstrances that will defeat formation of a proposed local improvement district shall be as provided by Chapter 9 of the City Charter for the particular type of improvement.

C. Formation Ordinance

1. The local improvement district formation ordinance shall contain at least the following findings:
 - a. Name of the proposed local improvement district;
 - b. A general description of the project scope as may also be shown on a typical section;
 - c. A description of the proposed local improvement district with a reference to specific district boundaries, or a map showing the area proposed for inclusion in the local improvement district;
 - d. A preliminary estimate of the total cost of the local improvement, including design, construction, engineering, project management and financing;
 - e. The assessment methodology or methodologies by which benefit within the local improvement district will be assigned;
 - f. A preliminary estimate of assessments for each property owner within the local improvement district based on the proposed assessment methodology or methodologies;

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- [illegible]

D. Local Improvement District Formation Hearing

1. The City Council shall hold a public hearing on the proposed improvement. As provided by Section 17.08.070 A.3, the hearing shall be held at least 21 calendar days after the date notice was deposited in the mail. The City Council may continue or discontinue the proceedings; may direct a modification of its resolution of intent; or may direct formation of the district and override any remonstrances, provided the City Council retains jurisdiction as provided by Chapter 9 of the City Charter for the particular type of improvement. The City Council may direct a modification to the location or scope of the improvement, and/or to the assessment district which it deems will be benefited by the improvement; or make such other modifications in the proceedings as it finds reasonable.

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2. Modification of Scope of Improvements: If the City Council significantly modifies the scope of the improvement within the adopted formation ordinance so that an assessment is likely to be significantly increased upon one or more properties, or if the City Council enlarges the assessment district within the adopted formation ordinance, then a new preliminary estimate of assessments will be made and new notices shall be sent to the property owners within the proposed district, and another hearing shall be held. The notice shall advise property owners who still wish to remonstrate that their remonstrance must be resubmitted. However, no new publication or posting shall be required. In the event of modification that meets the objection of any remonstrance, such remonstrance shall not be counted as such unless renewed following such modification.
3. Decision to Form District: Upon completion of the hearing process, the City Council may approve or decline formation of a district by ordinance. As provided in Section 17.08.070 C.1, a decision to approve formation of a district shall be supported by findings supporting a conclusion of special benefit and addressing the remonstrances, and shall direct the Local Improvement District Administrator to arrange for construction of the local improvement.
4. If the City Council approves formation of the local improvement district, the Responsible Engineer shall arrange for the preparation of plans and specifications. Upon completion, approved plans will be available for inspection at the Responsible Bureau for at least the minimum time period specified in its Records Retention and Disposition Schedule. The local improvement may be constructed and/or engineered in whole or in part by the City or by another government agency, or the City may seek bids for any portion of the local improvement.
5. The City Council shall have final determination of the kind and character of the local improvement, its location and extent, materials to be used, and all matters contained in the plans and specifications.
6. The City Council shall also have final determination of the assessment formula and boundaries of the district that is to be assessed for the costs of the improvement. The possibility or likelihood that some property contained in the property description of the proposed assessment district may not be benefited by the proposed improvement shall not invalidate the district description.
7. Upon City Council's passage of an ordinance forming a local improvement district, the assessment formula may not be changed notwithstanding concurrence among the property owner(s), nor can the assessment obligation be transferred to a property not included in the local improvement

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district. No release of obligation shall be made by the City Auditor until after final assessment is made.

17.08.080 Changes to Scope or Cost of Improvements and Notice to Proceed.

(Amended by Ordinance No. 182760, effective June 5, 2009.)

- A. After formation of a local improvement district, City Council shall hold a public hearing to consider significant and material changes to the proposed scope or to the estimate of the total cost of the local improvement that may arise during the course of final engineering.
- B. For such a hearing, notice shall be in the manner provided by Section 17.08.070. In addition to meeting the provisions of Section 17.08.070, the notice shall also state the nature of the proposed modifications to the scope of improvements or to the preliminary estimate of the total cost of the local improvement previously approved at the Local Improvement District formation hearing. Property owners shall have the opportunity to remonstrate against the significant changes in the manner provided by Section 17.08.070. If the improvement district was initiated by petition, no new petition will be required.
- C. The Responsible Engineer may issue a Notice to Proceed to begin construction provided that:
 - 1. There are no significant changes to the scope of the local improvements; or
 - 2. There are no significant changes to the preliminary estimate of assessments for the benefiting properties in the local improvement district; or
 - 3. The City Council has approved significant changes to scope and/or cost of the improvements as provided in this section.

Construction of the local improvement shall be in substantial accordance with the plans and specifications adopted by the Responsible Engineer.

17.08.090 Abandonment of Local Improvement District.

The City Council shall have full power and authority to abandon and rescind proceedings for local improvements at any time prior to the final completion of the improvements.

17.08.100 Completion of Construction.

(Amended by Ordinance No. 182760, effective June 5, 2009.)

- A. After the work financed by the local improvement district has been completed satisfactorily, the Responsible Engineer shall prepare a certificate of completion. The Responsible Engineer shall also prepare a final engineer's estimate showing the costs of all engineering and construction work performed. The certificate of completion shall be deemed acceptance by the City of the local improvement work.

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- B.** Authorization for final payment will be made as provided by Chapter 5.33 of City Code.
- C.** The Local Improvement District Administrator will include the final engineer's estimate and a copy of the certificate of completion with the filing of the final assessment ordinance as set forth in Section 17.08.130.
- D.** Notice of completion of the work need not be provided except as may be required elsewhere in City Code.
- E.** If a local improvement is substantially complete except for contract closeout, or if a scope of improvement included in the construction contract but not included in the local improvement is incomplete, the Responsible Engineer at the discretion of the Responsible Bureau may file a written report attesting that the local improvements are complete in lieu of a certificate of completion. The provisions set forth in Section 17.08.100.A apply, except that the written report substitutes for the certificate of completion. Any further project or financing costs incurred subsequent to final assessment will be the responsibility of the Responsible Bureau, not of the property owners.

17.08.110 Total Cost of Local Improvement.

- A.** After the work financed by a local improvement district has been accepted as complete, the Local Improvement District Administrator shall determine the total cost of the local improvement, including costs identified in the final engineer's estimate and any pending costs.
- B.** The total cost of the local improvement that may be assessed against the properties specially benefited by the improvement shall include, but not be limited to the following:
 - 1.** Direct or indirect costs incurred in order to undertake the capital construction project such as the costs of labor, materials, supplies, equipment, permits, survey, engineering, administration, supervision, inspection, insurance, advertising and notification, administration, accounting, depreciation, amortization, operation, maintenance, repair, replacement, contracts, debt service and assessment;
 - 2.** Financing costs, including interest charges; the costs of any necessary property, right-of-way or easement acquisition and condemnation proceedings; and
 - 3.** Attorneys' fees and any other actual expense as allowed by state law.
- C.** Engineering and project management performed by the City in connection with local improvements shall be charged at the rate of 100 percent of the direct cost of services performed computed in accordance with the provisions of Section

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5.48.030. The Responsible Engineer shall prepare a final engineer's estimate of the engineering and construction costs. A final estimate of the total project costs, including costs reflected in the final engineer's estimate, shall be prepared by the Local Improvement District Administrator.

- D.** The City Auditor shall maintain a fee schedule that shall be used for determining the charge to be made by the City Auditor for City Auditor's Office administrative services and general City administrative services in connection with local improvements. These charges will include a Superintendency fee; a recording fee which shall be fixed regardless of the amount of the assessment; and a monthly billing fee if the property owner does not pay the full assessment at the time it is levied.

17.08.120 Alternative Financing Methods.

Nothing contained in this Chapter shall preclude the City Council from using any other available means of financing portions of local improvements, including but not limited to city funds, federal or state grants, user charges or fees, revenue bonds, general obligation bonds, or any other legal means of finance. In the event that such other means of financing improvements are used, the City Council may make assessments to pay any remaining part of the total costs of the local improvement.

17.08.130 Final Assessment and Objections.

(Amended by Ordinance Nos. 182760 and 184957, effective November 25, 2011.)

A. Apportionment of Proposed Final Assessments

- 1.** Whenever any local improvement, any part of the cost of which is to be assessed upon the property specially benefited thereby, is completed in whole, or in such part that the cost of the whole can be determined, the Local Improvement District Administrator shall file the final estimate of the total cost of the local improvement and prepare a proposed final assessment according to the assessment formula approved by City Council upon the properties in the district, including upon any land owned by the City.
- 2.** If the City Council has determined that a portion of the total cost of the local improvement is to be paid from public funds, other than the benefit assessment to be imposed upon land owned by the City and lying within the assessment district fixed by the City Council, the Local Improvement District Administrator shall deduct from the total cost of the local improvement such allocation of costs to public funds provided by the City Council and shall apportion the remainder of such total cost on the properties within the assessment district.
- 3.** When the Local Improvement District Administrator has calculated the assessment for each property, the Local Improvement District

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Administrator shall file the proposed final assessment roll with the City Council through the Commissioner-in-Charge of the Responsible Bureau.

B. Notice of Proposed Final Assessments

- 1.** At least 21 calendar days before the public hearing on the proposed final assessment, the City Auditor at the direction of the Local Improvement District Administrator shall provide notice to the owner of each property or to the owner's agent as shown in the County tax record either by mail or by personal delivery. The notice shall state:
 - a.** The property description;
 - b.** The amount of the proposed final assessment against the property;
 - c.** A statement that this amount could be modified as a result of objections filed by other property owners in the district unless the cost to property owners is fixed;
 - d.** The date, time and place of the final assessment hearing;
 - e.** The deadline and manner for filing objections to the proposed final assessment; and
 - f.** Contact information for the Local Improvement District Administrator.
- 2.** The Local Improvement District Administrator shall publish 2 notices of the proposed final assessment in a newspaper of general circulation in the City at least 14 calendar days prior to the final assessment hearing.

C. Final Assessment Hearing and Objections

- 1.** Any owner of property proposed to be assessed a share of the cost of a local improvement may file an objection to the proposed final assessment in writing with the City Auditor. The objection must be received by the City Auditor no later than 5:00 PM seven (7) calendar days prior to the hearing by City Council on the proposed final assessment. The City Auditor will forward the objection to the Local Improvement District Administrator for a response. The objection shall be filed in the same manner as set forth in Section 17.08.070.B and shall state the reasons for the objection. However, objections received to final assessment shall not affect Council jurisdiction over final assessment proceedings.
- 2.** The City Council shall hold a hearing on any objections on the date set forth in the notice, and at that time shall consider objections made by the owners

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of property at the hearing. The hearing may be continued as the City Council may find appropriate.

3. At the hearing, the City Council at its discretion shall determine and approve the amount to be assessed upon each property within the assessment district, which amount does not exceed the special benefits accruing to such property from the improvement and the sum of which amount and other amounts assessed against properties within the assessment district do not exceed the total cost of the local improvement. The amount of each assessment as determined by City Council shall be based on the City Council's finding of special benefit to the property.

D. Final Assessment Ordinance

1. The City Council shall pass an assessing ordinance that shall set forth the assessments against the respective properties within the assessment district.
2. The ordinance shall:
 - a. Include an exhibit containing findings addressing each objection received, and number of objections received
 - b. State the total cost and assessment formula used
 - c. Include a statement that each property is specifically benefited in the amount shown in the assessment roll;
 - d. Include a statement that the project has been constructed as provided in the adopted plans and specifications, and, if the provisions set forth in Subsection 17.08.100 E. have been invoked, a copy of the written report from the Responsible Engineer attesting that the local improvements are complete in-lieu of a certificate of completion; and
 - e. Contain a directive to sustain or overrule the objections.
3. Upon passage of the assessing ordinance, the City Auditor shall enter the assessments in the docket of City liens and follow the assessment procedure set forth in Chapter 17.12. As provided by City Charter, the assessment ordinance shall take effect immediately upon passage or on any date fewer than 30 days after passage that is specified in the final assessment ordinance.
4. Claimed mistakes in the calculation of assessments shall be brought to the attention of the Local Improvement District Administrator, who shall determine whether there has been a mistake. If the Local Improvement District Administrator finds that there has been a mistake, he or she shall recommend to the City Council an amendment to the assessment ordinance

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to correct the error. On enactment of an amendment, the City Auditor shall cause the necessary correction to be made in the City lien docket. Such correction shall not change assessments against any other property within the district.

- E.** Formation of a new local improvement district: In the event a court of law holds that the formation of a local improvement district was invalid or improper procedures were used, property owners may be assessed after the new district is formed if the properties are again included.

CHAPTER 17.12 - ASSESSMENTS

(Chapter amended by Ordinance No. 163420,
effective September 29, 1990.)

Sections:

17.12.010	Lien Docket and General Assessment Procedure.
17.12.060	Assessing Ordinance.
17.12.070	Notice of Assessment.
17.12.080	Payment of City's Share.
17.12.100	Surplus.
17.12.120	Correction of Mistake in Assessment Refund or Overpayment.
17.12.130	Segregation of Assessments
17.12.140	Bonding.
17.12.150	Rebonding.
17.12.170	Collection.

17.12.010 Lien Docket and General Assessment Procedure.

(Replaced by Ordinance No. 177124, effective January 10, 2003.)

- A.** The City will maintain a lien docket and general assessment procedure as set forth in the Chapter for the assessment of:
 - 1.** Local improvement district assessments.
 - 2.** System development charge assessments.
 - 3.** Sidewalk maintenance and repair assessments.
 - 4.** Enforcement of City Code; and
 - 5.** Other assessments prescribed by City Code.

- B.** In addition to the general assessment procedure set forth in this Chapter, specific assessment procedures are set forth as follows:
 - 1.** Local improvement district assessment procedures as set forth in Chapter 17.08;
 - 2.** System development charge assessment procedures are set forth in Chapters 17.13, 17.14 and 17.15; and
 - 3.** Sidewalk maintenance and repair assessment procedures are set forth in Chapter 17.28.

17.12.020 Allowance for Engineering and Administration.

(Repealed by Ordinance No. 177124, effective January 10, 2003.)

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17.12.030 Estimate of Cost - Apportionment of Assessments.

(Repealed by Ordinance No. 177124, effective January 10, 2003.)

17.12.040 Notices of Proposed Assessments.

(Repealed by Ordinance No. 177124, effective January 10, 2003.)

17.12.050 Remonstrances and Hearings.

(Repealed by Ordinance No. 177124, effective January 10, 2003.)

17.12.060 Assessing Ordinance.

The City Council may pass an assessing ordinance, effective immediately upon passage as prescribed in the City Charter, which shall set forth the assessments against the respective properties within the assessment district. Upon such passage the City Auditor shall enter the assessments in the docket of City liens.

17.12.070 Notice of Assessment.

After an assessment has been entered in the lien docket, the Auditor shall send a bill for the assessment by mail to each person whose property is assessed or to the owner's agent as shown in the County tax record.

17.12.080 Payment of City's Share.

The City Council may provide for the payment into the particular local improvement assessment fund of any share allocated by the Council to be paid from public funds, and also any assessments imposed by it against City owned property.

17.12.090 Deficit Assessment.

(Repealed by Ordinance No. 177124, effective January 10, 2003.)

17.12.100 Surplus.

If the total cost of an improvement is found to be less than the total sum previously assessed therefor, the surplus shall be apportioned and paid in accordance with Charter provisions.

17.12.110 Reassessment.

(Repealed by Ordinance No. 177124, effective January 10, 2003.)

17.12.120 Correction of Mistake in Assessment Refund or Overpayment.

(Amended by Ordinance No. 173369, effective May 12, 1999.) A mistake in assessment or entry thereof in the lien docket may be corrected as prescribed by the Charter. In case of overpayment because of such mistake or otherwise, the person who paid such excess or his or her legal representative, heirs or assigns, is entitled to repayment of the same by check drawn upon the fund receiving such overpayment.

17.12.125 Mid-County Sewer Financial Assistance Program.

(Repealed by Ordinance No. 182760, effective June 5, 2009.)

17.12.130 Segregation of Assessments.

(Amended by Ordinance Nos. 177124 and 182760, effective June 5, 2009.)

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- A.** A lien against the real property in favor of the City may be segregated on the application of the owner(s), subject to the provisions of this section and any rules adopted by the City Auditor.
- B.** Applications shall be made to the City Auditor and shall include:

 - 1.** A legal description of each tract to be segregated;
 - 2.** Documentation demonstrating that each tract to be segregated is a lot or parcel created by a subdivision, partition or other division of the original tract of land in accordance with ORS 92.010 to 92.190, and is consistent with all applicable comprehensive plans;
 - 3.** The names of the owners of each tract, and the name of each person who will own each parcel should the segregation be approved; and
 - 4.** A full legal description that will be assigned by the County Assessor for each lot or parcel that is created as a result of the segregation.
- C.** No segregation shall be made unless each part of the original tract of land after the segregation has a true cash value, as determined from the certificate of the county assessor, of 200% or more of the amount of the lien as to each segregated tract concerned.
- D.** The City Auditor shall compute a segregation of the lien against the real property on the same basis as it was originally computed and apportioned and shall record the segregation in the lien docket. If the original tract has been divided by filing of a condominium plat, the applicant for segregation may propose an alternative, equitable basis for computing segregation of the lien. The alternative proposed segregation shall be subject to the Council's approval by ordinance.
- E.** No assessment shall be segregated until all outstanding delinquent City liens on the property are brought current.
- F.** The City Auditor shall charge a fee for the segregation of assessments. The fee will be based in part on the number of lots or parcels that result from the segregation. The segregation fee may be amended from time to time and shall be stated in the Fees & Charges schedule maintained in the Assessments Division of the City Auditor's office.

17.12.140 Bonding.

(Amended by Ordinance Nos. 173369 and 177124, effective January 10, 2003.)

- A.** Within 30 days of the entry in the lien docket a property owner may apply to pay the assessment, deficit assessment or re assessment or the amount remaining unpaid by installments as stated in the signed installment payment contract. The contract shall be in accordance with the terms and provisions of ORS 223.215. The contract

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shall be received by the Auditor subject to the limitations prescribed in this Section. The City may accept contracts after the 30-day period stated in this Section under procedures established by the City Auditor.

- B.** If the sum assessed together with all unpaid sums then outstanding as assessments against the property exceeds one-half the real market valuation of the property as shown on the latest county tax rolls, then the Auditor shall reject the application unless the excess is paid in cash with the application and the application is made for the remainder only.
- C.** If the installment payment contract has been received and is in force, the Treasurer may accept prepayments of any installments without penalty for the prepayment. Whenever an installment is paid, accrued interest to the due date of the installment on the unpaid assessment balance, plus interest on the past due installment if any, shall be paid with the installment.
- D.** In addition to the procedures provided for in Subsections A. through C above, the procedures for bonding improvement assessments authorized by the Bancroft Bonding Act (ORS 223.205, 223.930) may be followed for improvement assessments when the Council so directs in the ordinance making the assessment.
- E.** For purposes of this Section the term “property owner” means the owner of the Title to real property or the contract purchaser of real property, of record as shown on the last available complete assessment roll in the Office of the County Assessor.
- F.** Interest rates for bonded assessments shall be set using an adjusted rate mechanism. The City Council shall set an interim rate by ordinance, which shall be applied to the unpaid balance until improvement bonds are sold to finance the bonded assessments. Upon sale of bonds, the Auditor shall adjust the interest rate to the rate received by the City on the bond issue (expressed as true interest cost) plus a fee to cover insurance and discount on the bonds. All subsequent payments will be made at the new adjusted rate. Property owners who sign an installment contract for systems development charges shall receive the adjusted rate.
- G.** Bond financing fees shall be charged to each installment contract to defray the costs of financing per a fee schedule on file with the City Auditor. The fee schedule will include a loan creation fee as well as a bond financing fee. Bond financing fees are in addition to costs set forth in Chapter 17.08
- H.** The City may charge a bond reserve fee on each installment payment contract to facilitate the sale of the improvement bonds. Proceeds from the bond reserve fee shall be dedicated to a reserve account and used as security for the improvement bonds that the City sells to finance the installment payment contract. A separate bond reserve account shall be created for each bond sale as required by the terms of the sale. This fee shall be in addition to the fees set forth in Chapter 17.08 and in Section 17.12.140 G.

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- I.** The City Auditor shall charge a billing and service charge which shall be added to each statement and shall be in addition to principal, interest, penalties, costs and other fees. This fee shall be per a schedule on file with the City Auditor. This fee shall be in addition to the fees set forth in this Chapter 17.08, Section 17.12.140 G. and Section 17.12.140 H.

17.12.150 Rebonding.

- A.** If the Council specifically approves the same, a property owner who has bonded an assessment a portion of which remains unpaid, or a property owner whose assessment on such property has been subdivided as provided in the Charter, may apply for a rebonding if all taxes then due have been paid upon the property, no outstanding liens have been filed against the property, and if all the conditions applicable to initial bonding are met at the time of rebonding application. The rebonding application may include all unpaid assessment amounts remaining due and unpaid. All provisions relating to rebonding contained in the statutes of the State shall be applicable.
- B.** As used in this Section the term “property owner” shall mean the owner of the Title to real property or the contract purchaser of real property, of record as shown on the last available complete assessment roll in the Office of the County Assessor.

17.12.160 Monthly Payments on Assessments.

(Repealed by Ordinance No. 161797, effective May 12, 1989.)

17.12.170 Collection.

After 30 days from the date of entry in the lien docket of a sum assessed, whether by initial assessment, deficit assessment or reassessment, the amount of the delinquency together with interest and any costs may be collected as provided in the City Charter.

17.12.180 Redemption.

(Repealed by Ordinance No. 161797, effective May 12, 1989.)

17.12.190 Applicability of Charter Provisions.

(Repealed by Ordinance No. 161797, effective May 12, 1989.)

17.12.200 Alternate Procedures.

(Repealed by Ordinance No. 161797, effective May 12, 1989.)

**CHAPTER 17.13 - PARKS AND
RECREATION SYSTEM DEVELOPMENT
CHARGE**

(Chapter added by Ordinance No. 172614, effective
October 1, 1998.)

Sections:

17.13.010	Scope and Purposes
17.13.020	Definitions
17.13.030	Rules of Construction
17.13.040	Application
17.13.050	Application Requirements
17.13.060	Partial and Full Exemptions
17.13.070	SDC Credits and SDC Reimbursements
17.13.080	Alternative Calculation of SDC Rate, Credit or Exemption
17.13.090	Payment
17.13.100	Refunds
17.13.110	Dedicated Account and Appropriate Use of Account
17.13.120	Challenges and Appeals
17.13.130	City Review of SDC
17.13.140	Time Limit on Expenditure of SDCs
17.13.150	Implementing Regulations
17.13.160	Amendment of Parks and Recreation SDC-CIP List
17.13.170	Severability

17.13.010 Scope and Purposes.

(Amended by Ordinance Nos. 181669 and 187150, effective July 1, 2016.)

- A.** New development within the City of Portland contributes to the need for capacity increases for parks and recreation facilities and, therefore, new development should contribute to the funding for such capacity increasing improvements. This SDC will fund a portion of the needed capacity increases for urban, neighborhood, and community parks, trails, and habitat facilities as identified in the City of Portland Parks and Recreation SDC Capital Improvement Plan (SDC-CIP).
- B.** ORS 223.297 through 223.314 grant the City authority to impose a SDC to equitably spread the costs of essential capacity increasing capital improvements to new development.
- C.** The SDC is incurred upon the application to develop property for a specific use or at a specific density. The decision regarding uses, densities, and/or intensities causes direct and proportional changes in the amount of the incurred charge. The SDC is separate from other fees provided by law or imposed as a condition of development. It is a fee for service because it contemplates a development's receipt of parks and recreation services based upon the nature of that development.

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- D.** The SDC imposed by this Chapter is not tax on property or on a property owner as a direct consequence of ownership of property within the meaning of Section 11b, Article XI of the Oregon Constitution or legislation implementing that section. This Chapter does not shift, transfer, or convert a government product or service, wholly or partially paid for by ad valorem property taxes, to be paid for by a fee, assessment or other charge, within the meaning of Section 11g, Article XI of the Oregon Constitution.
- E.** The funding provided by this Chapter constitutes a mandatory collection method based upon the guidelines set forth in ORS 223.297 through 223.314 to assure the provision of capacity increasing improvements for parks and recreation facilities as contemplated in Parks 2020 Vision, July 2001; Recreational Trail Strategy, June 2006; Parks Natural Area Acquisition Strategy, November 2006; and the Parks and Recreation SDC-CIP incorporated as an Appendix to the most recently adopted Parks SDC Methodology Report. The Parks and Recreation SDC-CIP is not to be confused with the City of Portland Parks and Recreation Capital Improvement Program.
- F.** This Chapter is intended only to be a financing mechanism for a portion of the capacity increases needed for parks and recreation facilities associated with new development and does not represent a means to fund maintenance of existing facilities or the elimination of existing deficiencies.
- G.** The City hereby adopts the report entitled “Park System Development Charge Methodology Update Report” (dated April 15, 2015), and incorporates herein by this reference the assumptions, conclusions and findings in the report which refer to the determination of anticipated costs of capital improvements required to accommodate growth, and the rates for the parks and recreation SDC to finance these capital improvements. This report is hereinafter referred to as “SDC Methodology Report” and is attached to Ordinance No. 187150 passed by Council on May 27, 2015. The City Council may from time to time amend or adopt a new SDC Methodology Report by ordinance.

17.13.020 Definitions.

(Amended by Ordinance Nos. 173386, 173565, 174617, 176511, 181669 and 187150, effective July 1, 2016.)

- A.** “**Administrator**” means that person, or designee, appointed by the City Council to manage and implement this Parks and Recreation SDC program.
- B.** “**Applicant**” means the person who applies for a building permit.
- C.** “**Application**” means the Parks SDC Information Form together with other required forms and documents submitted at the time of application for a building permit.

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- D.** **“Building Official”** means that person, or designee, certified by the State and designated as such to administer the State Building Codes for the City.
- E.** **“Building Permit”** means that permit issued by the City Building Official pursuant to the State of Oregon Structural Specialty Code Section 301 or as amended, and the State of Oregon One and Two Family Dwelling Code Section R-109 or as amended. In addition, Building Permit shall mean the Manufactured Home Installation Permit issued by the City Building Official, relating to the placement of manufactured homes in the City.
- F.** **“Campus Housing”** means dormitories and other buildings arranged and designed as living quarters on a college or university campus for students enrolled at that college or university. College or university campus is any property owned or controlled by the college or university within a Conditional Use Master Plan, Impact Mitigation Plan or other campus zone boundary.
- G.** **“Central City”** means the area identified in the SDC Methodology Report as the Central City Service Area, and whose boundaries are included on the map in the SDC Methodology Report. This area is also referred to as the Central City sub-area.
- H.** **“City”** means the City of Portland, Oregon.
- I.** **“Comprehensive Plan”** means the City’s generalized, coordinated land use map and policy statement that interrelated all functional and natural systems and activities relating to the use of lands, including but not limited to sewer, water and transportation systems, educational and recreation facilities and natural resources and air and water quality management programs.
- J.** **“Condition of Development Approval”** is any requirement imposed on an Applicant by a City land use or limited land use decision, site plan approval or Building Permit either by operation of law, including but not limited to the City Code or Rule or regulation adopted thereunder, or a condition of approval.
- K.** **“Cost Index”** related to construction costs means the Seattle Area Engineering News Record (ENR) Construction Cost Index and related to land acquisition costs means the change in average market value of residential and commercial land in the City, according to the records of the Multnomah County Tax Assessor.
- L.** **“Credit”** means the amount by which an Applicant may be able to reduce the SDC fee as provided in this Chapter.
- M.** **“Development”** means a building or other land construction, or making a physical change in the use of a structure or land, in a manner which increases the usage of parks and recreation capital improvements or which may contribute to the need for additional or enlarged parks and recreation capital facilities.

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- N. **“Director”** means the Director of the Bureau of Parks and Recreation for the City of Portland.
- O. **“Dwelling Unit”** means a building or a portion of a building consisting of one or more rooms which include sleeping, cooking, and plumbing facilities and are arranged and designed as living quarters for one family or household.
- P. **“Non-Central City”** means all portions of the City outside the Central City Service Area.
- Q. **“Non-Residential Development”** means development which does not include dwelling units.
- R. **“New Development”** means Development for which a Building Permit is required.
- S. **“Occupancy Group Codes”** means the use codes (A-1, B, H, e.g.) in the Oregon Structural Specialty Code, “Use and Occupancy Classification.”
- T. **“Occupancy Use Types”** means the occupancy classifications in the Oregon Structural Specialty Code, “Use and Occupancy Classification.”
- U. **“Parks and Recreation SDC Capital Improvement Plan”** also called the Parks and Recreation SDC-CIP, means the City program set forth in the “SDC Methodology Report” to be funded with Parks and Recreation SDC revenues.
- V. **“Permit”** means a Building Permit.
- W. **“Previous use”** means the most intensive use conducted at a particular property within the past 36 months from the date of completed Application. Where the site was used simultaneously for several different uses (mixed use) then, for the purposes of this Chapter, all of the specific use categories shall be considered. Where one use of the site accounted for 70 percent or more of the total area used, then that dominant use will be deemed to be the sole Previous Use of the site. Where the Previous Use is composed of a primary use with one or more ancillary uses that support the primary use and are owned and operated in common, that primary use shall be deemed to be the sole Previous Use of the property for purposes of this Chapter.
- X. **“Proposed use”** means the use proposed by the Applicant for the New Development. Where the Applicant proposes several different uses (mixed use) for the New Development then, for purposes of this Chapter, all of the specific use categories shall be considered. Where the Proposed Use is composed of a primary use with one or more ancillary uses that support the primary Proposed Use and are owned and operated in common, that primary use shall be deemed to be the sole Proposed Use of the property for purposes of this Chapter.

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Y. “Qualified Public Improvement” means any parks and recreation system capital facility or conveyance of an interest in real property that:

1. increases the capacity of the City’s Parks and Recreation System;
2. pertains to the park categories defined in Parks 2020 or in the Park SDC/CIP: local access, city-wide access, regional, urban, neighborhood or community parks, botanic and community gardens trails, or habitat. If the proposed donation is a habitat, it must be adjacent to a Portland Parks property, or it must be a minimum of 3 contiguous acres with at least 66 percent of its area covered by the City’s environmental overlay zone. If the proposed donation is a trail, it must be designated as a recreational trail on the City’s Comprehensive Plan;
3. is approved by the Director; and
4. is in any of the following categories:
 - a. Is a capital improvement listed on the City’s Parks and Recreation SDC-CIP or two year funded list of City of Portland Parks and Recreation Capital Improvement Program, regardless of the improvement’s proximity to the Applicant’s New Development site, and is not a Real Property Interest already committed by contract or other obligation to public recreational use;
 - b. Is a public recreational trail improvement within the Willamette River Greenway overlay zone as designated on the Official Zoning Maps within the Central City plan boundary, and that exceeds all development standards currently contained in PCC Title 33 (Chapter 33.440, 33.272, and 33.248). Credits will be given for improvements which will result in enhancement for habitat or public recreational use on the landward side of the top of the bank. Credits will be valued at 100 percent of the value of Real Property Interests that ensures perpetual public access (subject to reasonable temporary closures) and/or improvements that occur on the landward side of the required 25’ minimum Greenway setback width, if the increase of width is at least 5’. The credit transfer mechanism described in Subsection 17.13.070 E. is applicable to Real Property Interests at 25 percent of its appraised value. The use of Greenway credit transfers are valid only for New Development within the Central City, and is not available to Applicants that are using the Willamette River Greenway Bonus Option described in City Code 33.510.210 C. 9.

Reasonable improvements within the required 25’ minimum Greenway setback shall also receive full Credit only for

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improvements that exceed the current basic required standards described in PCC Title 33 (Chapters 33.440, 33.272, and 33.248) or landscaping or mitigation plantings that are required as a Condition of Development Approval. The Credit transfer mechanism described in Subsection 17.13.070 E. is not applicable to Greenway improvements. Greenway improvement SDC Credits may be used only on the New Development that included the Greenway improvement, including subsequent phases of multi-phase Development.

- c. Is a conveyance of Real Property Interests or capital improvements for public recreational use that is required as a condition of development approval. For purposes of this section, the phrase “required as a condition of development approval” means
 - (1) requirements to construct improvements or convey Real Property Interests for public recreational use that are imposed as specifically listed conditions pursuant to a Code provision authorizing such conditions, or
 - (2) features of a development that are specifically stated as an element of a proposal that is approved by the review body.
 - d. An improvement or conveyance of Real Property Interests for parks and recreational use which does not otherwise meet the requirements of this section, is not already committed by contract or other obligation to public recreational use, and in the opinion of the Director in his or her reasonable discretion the improvement or conveyance serves the City’s public parks and recreation needs as well or better than the improvements or conveyance described above.
5. Conveyances of Real Property Interests or capital improvements for public recreational use specified in a development agreement between the City and a developer entered into after the effective date of this Ordinance are excluded from the definition of “qualified public improvement” unless the development agreement specifically provides otherwise. If the development agreement does include conveyances of Real Property Interests that are intended to be eligible for Parks SDC Credits, the value of the Real Property Interests must be established at the time the development agreement is finalized by the appraisal methods described in Section 17.13.070. The date of valuation is the date of the final development agreement. If there are subsequent amendments to the development agreement, the date of valuation will be the date of the original development agreement unless otherwise specified in future amendments.

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6. In addition to capital improvements described in Subsection 17.13.020 Y.1. through 5., the term “qualified public improvement” also includes agreements for long-term enhanced maintenance of park facilities within the City’s Parks and Recreation System, provided the following requirements are met:
- a. The Parks and Recreation System facilities for which enhanced maintenance is provided are located within the Central City Plan District as identified in PCC Chapter 33.510;
 - b. The long-term maintenance obligations are specifically described in a binding agreement that contains adequate financial assurances to ensure performance of the maintenance obligations for the duration of the agreement;
 - c. The Parks Director has determined the net present value of the maintenance obligations in order to establish the amount of SDC credits; and
 - d. The Parks Director has determined, in each instance where long-term maintenance obligations are accepted, that acceptance of the long-term maintenance obligations will promote the interests of the City’s Parks and Recreation System as well or better than acceptance of capital improvements.

- Z.** “**Rate Group**” means one of four rates or groups of rates, each of which has its own percentage split between land costs and development costs as follows:

Central City	Non Central-City
71% Land Portion	49% Land Portion
29% Improvement Portion	51% Improvement Portion

- AA.** “**Real Property Interests**” means fee title, easement, or other permanent interests in real property as documented in a written conveyance.
- BB.** “**Remodel**” or “**remodeling**” means to alter, expand or replace an existing structure.
- CC.** “**Resident Equivalent**” means a measure of the impact on parks and recreation facility needs created by non-residential development, as compared to the impact of a resident.
- DD.** “**SDC Methodology Report**” means the methodology report entitled Parks System Development Charge Methodology Update Report, dated April 15, 2015 and adopted as Exhibit B to Ordinance 187150.

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EE. “Temporary use” means a construction trailer or other non-permanent structure.

17.13.030 Rules of Construction.

For the purposes of administration and enforcement of this Chapter, unless otherwise stated in this Chapter, the following rules of construction shall apply:

- A.** In case of any difference of meaning or implication between the text of this Chapter and any caption, illustration, summary table, or illustrative table, the text shall control.
- B.** The word “shall” is always mandatory and not discretionary; the word “may” is permissive.
- C.** Words used in the present tense shall include the future; words used in the singular number shall include the plural and the plural the singular, unless the context clearly indicates the contrary.
- D.** The phrase “used for” includes “arranged for,” “designed for,” “maintained for,” or “occupied for.”
- E.** Where a regulation involves two or more connected items, conditions, provisions, or events:
 - 1.** “And” indicates that all the connected terms, conditions, provisions or events shall apply;
 - 2.** “Or” indicates that the connected items, conditions, or provisions or events may apply singly or in any combination.
- F.** The word “includes” shall not limit a term to the specific example, but is intended to extend its meaning to all other instances or circumstances of like kind or character.

17.13.040 Application.

(Amended by Ordinance Nos. 181669 and 187150, effective July 1, 2016.) This Chapter applies to all New Development throughout the City of Portland. The amount of the Parks and Recreation SDC shall be calculated according to this section, using the rates set forth in the SDC Methodology Report.

- A.** Except as otherwise provided in this Chapter, a Parks and Recreation SDC shall be imposed upon all New Development for which an Application is filed on or after the effective date of this ordinance.
- B.** The Applicant shall at the time of Application provide the Administrator with the information requested on an SDC application form regarding the previous and proposed use(s) of the property, including the following:

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1. A description of each of the previous and proposed uses for the property for which the Permit is being sought--with sufficient detail to enable the City to calculate dwelling units and square footage for the entire property under the previous use and for the proposed use(s) of the New Development.
 2. For residential uses--the number of residential dwelling and the square footage of each dwelling unit.
 3. For non-residential uses--the square footage for each occupancy use type (i.e., office, retail, etc.).
- C.** Except as otherwise provided in this Chapter, the amount of the SDC due shall be calculated by determining the number of dwelling units, square footage of each dwelling unit, and square footage of non-residential development for the previous use(s) of the property and the number of dwelling units, square footage of each dwelling unit, and square footage of non-residential development for all of the proposed use(s); calculating the total SDC for the previous use(s) and the proposed uses(s); and subtracting the total SDC for the previous use(s) from the total SDC for the proposed use(s) to arrive at the net Park SDC due. If the previous use(s) were vacant for more than 50 percent of the 5 years prior to the date of the application, the SDC shall be the full amount of the SDC for the proposed use(s) and no reduction shall be made for previous use(s).
- D.** Notwithstanding any other provision, the dollar amounts of the SDC set forth in the SDC Methodology Report are based on 2013 values and shall be adjusted on July 1, 2016 and thereafter annually on July 1st to account for changes in the costs of acquiring and constructing parks facilities. The adjustment factor shall be based on:
1. the percent change in average market value of residential and commercial land in the City, measured from Tax Year 2013-14, annually, to the most recent annual tax year report, according to the records of the Multnomah County Tax Assessor,
 2. the portion of Rate Group growth costs for land identified in Subsection 17.13.020 Z.,
 3. the percent change in average construction costs measured from 2013, annually, to the quarter prior to the rate change, according to the Engineering News Record (ENR) Northwest (Seattle, Washington) Construction Cost Index, and
 4. the portion of Rate Group growth costs for improvement identified in Subsection 17.13.020 Z.

The adjustment factor for each Rate Group shall be determined as follows:

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Percent change in Land Value multiplied by the Rate Group's Land Portion (percent)

+ Percent change in Construction Cost Index multiplied by the Rate Group's Development Portion (percent)

= Park SDC Rate Group Adjustment Factor

The resulting Adjustment Factor shall be multiplied by the adopted SDC rates by Rate Group and added to the base charges.

- E.** Notwithstanding any other provision, the adjustment shall not exceed a total of 12 percent in any consecutive two-year period. This shall be calculated by dividing the proposed new rate by the rate of two years prior. If the resulting change is greater than 12 percent, the rate shall be set at 12 percent variance from the rate of two years prior.

17.13.050 Application Requirements.

(Amended by Ordinance Nos. 176955, 181669 and 187150, effective July 1, 2016.) All Applications must meet the application completeness requirements of the Planning Bureau and Bureau of Development Services. Where construction requires a land division, the Applicant must have final plat approval prior to submitting a Building Permit Application. This Ordinance shall apply to all Building Permits for New Development not yet complete as of the effective date and those which are subsequently submitted or made complete. Fees are assessed based on the rate schedule in use on the date that the permit application is made complete. For purposes of this Section, a complete Application shall meet all the requirements of the Bureau of Development Services.

17.13.060 Partial and Full Exemptions.

(Amended by Ordinance Nos. 176511, 179008, 181669, 183448 and 187150, effective July 1, 2016.) The uses listed and described in this Section shall be exempt, either partially or fully, from payment of the Parks and Recreation SDC. Any Applicant seeking an exemption under this Section shall specifically request that exemption no later than the time of the City's completion of the final inspection. Where New Development consists of only part of one or more of the uses described in this section, only that/those portion(s) of the development which qualify under this section are eligible for an exemption. The balance of the New Development which does not qualify for any exemption under this section shall be subject to the full SDC. Should the Applicant dispute any decision by the City regarding an exemption request, the Applicant must apply for an Alternative Exemption calculation under Section 17.13.080. The Applicant has the burden of proving entitlement to any exemption so requested.

- A.** Temporary uses are fully exempt so long as the use or structure proposed in the New Development will be used for not more than 180 days in a single calendar year.

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- B.** Affordable housing is exempt pursuant to Section 30.01.095.
- C.** Alteration permits for tenant improvements are fully exempt.
- D.** New construction or remodeling of Dwelling Units where no additional Dwelling Unit(s) are created and the square footage of each remodeled dwelling unit does not change the range of square footage in the SDC Methodology Report is fully exempt.
- E.** New construction or remodeling of non-residential development where no additional square footage is created is fully exempt.
- F.** Campus Housing is fully exempt.
- G.** For New Development which includes a mix of exempt and non-exempt forms of Development, the applicable exemption(s) shall apply only to that portion of the New Development to which the exemption applies.

17.13.070 SDC Credits and SDC Reimbursements.

(Amended by Ordinance Nos. 172732, 172758, 173386, 174617, 181669 and 187150, effective July 1, 2016.) SDC Credits:

- A.** The City shall grant a Credit against the Parks SDC, which is otherwise assessed for an New Development, for any Qualified Public Improvement(s) constructed or conveyed as part of that New Development. For purposes of this section, a Qualified Public Improvement will be considered part of a New Development when the application for a credit is made and the New Development is identified by a Building Permit Number. The Applicant bears the burden of evidence and persuasion in establishing entitlement to an SDC Credit and to a particular value of SDC Credit.
- B.** To obtain an SDC Credit, the Applicant must specifically request a Credit prior to the City's completion of the final inspection for the new Development. In the request, the Applicant must identify the improvement(s) for which Credit is sought and explain how the improvement(s) meet the requirements for a Qualified Public Improvement. The Applicant shall also document, with credible evidence, the value of the improvement(s) for which Credit is sought. If, in the Administrator's opinion, the improvement(s) is a Qualified Public Improvement, and the Administrator concurs with the proposed value of the improvement(s), an SDC Credit shall be granted. The value of the SDC Credits under this section shall be determined by the Administrator based on the cost of the Qualified Public Improvement, or the value of Real Property Interests, as follows:
 - 1.** For Real Property Interests, the value shall be based upon a written appraisal of fair market value by a qualified, professional appraiser based upon comparable sales of similar property between unrelated parties in an arms-length transaction;

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2. For improvements yet to be constructed, value shall be based upon the anticipated cost of construction. Any such cost estimates shall be certified by a professional architect or engineer or based on a fixed price bid from a contractor ready and able to construct the improvement(s) for which SDC Credit is sought. The City will give immediate credits based on estimates, but it will provide for a subsequent adjustment based on actual costs: a refund to the Applicant if actual costs are higher than estimated, and an additional SDC to be paid by the Applicant if actual costs are lower than estimated. The City shall inspect all completed Qualified Public Improvement projects before agreeing to honor any credits previously negotiated. The City shall limit credits to reasonable costs. Credits shall be awarded only in conjunction with an application for development;
 3. For improvements already constructed, value shall be based on the actual cost of construction as verified by receipts submitted by the Applicant;
- C. The Administrator will respond to the Applicant's request in writing within 21 days of when the request is submitted. The Administrator shall provide a written explanation of the decision on the SDC Credit request.
1. The "Request for Parks SDC Credit for Qualified Public Improvement" (Form PSDC-7) and accompanying information will be sent to the Parks SDC Administration Section, who will prepare a staff report and convene the SDC Credit Review Committee. The Committee shall be composed of representatives of the following organizations:
 - a. Metropolitan Home Builders Association
 - b. Coalition for a Livable Future
 - c. League of Women Voters
 - d. Developer-at-Large
 - e. Parks Board Member or Designee
 - f. Portland Business Alliance Member or Designee

If a vacancy occurs, the organization will nominate a replacement. Members of the committee will be nominated by their respective organizations and appointed by the Director.
 2. The Committee shall review each proposal and forward a recommendation, along with any minority viewpoints. The Director will make a decision within 60 days of the application.

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- 3.** Certified copies of the decision and the Committee recommendations will be transmitted to the Auditor of the City of Portland, who will file them in a special record of such decisions. All such decisions of the Director shall be accessible to the public under like terms as ordinances of the City of Portland. Any decision of the Director shall be subject to amendment, repeal, or alteration by the City Council, but any such action must take place within 30 days of the decision.
- D.** If the Applicant disputes the Administrator's decision with regard to an SDC Credit request, including the amount of the Credit, the Applicant may seek an alternative SDC Credit calculation under Section 17.13.080. Any request for an Alternative SDC Credit calculation must be filed with the Administrator in writing within 10 calendar days of the written decision on the initial Credit request.
- E.** When the construction or donation of a qualified public improvement gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project receiving development approval, the excess credit may be applied against improvement fees that accrue in subsequent phases of the original development project. For purposes of this paragraph, "subsequent phases of the original development project" means additional New Development that is approved as part of the same regulatory development approval, (such as elements approved as part of the same conditional use master plan or planned unit development) or other portions of the same "site" (as defined by PCC 33.901.030) that are explicitly defined in the application for SDC credits as subsequent phases of the original development project. For multi-phased developments, the applicant must describe all subsequent phases at the time application is made for SDC credits and must document to the satisfaction of the SDC Administrator that the subsequent phases are integrally connected with the original development rather than independent projects.
- F.** The Applicant may request that the portion of the Park SDC credit relative to the Non-Local Access portion of the SDC fee be applied to their development anywhere within the City. The proportional breakdown of Local Access portion to Non-Local Access portion is 43 percent Local Access and 57 percent Non-Local Access.
- G.** Parks and Recreation SDC Credits are void and of no value if not redeemed with the City for payment of a Parks and Recreation SDC within 10 years of the date of issuance.
- H.** Notwithstanding any other provisions of this section, with respect to conveyances of Real Property Interests specified in development agreements adopted before June 21, 2000, the value of the credit will be 25 percent of the appraised value of the Real Property Interest.

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17.13.080 Alternative Calculation for SDC Rate, Credit, or Exemption.

(Amended by Ordinance No. 181669, effective January 1, 2009.)

- A.** Pursuant to this section, an Applicant may request an alternative Parks and Recreation SDC rate calculation, alternative SDC Credit determination, or alternative SDC exemption, but only under the following circumstances:
- 1.** The Applicant believes that the number of persons per Dwelling Unit for residential development, or resident equivalents per 1,000 square feet for non-residential development, resulting from the New Development is, or will be, less than the number of persons per Dwelling Unit or resident equivalents per 1,000 square feet established in the SDC Methodology Report, and for that reason, the Applicant's SDC should be lower than that calculated by the City.
 - 2.** The Applicant believes the City improperly excluded from consideration a Qualified Public Improvement that would qualify for Credit under Section 17.13.070, or the City accepted for Credit a Qualified Public Improvement, but undervalued that improvement and therefore undervalued the Credit.
 - 3.** The Applicant believes the City improperly rejected a request for an exemption under Section 17.13.060 for which the Applicant believes it is eligible.
- B.** Alternative SDC Rate Request
- 1.** If an Applicant believes that the occupancy assumptions for the class of structures that includes New Development are inaccurate, in that, for residential development, the number of persons per Dwelling Unit is, or will be, less than the number of persons per Dwelling Unit established in the SDC Methodology Report, or for non-residential development, the number of resident equivalents per 1,000 square feet is, or will be, less than the number of resident equivalents per 1,000 square feet established in the SDC Methodology Report, the Applicant must request City consideration of an alternative SDC rate calculation, under this section, no later than the time the City completes the final inspection for the New Development. Alternative SDC rate calculations must be based on analysis of occupancy of classes of structures, not on the intended occupancy of a particular New Development. The City shall not entertain such a request filed after the City has completed the final inspection for the new Development. Upon the timely request for an alternative SDC rate calculation, the Administrator shall review the Applicant's calculations and supporting evidence and make a determination within 21 days of submittal as to whether the Applicant's request satisfies the requirements of this Section.

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2. In support of the Alternative SDC Rate request, the Applicant must provide complete and detailed documentation, including verifiable dwelling occupancy data, analyzed and certified by a suitable and competent professional. The Applicant's supporting documentation must rely upon generally accepted sampling methods, sources of information, cost analysis, demographics, growth projections, and techniques of analysis as a means of supporting the proposed alternative SDC rate. The proposed Alternative SDC Rate calculation shall include an explanation with particularity why the rate established in the SDC Methodology Report does not accurately reflect the New Development's impact on the City's capital improvements.
3. The Administrator shall apply the Alternative SDC Rate if, in the Administrator's opinion, the following are found:
 - a. The evidence and assumptions underlying the Alternative SDC Rate are reasonable, correct and credible and were gathered and analyzed in compliance with generally accepted principles and methodologies consistent with this Section, and
 - b. The calculation of the proposed Alternative SDC rate was by a generally accepted methodology, and
 - c. The proposed alternative SDC rate better or more realistically reflects the actual impact of the New Development than the rate set forth in the SDC Methodology Report.
4. If, in the Administrator's opinion, all of the above criteria are not met, the Administrator shall provide to the Applicant (by Certified mail, return receipt requested) a written decision explaining the basis for rejecting the proposed alternative Parks and Recreation SDC Rate.

C. Alternative SDC Credit Request

1. If an Applicant has requested an SDC Credit pursuant to Section 17.13.070, and that request has either been denied by the City or approved but at a lower value than desired, the Applicant may request an Alternative SDC Credit calculation, under this section, no later than the time the City completes the final inspection for the New Development. The City shall not entertain such a request filed after the City has completed the final inspection for the new Development. Upon the timely request for an Alternative SDC Credit calculation, the Administrator shall review the Applicant's calculations and supporting evidence and make a determination within 21 days of submittal as to whether the Applicant's request satisfies the requirements of this Section.

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2. In support of the Alternative SDC Credit request, the Applicant must provide complete and detailed documentation, including appraisals, cost analysis or other estimates of value, analyzed and certified to by an appropriate professional, for the improvements for which the Applicant is seeking Credit. The Applicant's supporting documentation must rely upon generally accepted sources of information, cost analysis, and techniques of analysis as a means of supporting the proposed Alternative SDC Credit.
3. The Administrator shall apply the Alternative SDC Credit if, in the Administrator's opinion, the following are found:
 - a. The improvement(s) for which the SDC Credit is sought are Qualified Public Improvement(s), and
 - b. The evidence and assumptions underlying the Applicant's Alternative SDC Credit request are reasonable, correct, and credible and were gathered and analyzed by an appropriate competent professional in compliance with generally accepted principles and methodologies, and
 - c. The proposed Alternative SDC Credit is based on realistic, credible valuation analysis.
4. If, in the Administrator's opinion, any one or more of the above criteria is not met, the Administrator shall deny the request and provide to the Applicant (by Certified mail, return receipt requested) a written decision explaining the basis for rejecting the proposed Alternative Parks and Recreation SDC Credit proposal.

D. Alternative SDC Exemption Request:

1. If an Applicant has requested a full or partial exemption under Section 17.13.060 and that request has been denied, the Applicant may request an Alternative SDC Exemption under this Section, no later than the time the City completes the final inspection for the new Development. The City shall not entertain such a request filed after the City has completed the final inspection for the New Development. Upon the timely request for an Alternative SDC Exemption, the Administrator shall review the Applicant's request and supporting evidence and make a determination within 21 days of submittal as to whether the Applicant's request satisfies the requirements of Section 17.13.060 for exemptions.
2. In support of the Alternative SDC Exemption request, the Applicant must provide complete and detailed documentation demonstrating that the Applicant is entitled to one of the exemptions described in Section 17.13.060.

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3. The Administrator shall grant the exemption if, in the Administrator's opinion, the Applicant has demonstrated with credible, relevant evidence that it meets the pertinent criteria in Section 17.13.060.
4. Within 21 days of the Applicant's submission of the request, the Administrator shall provide a written decision explaining the basis for rejecting or accepting the request.

17.13.090 Payment.

(Amended by Ordinance Nos. 173565, 181669 and 183447, effective July 1, 2010.)

- A. The Parks and Recreation SDC required by this Chapter to be paid is due upon issuance of the Building Permit. However, in lieu of payment of the full Parks and Recreation SDC, the Applicant may elect to pay the SDC in installments as is authorized by ORS Chapter 223.208 and Chapter 17.14 of this Code. If the Applicant elects to pay the SDC in installments, a lien will be placed against the property that is subject to the SDC Deferral or Installment Agreement entered into by the Applicant and the City on a form provided by the City, and which may provide for the deferral of payments as set forth in Chapter 17.14 of this Code. In any event, the Applicant shall either pay the SDC in full or enter into an SDC Deferral or Installment Agreement as provided in this Code, before the City will issue any Building Permits.
- B. Upon written request of Portland Parks & Recreation, the City Auditor is authorized to cancel assessments of SDCs, without further Council action, where the New Development approved by the Building Permit is not constructed and the Building Permit is cancelled.
- C. For property that has been subject to a cancellation of assessment of SDCs, a new installment payment contract shall be subject to the code provisions applicable to SDCs and installment payment contracts on file on the date the new contract is received by the City.

17.13.100 Refunds.

(Amended by Ordinance No. 181669, effective January 1, 2009.) Refunds may be given by the Administrator upon finding that there was a clerical error in the calculation of the SDC. The City shall refund to the Applicant any SDC revenues not expended within ten (10) years of receipt. Refunds will be given, upon request by the Applicant, when a building permit application is canceled.

17.13.110 Dedicated Account and Appropriate Use of Account.

(Amended by Ordinance No. 181669, effective January 1, 2009.)

- A. There is created a dedicated account entitled the "Parks and Recreation SDC Account." All monies derived from the Parks and Recreation SDC shall be placed in the Parks and Recreation SDC Account. Funds in the Parks and Recreation SDC

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Account shall be used solely for the purpose of providing capacity-increasing capital improvements as identified in the adopted Parks and Recreation SDC-CIP as it currently exists or a hereinafter amended, and eligible administrative costs. In this regard, SDC revenues may be used for purposes which include:

1. design and construction plan preparation;
2. permitting;
3. land and materials acquisition, including any costs of acquisition or condemnation;
4. construction of parks and recreation capital improvements;
5. design and construction of new drainage facilities or streets required by the construction of parks and recreation capital improvements and structures;
6. relocating utilities required by the construction of improvements;
7. landscaping;
8. construction management and inspection;
9. surveying, soils and material testing;
10. acquisition of capital equipment that is an intrinsic part of a facility;
11. demolition that is part of the construction of any of the improvements on this list;
12. payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the City to provide money to construct or acquire parks and recreation facilities;
13. direct costs of complying with the provisions of ORS 223.297 to 223.314, including the consulting, legal, and administrative costs required for developing and updating the system development charges methodologies and capital improvement plan; and the costs of collecting and accounting for system development charges expenditures.

B. Money on deposit in the Parks and Recreation SDC Account shall not be used for:

1. any expenditure that would be classified as a maintenance or repair expense; or
2. costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements; or

- 3. costs associated with acquisition or maintenance of rolling stock
- C. The City may prioritize SDC-funded projects and may spend SDC revenues for growth-related projects anywhere in the City. However, during any period of twenty years, the City shall not spend less SDC revenues for local access parks within any City parks planning sub-area than the total amount of SDC revenues collected for local access parks within that sub-area.

17.13.120 Challenges and Appeals.

(Amended by Ordinance No. 174617, effective July 28, 2000.)

- A. Any person may challenge the expenditure of SDC revenues by filing a challenge to the expenditure with the Administrator within two years after the date of the disputed SDC revenue expenditure. The fee for filing such a challenge shall be \$100.
- B. Except where a different time for an Administrator's decision is provided in this Chapter, all Administrator decisions shall be in writing and shall be delivered to the Applicant within 21 days of an Application or other Applicant request for an Administrator determination. Delivery shall be deemed complete upon the earlier of actual delivery to the Applicant or upon deposit by the Administrator in the mail, first class postage prepaid, addressed to the address for notice Applicant has designated in the Application. Any person may appeal any decision of the Administrator made pursuant to this Chapter to the City Hearings Officer by filing a written request with the Administrator within fourteen (14) days after the delivery of the Administrator's written decision to the Applicant. The fee for appealing a decision to the Hearings Officer shall be \$250 and shall accompany the request for appeal. An outline of these appeal procedures shall be included in the Administrator's written decision.
- C. The decision of the Hearings Officer shall be reviewable solely under ORS 34.010 through 34.100.
- D. The City shall withhold all Permits and other approvals applicable to the Applicant's property of the New Development pending resolution of all appeals under this Chapter unless the SDC is paid in full or Applicant provides, for the pendency of the appeal, a financial guarantee or security for the charge in a form acceptable to the City Attorney.

17.13.130 City Review of SDC.

(Amended by Ordinance No. 181669, effective January 1, 2009.)

- A. No later than every five (5) years as measured from initial enactment, the City shall undertake a review to determine that sufficient money will be available to help fund the Parks and Recreation SDC-CIP identified capacity increasing facilities; to determine whether the adopted SDC rate keeps pace with inflation, whether the

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Parks and Recreation SDC-CIP should be modified, and to ensure that such facilities will not be over-funded by the SDC receipts.

- B.** In the event that during the review referred to above, it is determined an adjustment to the SDC is necessary and consistent with state law, the City Council may propose and adopt appropriately adjusted SDCs.
- C.** The City Council may from time to time amend or adopt a new SDC Methodology Report by ordinance.

17.13.140 Time Limit on Expenditure of SDCs.

The City shall expend SDC revenues within ten (10) years of receipt, based on the priorities in the Parks and Recreation SDC-CIP list.

17.13.150 Implementing Regulations.

(Amended by Ordinance No. 187150, effective July 1, 2016.) The Director may adopt regulations to implement the provisions of this chapter.

17.13.160 Amendment of the Parks and Recreation SDC-CIP List.

(Amended by Ordinance No. 181669, effective January 1, 2009.) The City Council may, by resolution, amend its Parks and recreation SDC-CIP list as set forth in the SDC Methodology Report, from time to time to add or remove projects the City deems appropriate. The Administrator may, at any time, change the timing and sequence for completion of projects included in the Parks and Recreation SDC-CIP list.

17.13.170 Severability.

The provisions of this Chapter are severable, and it is the intention to confer the whole or any part of the powers herein provided for. If any clause, section or provision of this Chapter shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of this Chapter shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein. It is hereby declared to be the legislative intent that this Chapter would have been adopted had such an unconstitutional provision not been included herein.

CHAPTER 17.14 - FINANCING SYSTEMS
DEVELOPMENT CHARGES

(Chapter added by Ordinance No. 145785; amended
by Ordinance No. 166334, effective March 17,
1993.)

Sections:

- 17.14.010 Purpose.
- 17.14.020 Definitions.
- 17.14.030 Application, Consent to Assessment.
- 17.14.040 Terms and Conditions of Deferred Payment and Installment Payment Agreements.
- 17.14.050 Assessment.
- 17.14.060 Cancellation.

17.14.010 Purpose.

(Amended by Ordinance No. 183447, effective July 1, 2010.) The purpose of this Chapter is to authorize financing agreements that provide for payments deferrals and installment payments of City system development charges. This Chapter fulfills the mandate of Chapter 722 Oregon Laws of 1977 (ORS 223.207 and 223.208) by providing that the rights and duties accorded the City and property owners by the laws relating to assessments and financing of local improvement districts shall also apply to assessments and financing of those charges imposed by the City that are defined by Subsections 1 (a) and (b) of Section 2, Chapter 722 Oregon Laws of 1977 (ORS 223.208 (1) (a) and (b)).

17.14.020 Definitions.

(Amended by Ordinance No. 183447, effective July 1, 2010.) As used in this Chapter the following terms shall be defined as follows:

- A. **“System development charge”** means a charge imposed pursuant to Chapters 17.13, 17.15, 17.36 and 21.16 of this Code.
- B. **“Owner or property owner”** means all persons who appear on the County property tax record for the property subject to the system development charge.
- C. **“Responsible Bureau”** means the City agency, office, organization, division or bureau which is responsible for calculating and maintaining records regarding system development charges.

17.14.030 Application, Consent to Assessment.

(Amended by Ordinance No. 183447, effective July 1, 2010.) Any owner of real property subject to a systems development charge may apply to defer the payment of system development charges, or to pay the charge in installments in a manner similar to that provided for local improvement district assessments. As a condition to such application,

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the owner shall waive any right to challenge the validity or applicability of the charge and shall consent to the assessment of the property subject to the charge.

17.14.040 Terms and Conditions of Deferred Payment and Installment Payment Agreements.

(Amended by Ordinance Nos. 183447 and 185326, effective July 1, 2012.)

A. Deferred Payments.

1. The City shall authorize the deferred payment of system development charges for periods not to exceed 6 months for projects valued less than or equal to \$750,000, 9 months for projects valued greater than \$750,000 and less than or equal to \$7 million, and 12 months for projects that are valued greater than \$7 million.
2. For purposes of this Section, the City shall rely on the value assigned to projects by the City when calculating building permit fees.
3. The City shall charge simple interest during the deferral period at the interim interest rate established by ordinance pursuant to Chapter 17.12 of this Code.
4. The City shall collect fees and charges for the processing and administration of deferred payment agreements as set by general ordinance.
5. The City shall authorize the deferred payment of system development charges for periods not to exceed 18 months for new single family residential dwellings (detached, duplex, row house, townhouse) regardless of project value; this option shall include the requirements of Subsections 3. and 4. of this Section and shall be offered on projects for which complete building permit applications and SDC deferral applications in accordance with Section 17.14.030 are received between July 1, 2012 through June 30, 2014. Development for which a complete building permit application or a SDC deferral application under Section 17.14.030 are received after June 30, 2014 are not eligible for the deferral provided by this Subsection.

B. Installment Payment Agreements. Payment of principal and interest shall be made in installments as set forth in the signed installment payment contract.

17.14.050 Assessment.

The City Auditor shall report to the Council from time to time the contracts to pay system development charges pursuant to this Chapter. If the Council finds that the contracts are in order and that subject property has been permitted to connect to City facilities and has thereby benefited, it shall approve the contracts by ordinance direct the billing for the charges upon the land benefited plus a financing fee. The financing fee shall be calculated as set forth in PCC 17.12 Assessments. All such assessments may be combined in one

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assessment roll and shall be entered upon the Docket of City Liens and collected in the same manner as other local improvement assessments.

17.14.060 Cancellation.

(Amended by Ordinance No. 183447, effective July 1, 2010.)

- A.** Upon written request of the responsible City bureau, the City Auditor is authorized to cancel assessments of system development charges, without further Council action, where the property is not physically connected to the public improvement of where the new development approved by the building permit is not constructed and the building permit is cancelled. The City Auditor shall establish administrative guidelines and fees or charges relating to the cancellation of assessments. The City Auditor shall maintain on file for public inspection a current copy administrative guidelines and fees or charges.
- B.** For property which has been subject to a cancellation of assessment of system development charges, a new installment payment contract shall be subject to the code provisions applicable to system development charges and installment payment contracts on file on the date the new contract is received by the City.

CHAPTER 17.15 - TRANSPORTATION
SYSTEM DEVELOPMENT CHARGE

(Chapter added by Ordinance No. 171301, effective
July 18, 1997.)

Sections:

17.15.010	Scope and Purposes
17.15.020	Definitions
17.15.030	Rules of Construction
17.15.040	Application
17.15.050	Partial and Full Exemptions
17.15.060	SDC Credits, SDC Credit Transfers and SDC Reimbursements
17.15.070	Alternative Calculation for SDC Rate, Credit or Exemption
17.15.080	Payment
17.15.090	Refunds
17.15.100	Dedicated Account and Appropriate Use of Account
17.15.110	Challenges and Appeals
17.15.120	City Review of SDC
17.15.130	Time Limit on Expenditure of SDCs
17.15.140	Implementing Regulations; Amendments
17.15.150	Amendment of SDC-CIP List
17.15.160	Severability

17.15.010 Scope and Purposes.

(Amended by Ordinance Nos. 181322, 182652 and 184756, effective November 1, 2011.)

- A.** New development within the City of Portland contributes to the need for capacity increases for roads, multi-modal transportation and related transportation improvements, to enable new development to take advantage of transit systems and, therefore, new development should contribute to the funding for such capacity increasing improvements. This SDC will fund a portion of the needed capacity increases for arterial, boulevard and collector roads, multi-modal transportation improvements and associated bus and transit improvements, sidewalks, bicycle and pedestrian facilities, street lighting and stormwater drainage and treatment facilities, and other public facilities specified in the City of Portland Transportation System Plan.
- B.** ORS 223.297 through 223.314 grant the City authority to impose a SDC to equitably spread the costs of essential capacity increasing capital improvements to new development.
- C.** The SDC is incurred upon application to develop property for a specific use or at a specific density. The decision regarding uses, densities, and/or intensities causes direct and proportional changes in the amount of the incurred charge. This SDC is separate from other fees provided by law or imposed as a condition of development.

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It is a fee for service because it contemplates a development's receipt of transportation services based upon the nature of that development.

- D.** The SDC imposed by this Chapter is not a tax on property or on a property owner as a direct consequence of ownership of property within the meaning of Section 11b, Article XI of the Oregon Constitution or legislation implementing that section. This Chapter does not shift, transfer or convert a government product or service, wholly or partially paid for by ad valorem property taxes, to be paid for by a fee, assessment or other charge, within the meaning of Section 11g, Article XI of the Oregon Constitution.
- E.** The funding provided by this Chapter constitutes a mandatory collection method based upon the guidelines set forth in ORS 223.297 through 223.314 to assure the construction of capacity increasing improvements to arterial, boulevard and collector roads as well as to bicycle, pedestrian and transit facilities as contemplated in the Transportation Element of the City Comprehensive Plan, City of Portland Transportation System Plan and the list of projects, referred to as the SDC-CIP, to be funded with money collected under this Chapter and incorporated as Table 3-2 in the attached Update of Transportation System Development Charges rate study, (dated July 2007), as well as Table 3-2 in the attached North Macadam Transportation System Development Charge TSDC Overlay Rate Study, (dated January 2009) and Table 3-1 in the attached Innovation Quadrant Transportation System Development Charge Overlay Project Report (dated May 2011). The SDC-CIP is not to be confused with the City of Portland Capital Improvement Program.
- F.** This Chapter is intended only to be a financing mechanism for the capacity increases needed for major City traffic and collector streets, multi-modal improvements associated with new development and capacity increasing transportation improvements and does not represent a means to fund maintenance of existing roads or the elimination of existing deficiencies.
- G.** The City hereby adopts the methodology report and rate study entitled Update of Transportation System Development Charges, (dated July 2007), as well as the attached North Macadam Transportation System Development Charge TSDC Overlay Rate Study, (dated January 2009), and the attached Innovation Quadrant Transportation System Development Charge Overlay Project Report (dated May 2011) and incorporates herein by this reference the assumptions, conclusions and findings in the report which refer to the determination of anticipated costs of capital improvements required to accommodate growth. These reports are hereinafter referred to as "City Rate Study" and is attached to Ordinance No. 181322 as Exhibit A, "North Macadam Overlay Rate Study", attached to Ordinance No. 182652 as Exhibit A, and "Innovation Quadrant Overlay Project Report", attached to Ordinance No. 184756 as Exhibit A. The City Council may from time to time amend or adopt a new City Rate Study by Ordinance.

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- H.** The Transportation SDC provided for in this Chapter is designed to help finance the Transportation System facilities listed in Table 3-2 in the SDC-CIP as a means of ensuring that adequate capacity is maintained in the City's Transportation System. However, the City specifically recognizes that the entire project list will likely not receive full funding from the proceeds of this SDC, and it is unlikely that every one of the projects listed will be constructed. The City recognizes that the project list in the SDC-CIP is not complete but that construction of other projects, not included on the SDC-CIP, may also advance the policy objective of maintaining capacity in the City's Transportation System.
- I.** In conjunction with the Transportation System capacity objectives of this Chapter, the City also seeks to encourage certain types of development by granting a partial or full credit for the Transportation SDC. In particular, the city places a high priority on the development of low-income housing. The City has also recognized a higher public purpose in Transit Oriented Development (TOD) in creating a more dense, mixed-use urban design that promotes and integrates transit ridership with housing. Likewise, the development of low-income housing promotes the public purpose of providing quality housing options for families and individuals earning 60 percent or less of the Area Median Income. Providing a credit for the Transportation SDC will make it possible to develop more and better low income housing within the metropolitan area where jobs and shopping are available by transit and non-motorized modes. For both the low income housing and TOD credit, the City has made the policy decision that the entire SDC-CIP project list may not be fully funded, but that other policy objectives, equally important as maintaining transportation system capacity, will be advanced.

17.15.020 Definitions.

(Amended by Ordinance Nos. 171698, 172677, 173121, 175717, 176782, 181322, 182389, 182652, 184756 and 185459, effective June 27, 2012.)

- A.** “**Accessway**” means a walkway that provides pedestrian and/or bicycle passage either between streets or from a street to a building or other destination such as a school, park, or transit stop. Accessways generally include a walkway and additional land on either side of the walkway, often in the form of an easement or right-of-way, to provide clearance and separation between the walkway and adjacent uses. Accessways through parking lots are generally physically separated from adjacent vehicle parking or parallel vehicle traffic by curbs or similar devices and include landscaping, trees and lighting. Where Accessways cross driveways, they may be raised, paved or marked in a manner which provides convenient access for pedestrians.
- B.** “**Administrator**” means that person as appointed by the Director of Transportation to manage and implement this SDC program.
- C.** “**Alternative System Development Charge**” means any SDC established pursuant to Section 17.15.070 of this Chapter.

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- D.** “**Applicant**” means the person who applies for a Building Permit.
- E.** “**Application**” means the written request by an Applicant for a Building Permit.
- F.** “**Building Official**” means that person, or his designee, certified by the State and designated as such to administer the State Building Codes for the City.
- G.** “**Building Permit**” means that permit issued by the City Building Official pursuant to the State of Oregon Structural Specialty Code or as amended, and the State of Oregon Residential Specialty Code or as amended. In addition, Building Permit shall mean the Manufactured Home Installation Permit issued by the City Building Official, relating to the placement of manufactured homes in the City.
- H.** “**City**” means City of Portland, Oregon.
- I.** “**City Rate Study**” means the methodology report entitled Update of Transportation System Development Charges, dated July 2007 and adopted as Exhibit A to Ordinance No. 181322.
- J.** “**Comprehensive Plan**” means the current, adopted Comprehensive Plan of the City of Portland.
- K.** “**Condition of Development Approval**” is a Bureau of Transportation requirement imposed on an Applicant by a city land use or limited land use decision, site plan approval or building permit either by operation of law, including but not limited to the City Code or Rule or regulation adopted thereunder, or a condition of approval.
- L.** “**Construction Cost Index**” means the National Highway Construction Cost Index published by the Federal Highway Administration.
- M.** “**Credit**” means the amount by which an Applicant may be able to reduce the SDC fee as provided in this Chapter.
- N.** “**Developer**” means the person constructing a Qualified Public Improvement prior to the construction of the New Development.
- O.** “**Development**” means all improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, and areas devoted to exterior display, storage or activities which has the effect of generating additional weekday or weekend trips. Development includes improved open areas such as plazas and walkways, but does not include natural geologic forms or unimproved land.
- P.** “**Director of Transportation**” means that person or her or his designee who is responsible for managing the Bureau of Transportation.

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- Q. “Finance Director”** means that person or his or her designee who is responsible for managing the Finance Department for the City of Portland.
- R. “Innovation Quadrant Overlay Project Report”** means the methodology report entitled Innovation Quadrant Transportation System Development Charge Overlay Project Report, dated May 2011 and adopted as Exhibit A to Ordinance. No. 184756.
- S. “Innovation Quadrant Transportation System Development Charge TSDC Overlay”** means a transportation system development charge (TSDC) zone over the Innovation Quadrant area, as it presently exists or may be amended in the future, in which additional SDCs are collected and expended on capacity-increasing projects to serve future users within the Innovation Quadrant.
- T. “Institutional Development”** means development associated with a medical or educational institution and associated uses, on a site of at least five acres in area. Medical institutional campuses include medical centers and hospitals. Educational institutional campuses include universities, colleges, high schools, and other similar institutions offering course of study leading to a high school diploma or a degree certified by a recognized accreditation body. Associated uses on institutional campuses may include some commercial or light industrial uses, residential and other uses.
- U. “ITE Manual”** means that manual entitled “An Institute of Transportation Engineers Informational Report - Trip Generation” Seventh Edition (2003) or as amended. A copy of the ITE Manual shall be kept on file with the Bureau of Transportation.
- V. “Multi-Modal”** means vehicular, transit, bicycle, pedestrian and wheel chair transportation.
- W. “New Development”** means Development on any site which increases overall trip generation from the site according to Table 4-9 of The City Rate Study or pursuant to Section 17.15.070 of this Chapter. Except as provided under Section 17.15.050, New Development for purposes of this Chapter includes remodeling to the extent that it generates additional trips.
- X. “Non-Motorized”** means transportation that is neither vehicular or transit. Non-motorized includes pedestrian and bicycle transportation. Pedestrian transportation includes wheelchair transportation regardless of whether the wheelchair is motorized or hand propelled.
- Y. “North Macadam Overlay Rate Study”** means the methodology report entitled North Macadam Transportation System Development Charge TSDC Overlay Rate Study, dated January 2009 and adopted as Exhibit A to Ordinance 182652.

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- Z.** “**North Macadam Transportation System Development Charge TSDC Overlay**” means a transportation system development charge (TSDC) zone over the entire North Macadam urban renewal area (URA), as it presently exists or may be amended in the future, in which additional SDCs are collected and expended on capacity-increasing projects to serve future users within North Macadam.
- AA.** “**Over-capacity**” means that portion of an improvement that is built larger or with greater capacity (over-capacity) than is necessary to serve the Applicant’s New Development or mitigate for transportation system impacts attributable to the Applicant’s New Development. There is a rebuttable presumption that improvements built to the City’s minimum standards are required to serve the Applicant’s New Development and to mitigate for transportation system impacts attributable to the Applicant’s New Development.
- BB.** “**Pedestrian Connection**” means a continuous, unobstructed, reasonably direct route between two points that is intended and suitable for pedestrian use. Pedestrian connections include but are not limited to sidewalks, walkways, stairways and pedestrian bridges. On developed parcels, pedestrian connections are generally hard surfaced. In parks and natural areas, pedestrian connections may be soft-surfaced pathways. On undeveloped parcels and parcels intended for redevelopment, pedestrian connections may also include rights-of-way or easements for future pedestrian improvements.
- CC.** “**Permit**” means a Building Permit.
- DD.** “**Planned light rail station**” means a station included in local and regional transportation plans for which a full funding agreement has been executed by the Federal Transit Administration or other U. S. governmental agency, which agreement contains the terms and conditions applicable to the approval of a light rail project and the grant of federal funds for that project which includes construction of planned stations and other light rail facilities.
- EE.** “**Port Development**” means a planned development owned or operated by a unit of government involving a facility used for cargo freight or passenger transportation by air, water, rail or public mass transit, including accessory uses. Uses that are accessory to Port Development are those which send or receive cargo freight or are related to passenger movement or service.
- FF.** “**Previous use**” means the most recent permitted use conducted at a particular property. Where the site was used simultaneously for several different uses (mixed use) then, for purposes of this Chapter, all of the specific use categories shall be considered. Where one use of the site accounted for 70 percent or more of the total area used, then that dominant use will be deemed to be the sole previous use of the site. Where the previous use is composed of a primary use with one or more ancillary uses that support the primary use and are owned and operated in common,

that primary use shall be deemed to be the sole use of the property for purposes of this Chapter.

- GG. “Proposed use”** means the use proposed by the Applicant for a New Development. Where the Applicant proposes several different uses (mixed use) for the New Development then, for purposes of this Chapter, all of the specific use categories shall be considered. Where the proposed use is composed of a primary use with one or more ancillary uses that support the primary proposed use and are owned and operated in common, that primary use shall be deemed to be the sole proposed use of the property for purposes of this chapter.
- HH. “Qualified Public Improvement”** means any transportation system capital improvement or conveyance of an interest in real property that increases the capacity of the City’s Transportation System and is in one of the following categories:
1. Is a capital improvement listed on the City’s SDC-CIP regardless of the improvement’s proximity to the Applicant’s New Development site or
 2. Pertains to an arterial or collector street and is required by the Bureau of Transportation as a condition of the development approval and in the opinion of the Administrator is built larger or with greater capacity (over-capacity) than is necessary to serve the Applicant’s New Development or mitigate for transportation system impacts attributable to the Applicant’s New Development. There is a rebuttable presumption that improvements built to the Bureau of Transportation’s minimum standards are required to serve the Applicant’s New Development and to mitigate for transportation system impacts attributable to the Applicant’s New Development. Potentially eligible improvements include, but are not limited to:
 - a. vehicle travel, turning or refuge lanes and traffic signals and sidewalks
 - b. bicycle lanes, bicycle parking facilities or bicycle lockers, other than those required by the Bureau of Transportation to serve the Applicant’s New Development, or
 - c. any improvement to traffic or transportation safety that corrects an identified safety problem or defect in the City’s transportation system.
- II. “Remodel” or “Remodeling”** means to alter, expand or replace an existing structure.

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JJ. “Right-of-Way” means that portion of land that is dedicated for public use including use for pedestrians, bicycles, vehicles and transit, utility placement and signage.

KK. “Roads” means streets, roads and highways.

LL. “Temporary use” means a construction trailer or other non-permanent structure.

MM. “Transit Oriented Development” means

1. All development located within the following subdistricts of the Central City Plan District as shown on Map 510-8 of PCC Chapter 33.510: DT 1 through DT 6-2; UD 1-1 and UD 1-2; RD 3,4,5-1 and 5-2; GH 1; CE 2 and 3; and LD 1-4.
2. Any development located in any other subdistrict of the Central City Plan District that either
 - a. includes at least 40 units of housing per net acre, or
 - b. achieves a floor area ratio of 2 to 1.
3. Any development, except an auto-related use as defined in City Code 33.910, located outside the Central City Plan District that is within 500 feet of a street with fixed-route frequent (every 15 minutes or better during the day) transit service or within 1,000 feet of a light rail station and that either:
 - a. includes at least 30 units of housing per acre of site, and there are no drive through facilities, or
 - b. achieves a floor area ratio of 1 to 1, and there are no drive through facilities, or
 - c. is located in a commercial zone where no parking is required by the Planning and Zoning code of the City of Portland and no on-site parking is provided and there are no drive through facilities.

For purposes of this definition, “site” shall include the building footprint and all associated land required for parking, landscaping and the like. For the purpose of this definition, “fixed-route frequent transit service” shall include the I-205 light rail corridor and “light rail station” shall include the I-205 light rail stations.

NN. “Transportation SDC Capital Improvement Plan,” also called SDC-CIP, means the City program set forth in the City Rate Study that identifies all of the major transportation system and facilities capacity, safety, reconstruction, bicycle, pedestrian, transit and bridge improvements projected to be necessary to

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accommodate existing and anticipated transportation system demands within the next 10 years as described in the Update of Transportation System Development Charges, (dated July 2007), and within the next 20 years as described in the North Macadam Transportation System Development Charge TSDC Overlay Rate Study, (dated January 2009).

- OO.** “**Transportation System Development Charge,**” or “**SDC,**” refers to the fee to be paid under this Chapter.
- PP.** “**Transportation System Plan**” or “**TSP**”, means the current, adopted 20-year plan for transportation improvements in the City of Portland.
- QQ.** “**Vehicle**” means motorcycles, automobiles, trucks, boats and recreational vehicles, but does not include transit, bicycles and motorized wheelchairs for the disabled.
- RR.** “**Vehicular**” means a reference to a vehicle.
- SS.** “**Walkway**” means an area intended and suitable for use by pedestrians, that meets standards of the American with Disabilities Act, located in public right-of-way.

17.15.030 Rules of Construction.

For the purposes of administration and enforcement of this Chapter, unless otherwise stated in this Chapter, the following rules of construction shall apply:

- A.** In case of any difference of meaning or implication between the text of this Chapter and any caption, illustration, summary table, or illustrative table, the text shall control.
- B.** The word “shall” is always mandatory and not discretionary; the word “may” is permissive.
- C.** Words used in the present tense shall include the future; and words used in the singular number shall include the plural and the plural the singular, unless the context clearly indicates the contrary.
- D.** The phrase “used for” includes “arranged for,” “designed for,” “maintained for,” or “occupied for.”
- E.** Where a regulation involves two or more connected items, conditions, provisions, or events:
 - 1.** “And” indicates that all the connected terms, conditions, provisions or events shall apply;
 - 2.** “Or” indicates that the connected items, conditions, provisions or events may apply singly or in any combination.

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- F.** The word “includes” shall not limit a term to the specific example, but is intended to extend its meaning to all other instances or circumstances of like kind or character.

17.15.040 Application.

(Amended by Ordinance Nos. 181322, 182652, 184756, 185195, 185459 and 187210, effective June 24, 2015.) This Chapter applies to all New Development throughout the City of Portland except for those areas where Washington County, Multnomah County or Clackamas County imposes a transportation SDC or Traffic Impact Fee. The amount of the Transportation SDC shall be calculated according to this section. For any New Development within the North Macadam Overlay Rate Study boundaries, the transportation SDC shall be the sum of two calculations, the first based upon the City Rate Study and the second based upon the North Macadam Overlay Rate Study. For any New Development within the Innovation Quadrant area boundaries, the transportation SDC shall be the sum of two calculations, the first based upon the City Rate Study and the second based upon the Innovation Quadrant Overlay Project Report.

A. New Development.

- 1.** Except as otherwise provided in this Chapter, a Transportation SDC shall be imposed upon all New Development for which an Application is filed after October 18, 1997.
- 2.** The Applicant shall at the time of Application provide the Administrator with the information requested on an SDC application form regarding the previous and proposed use(s) of the property, including the following:
 - a.** A description of each of the previous and proposed uses for the property for which the Permit is being sought--with sufficient detail to enable the City to calculate trip generation for the entire property under the previous use and for the proposed use(s) of the New Development.
 - b.** For residential uses--the number of residential dwellings, including type, e.g., single family or multi family.
 - c.** For commercial uses--the square footage for each type of commercial use, e.g., office, retail, etc.
- 3.** Except as otherwise provided in this Chapter, the amount of the SDC due shall be determined by estimating the trip generation of the previous use(s) on the property and the trip generation for all of the proposed use(s) and then calculating the total SDC for the previous use(s) and the proposed uses(s) as provided in Table 4-9 of The City Rate Study, and if applicable, Table 4-9 of the North Macadam Overlay Rate Study or Table 4-8 of the Innovation Quadrant Overlay Project Report.

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- a. If the vehicle trips attributable to the proposed use of the New Development are within 15 percent \pm of the vehicle trips attributable to the total previous use of the property and does not increase or decrease vehicle trips by more than 250 vehicle trips, the Applicant is not required to pay any SDC and is not eligible for any SDC reimbursement or credit.
 - b. If the vehicle trips attributable to the proposed use of the New Development are more than 115 percent of the vehicle trips attributable to the total previous use, the Applicant shall pay the difference between the SDC attributable to the proposed use and the SDC attributable to the total previous use.
 - c. If the vehicle trips attributable to the proposed New Development are less than 85 percent of the vehicle trips attributable to the total previous use(s), the Applicant shall be eligible for an SDC Reimbursement under Section 17.15.060.
4. In the event an identified use does not have a basis for trip determination stated in The City Rate Study, the Administrator shall identify the land use or uses that has/have a trip generation rate most similar to the use(s) in question and apply the trip generation rate most similar to the proposed use or uses.
5. Notwithstanding any other provision, the dollar amounts of the SDC set forth in The City Rate Study as well as the North Macadam Overlay Rate Study and the Innovation Quadrant Overlay Project Report shall on July 1st of each year be increased or decreased automatically by the difference of the 10-year moving average of the National Highway Construction Cost Index published by the Federal Highway Administration.

B. Institutional Development.

1. Institutional Development shall be subject to assessment under this Subsection or under Subsection 1 above, at the election of the Applicant. If the Applicant elects assessment under this Subsection, this method of assessment shall be utilized on Institutional properties designated in the election for a period of not less than three years from date of initial election.
2. Within 60 days of election of the alternate assessment under this Subsection, the Applicant Institution shall submit the proposed methodology for counting trips to the Administrator. The Administrator shall determine whether the proposed methodology is acceptable within 20 days from the date of election and submission, and, if the methodology is rejected, the Administrator shall provide an explanation for the decision.

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3. Within one year of the date of election of the alternative method of assessment under this Subsection, at the time(s) designated in the accepted methodology to count trips, the applicant Institution shall establish the average weekday trip count. Such data and related analysis shall be based upon a methodology to calculate trips accepted by the Administrator. This average weekday trip count shall be calculated, unless otherwise specified in the accepted methodology, by dividing the total current average weekday trips that occur in each mode during an average week by the number of weekdays.
 4. The amount of the SDC shall be determined at the end of each 12 month period by multiplying the applicable dollar amount, as provided in the City Rate Study, by the change in average weekday trip count by mode type during the intervening 12 month period over the highest prior documented average weekday trip count since October 18, 1997. Such SDC, if any, shall be due and payable within 45 days from the close of the 12-month period. A reduction in trips by any mode shall allow the Applicant Institution to reduce future annual assessment against the same mode by the number of such reduced trips.
 5. For uses that calculate the SDC using a unit of measure other than square feet, such as the number of students, movie screens, etc., the first Application submitted for such a use that is subject to this Chapter shall establish the baseline number of existing units of measure. No SDC shall be assessed against that baseline. A baseline trip rate so established shall be valid, and need not be recalculated, for the next 12 months.
- C. Port Development. At the applicant's option, Port Development may be subject to assessment under Subsection A. of this Section, or under this Subsection. If the Applicant elects assessment under this Subsection C., the Applicant and the City shall negotiate an agreement for the payment of a fee in lieu of the Transportation SDC that includes the following elements:
1. A methodology for estimating the amount of the SDC which would be imposed pursuant to Subsection A. or B. above, during a period of not less than either 3 years or until the expiration of the SDC project list, whichever is less, nor more than 10 years as specified by the Applicant. The methodology shall take into account the Port Development anticipated under the Applicant's master plan during the period specified in that plan, the trips that the Port Development is expected to generate, trip levels against which SDC charges have historically been assessed, the anticipated increases or decreases in the dollar amounts of the SDC during the specified period, any applicable credits or exemptions and any other factors which the Administrator deems to be relevant. In no event shall the charge estimated under this Subsection be less than the SDC that would otherwise

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be due for the Port Development and the Applicant shall indicate its agreement to the methodology in writing; and

2. A payment period shall be imposed by which the Applicant shall pay in full the amount due within 12 months of the Applicant's agreement to the methodology.
3. In the event the Applicant and the City are unable to agree to a methodology under this Subsection, the normal method of calculating and assessing the SDC under Subsection A. or B. shall apply.

17.15.050 Partial and Full Exemptions.

(Amended by Ordinance Nos. 171698, 173437, 177198, 181322, 182389, 182652, 183679, 183448, 184756, 185195, 185987 and 187821, effective July 15, 2016.) The uses listed and described in this section shall be exempt, either partially or fully, from payment of the Transportation SDC. Any Applicant seeking an exemption under this Section shall specifically request that exemption within 180 days after building permit issuance for the New Development. Where New Development consists of only part of one or more of the uses described in this section, only that/those portion(s) of the development which qualify under this section are eligible for an exemption. The balance of the New Development which does not qualify for any exemption under this section shall be subject to the full SDC. Should the Applicant dispute any decision by the City regarding an exemption request, the Applicant must apply for an Alternative Exemption calculation under Section 17.15.070. The Applicant has the burden of proving entitlement to any exemption so requested.

- A. Temporary uses are fully exempt so long as the use or structure proposed in the New development will be used not more than 180 days in a single calendar year.
- B. New Development which, will not generate more than 15 percent more vehicle trips than the present use of the property and does not increase vehicle trips by more than 250 vehicle trips shall be fully exempt.
- C. Affordable housing is exempt pursuant to Section 30.01.095.
- D. The City of Portland is phasing out the exemption for the Transit Oriented Development (TOD) as calculated per Section 17.15.050 D.1. and 3. below. From January 1, 2008 through December 31, 2008, eligible development shall receive 100 percent of the exemption; from January 1, 2009 through December 1, 2009, eligible development shall receive 67 percent of the total exemption; and from January 1, 2010 through December 31, 2010, eligible development shall receive 33 percent of the total exemption. No TOD exemption shall be provided after December 31, 2010, as calculated per Section 17.15.050 D.1. and 3.

Transit Oriented Development (TOD) as calculated per Section 17.15.050 D.2. shall be exempt from the SDC as described below from January 1, 2008 through

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December 31, 2012. No TOD exemption shall be provided after December 31, 2012.

No exemption for Transit Oriented Development (TOD) shall be provided for any SDC based upon the North Macadam Overlay Rate Study or the Innovation Quadrant Overlay Project Report.

1. Within the Central City Plan District, New Development that meets Transit Oriented Development definition MM.1., MM.2.a. or MM.2.b. shall be liable for only 10 percent of the vehicle portion of the SDC and 90 percent of the transit and non-motorized portion of the SDC.
2. For all areas outside of the Central City Plan District, New Development that meets Transit Oriented Development definition MM.3.a., MM.3.b., or MM.3.c. shall be liable for only 50 percent of the vehicle portion of the SDC and 100 percent of the transit and non-motorized portion of the SDC.
3. For all areas outside of the Central City Plan District, New Development that meets the density requirements in Transit Oriented Development definition MM.2.a., or MM.2.b. shall be liable for only 10 percent of the vehicle portion of the SDC and 90 percent of the transit and non-motorized portion of the SDC.

- E. Graded Scale: A change in occupancy of an existing building where the gross enclosed floor area does not exceed 3,000 square feet is fully exempt. A change in occupancy of an existing building where the gross floor area is between 3,000 square feet and 5,000 square feet shall be assessed on a graded scale. The percentage of the rate to be assessed on the entire existing building shall be calculated by the following equation:

$$(\text{size of existing building} - 3,000 \text{ square feet}) / 2,000 \text{ square feet}$$

Examples of Graded Scale Assessment Calculations

$(4,000 - 3,000) / 2,000 = 0.50$	Existing 4,000 square foot building assessed at 50% of the rate
$(3,200 - 3,000) / 2,000 = 0.10$	Existing 3,200 square foot building assessed at 10% of the rate
$(4,900 - 3,000) / 2,000 = 0.95$	Existing 4,900 square foot building assessed at 95% of the rate

- F. Alteration permits for tenant improvements, new construction or remodeling where
1. no additional dwelling unit(s) or structure(s) are created;

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2. which is not reasonably expected to result in a significant increase in additional trips according to table 4-9 of the City Rate Study, and if applicable, the North Macadam Overlay Rate Study or the Innovation Quadrant Overlay Project Report;
 3. the use or structure is of a temporary nature and is used less than 180 days in a calendar year;
- G.** The construction of accessory buildings or structures which will not create additional dwelling units or which do not create additional demands on the City's capital improvements.
- H.** Any newly permitted and constructed accessory dwelling unit (ADU) conforming to the Title 33 definition of an ADU will receive a waiver of SDC fees if a complete building permit application is submitted for the ADU from April 15, 2010 through July 31, 2018, provided that the new ADU receiving a waiver obtains an occupancy permit no later than June 30, 2019. If an occupancy permit is not obtained by June 30, 2019, an occupancy permit will not be issued until the SDC are paid at the rates in effect at the time the occupancy permit is issued.
- I.** For New Development which includes a mix of exempt and non-exempt forms of development, the applicable exemption(s) shall apply only to that portion of the New Development to which the exemption applies.

17.15.060 SDC Credits, SDC Credit Transfers and SDC Reimbursements.

(Amended by Ordinance Nos. 172677, 173121, 173437, 174936, 181322, 182652, 184756 and 185195, effective March 14, 2012.)

A. SDC Credits:

1. The City shall grant a credit against the Transportation SDC, which is otherwise assessed for a New Development, for any Qualified Public Improvement(s) constructed or dedicated as part of that New Development. The Applicant bears the burden of evidence and persuasion in establishing entitlement to an SDC Credit and to a particular value of SDC Credit.
 - a. To obtain an SDC Credit, the Applicant must specifically request a credit within 180 days after building permit issuance for the New Development. In the request, the Applicant must identify the improvement(s) for which credit is sought and explain how the improvement(s) meet the requirements for a Qualified Public Improvement. The Applicant shall also document, with credible evidence, the value of the improvement(s) for which credit is sought. If, in the Administrator's opinion, the improvement(s) are Qualified Public Improvement, and the Administrator concurs with the proposed value of the improvement(s), an SDC Credit shall be

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granted. The value of SDC Credits under Section 17.15.060 A.1. shall be determined by the Administrator based on the cost of the Qualified Public Improvement, or the value of land dedicated, as follows:

- (1)** For dedicated lands, value shall be based upon a written appraisal of fair market value by a qualified, professional appraiser based upon comparable sales of similar property between unrelated parties in an arms-length transaction;
 - (2)** For improvements yet to be constructed, value shall be based upon the anticipated cost of construction. Any such cost estimates shall be certified by a professional architect or engineer or based on a fixed price bid from a contractor ready and able to construct the improvement(s) for which SDC Credit is sought;
 - (3)** For improvements already constructed, value shall be based on the actual cost of construction as verified by receipts submitted by the Applicant;
 - (4)** For all improvements for which credit is sought, only the fraction of over-capacity in the improvement as described in the definition of Qualified Public Improvement is eligible for SDC Credit. There is a rebuttable presumption that improvements built to the City's minimum standards are required to serve the Applicant's New Development and to mitigate for transportation system impacts attributable to the Applicant's New Development;
 - (5)** For all improvements for which credit is sought within the North Macadam Transportation System Development Charge Overlay, the Administrator shall apportion the credit based upon the percent of the total SDC charge attributable to the City Rate Study and the Overlay Rate Study.
 - (6)** For all improvements for which credit is sought within the Innovation Quadrant Transportation System Development Charge Overlay, the Administrator shall apportion the credit based upon the percent of the total SDC charge attributable to the City Rate Study and the Innovation Quadrant Overlay Project Report.
- b.** The Administrator will respond to the Applicant's request in writing within 21 days of when the request is submitted. The Administrator

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shall provide a written explanation of the decision on the SDC Credit request.

- c. If an Applicant disputes the Administrator's decision with regard to an SDC Credit request, including the amount of the credit, the Applicant may seek an alternative SDC Credit calculation under Section 17.15.070. Any request for an Alternative SDC Credit calculation must be filed with the Administrator in writing within 10 calendar days of the written decision on the initial credit request.
2. Granting SDC Credits to New Development Prior to Commencing Construction of New Development. When a Qualified Public Improvement is built by a Developer prior to an Applicant applying for Building Permits for the New Development, the City shall grant a credit for any Qualified Public Improvement(s) to be constructed or dedicated as a Condition of Development Approval of that New Development. Credits issued pursuant to Section 17.15.060 A.3. are in lieu of any other SDC Credits that could otherwise be claimed in connection with the Qualified Public Improvement, and are issued pursuant to the following requirements and conditions:
 - a. The Developer must specifically request a credit prior to the first Application for a Building Permit, but after the issuance of the Public Works Permit for the Qualified Public Improvement;
 - b. For improvements yet to be constructed, the Developer shall provide the City with an enforceable mechanism to guarantee completion of the Qualified Public Improvement, either in the form of a performance bond or other financial guarantee acceptable to the Administrator;
 - c. The Developer shall submit written confirmation to the Administrator on the form provided acknowledging:
 - (1) That SDC credits issued pursuant to this Section are in lieu of any other credits that could be claimed by the Developer or other Applicants on account of the Qualified Public Improvement and
 - (2) That it is the Developer's obligation to advise subsequent Applicants of the New Development that SDC credits associated with the Qualified Public Improvement have already been issued and that no further credits are available.
3. Where the amount of an SDC Credit approved by the Administrator under this Section exceeds the amount of the Transportation SDC assessed by the City upon a New Development, the excess may be transferred. SDC Credit

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Transfers shall be issued by the City for a particular dollar value to the Applicant. The Applicant may convey by any means and for any value an SDC Credit Transfer to any other party. The Applicant or any other party to whom the credits are transferred may use the SDC Credit Transfers to satisfy Transportation SDC requirements for any other New Development within the City, with the following exceptions:

- a.** SDC Credit Transfers approved in connection with New Development outside the North Macadam Urban Renewal District, if applied to SDCs payable on New Development inside the North Macadam Urban Renewal District, may only be applied to the portion of that New Development's SDC charges payable under the City Rate Study. Such SDC Credit Transfers may not be applied to SDCs payable under the North Macadam Overlay Rate Study.
 - b.** SDC Credit Transfers approved in connection with New Development outside the Innovation Quadrant, if applied to SDCs payable on New Development inside the Innovation Quadrant, may only be applied to the portion of that New Development's SDC charges payable under the City Rate Study. Such SDC Credit Transfers may not be applied to SDCs payable under the Innovation Quadrant Overlay Project Report.
- 4.** The City shall accept at face value any SDC Credit Transfer presented as full or partial payment for the Transportation SDC due on New Development, except that SDC credits approved in connection with New Development outside the North Macadam Renewal District and applied to New Development inside the North Macadam Urban Renewal District may only be applied to the portion of that New Development's SDC charges payable under the City Rate Study, and SDC credits approved in connection with New Development outside the Innovation Quadrant and applied to New Development inside the Innovation Quadrant may only be applied to the portion of that New Development's SDC charges payable under the City Rate Study. Neither the City nor any of its employees or officers shall be liable to any party for accepting a SDC Credit Transfer, approved and issued by the City under this Section, as payment for a Transportation SDC.
- 5.** SDC Credit Transfers are void and of no value if not redeemed with the City for payment of a Transportation SDC within 10 years of the date of issuance.
- 6.** It shall be a violation of this title for any person to counterfeit or forge an SDC Credit Transfer or knowingly attempt to negotiate or redeem any counterfeit or forged SDC Credit Transfer.

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7. Notwithstanding Subsections 3. and 4. above, transportation SDC credits approved in connection with New Development subject to the North Macadam Overlay Rate Study or the Innovation Quadrant Overlay Project Report may be applied against transportation SDCs that accrue in subsequent phases of the original New Development.

B. SDC Reimbursement.

1. If an Applicant proposes New Development on property on which there is already a use which generates at least 15 percent more vehicle trips than the proposed use, or generates more than 250 more vehicle trips than the proposed use, then the Applicant shall be entitled to an SDC Reimbursement. The SDC Reimbursement shall be in the form of a credit equal to the difference between the SDC Rate of the previous use and that for the proposed use. The Applicant bears the burden of evidence and persuasion in establishing entitlement to an SDC Reimbursement and to a particular amount of such a reimbursement.
2. To obtain an SDC Reimbursement, the Applicant must request the Reimbursement within 180 days after building permit issuance for the New Development and document the basis for the request with traffic reports prepared and certified to by a Professional Traffic Engineer.
3. If, in the Administrator's opinion, the Applicant has sufficiently demonstrated that the new use will generate fewer trips than did the previous use, the Administrator shall refund to the Applicant the difference between the Transportation SDC that was paid on the previous use and the Transportation SDC amount that would be assessed for the proposed use. The Administrator shall notify the Applicant in writing of its decision on the SDC Reimbursement request and shall provide a written explanation of the decision. For all improvements for which Reimbursement is sought within the North Macadam Transportation System Development Charge Overlay, the Administrator shall apportion the Reimbursement based upon the percent of the total SDC charge attributable to the SDC calculated from the City Rate Study and from the North Macadam Overlay Rate Study. For all improvements for which Reimbursement is sought within the Innovation Quadrant Overlay, the Administrator shall apportion the Reimbursement based upon the percent of the total SDC charge attributable to the SDC calculated from the City Rate Study and from the Innovation Quadrant Overlay Project Report.
4. If an Applicant disputes the Administrator's decision with regard to an SDC Reimbursement decision, including the amount of the Reimbursement, the Applicant may seek an Alternative SDC Reimbursement calculation under Section 17.15.070 in the same manner as for an Alternative SDC Rate request. Any request for an Alternative SDC Reimbursement calculation

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must be filed with the administrator in writing within 10 calendar days of the written decision on the initial reimbursement request.

17.15.070 Alternative Calculation for SDC Rate, Credit or Exemption.

(Amended by Ordinance Nos. 181322, 182652 and 184756, effective November 1, 2011.)

- A.** Pursuant to this section, an applicant may request an alternative SDC calculation, alternative SDC credit determination or alternative SDC exemption, but only under the following circumstances:
- 1.** The Applicant believes the number of vehicle trips resulting from the New Development is, or will be, less than the number of trips established in The City Rate Study and if applicable, the North Macadam Overlay Rate Study or the Innovation Quadrant Overlay Project Report, and for that reason the Applicant's SDC should be lower than that calculated by the City.
 - 2.** The Applicant believes the City improperly excluded from consideration a Qualified Public Improvement that would qualify for credit under Section 17.15.060, or the City accepted for credit a Qualified Public Improvement, but undervalued that improvement and therefore undervalued the credit.
 - 3.** The Applicant believes the City improperly rejected a request for an exemption under Section 17.15.050 for which the Applicant believes it is eligible.
- B.** Alternative SDC Rate Request:
- 1.** If an Applicant believes the number of trips resulting from the New Development is less than the number of trips established in The City Rate Study, and if applicable, the North Macadam Overlay Rate Study or the Innovation Quadrant Overlay Project Report, the Applicant must request an alternative SDC rate calculation, under this section, within 180 days after building permit issuance for the New Development. The City shall not entertain such a request filed after 180 days after building permit issuance for the New Development. Upon the timely request for an alternative SDC rate calculation, the Administrator shall review the Applicant's calculations and supporting evidence and make a determination within 21 days of submittal as to whether the Applicant's request satisfies the requirements of this Section.
 - 2.** In support of the Alternative SDC rate request, the Applicant must provide complete and detailed documentation, including verifiable trip generation data, analyzed and certified to by a Professional Traffic Engineer. The Applicant's supporting documentation must rely upon generally accepted sampling methods, sources of information, cost analysis, traffic and growth projections and techniques of analysis as a means of supporting the

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proposed alternative SDC rate. The proposed Alternative SDC Rate calculation shall include an explanation by a registered engineer explaining with particularity why the rate established in The City Rate Study, and if applicable, the North Macadam Overlay Rate Study or the Innovation Quadrant Overlay Project Report, does not accurately reflect the New Development's impact on the City's capital improvements

3. The Administrator shall apply the Alternative SDC Rate if, in the Administrator's opinion, the following are found:
 - a. The evidence and assumptions underlying the Alternative SDC Rate are reasonable, correct and credible and were gathered and analyzed by a suitable, competent professional in compliance with generally accepted engineering principles and methodologies and consistent with this Section, and
 - b. The calculation of the proposed Alternative SDC rate was by a generally accepted methodology, and
 - c. The proposed alternative SDC rate better or more realistically reflects the actual traffic impact of the New Development than the rate set forth in The City Rate Study, and if applicable, the North Macadam Overlay Rate Study or the Innovation Quadrant Overlay Project Report.
4. If, in the Administrator's opinion, all of the above criteria are not met, the Administrator shall provide to the Applicant by certified mail, return receipt requested, a written decision explaining the basis for rejecting the proposed alternative SDC rate.

C. Alternative SDC Credit Request:

1. If an Applicant has requested an SDC Credit pursuant to Section 17.15.060, and that request has either been denied by the City or approved but at a lower value than desired, the Applicant may request an Alternative SDC Credit calculation, under this section. Any request for an Alternative SDC Credit calculation must be filed with the Administrator in writing within 10 calendar days of the written decision on the initial credit request.

The City shall not entertain such a request filed after 10 calendar days of the written decision on the initial credit request. Upon the timely request for an Alternative SDC Credit calculation, the Administrator shall review the Applicant's calculations and supporting evidence and make a determination within 21 days of submittal as to whether the Applicant's request satisfies the requirements of this Section.

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2. In support of the Alternative SDC credit request, the Applicant must provide complete and detailed documentation, including appraisals, cost analysis or other estimates of value, analyzed and certified to by an appropriate professional, for the improvements for which the Applicant is seeking credit. The Applicant's supporting documentation must rely upon generally accepted sources of information, cost analysis and techniques of analysis as a means of supporting the proposed Alternative SDC credit.
3. The Administrator shall grant the Alternative SDC Credit if, in the Administrator's opinion, the following are found:
 - a. The improvement(s) for which the SDC Credit is sought are Qualified Public Improvement(s), and
 - b. The evidence and assumptions underlying the Applicant's Alternative SDC Credit request are reasonable, correct and credible and were gathered and analyzed by an appropriate, competent professional in compliance with generally accepted principles and methodologies, and
 - c. The proposed alternative SDC Credit is based on realistic, credible valuation or benefit analysis.
4. If, in the Administrator's opinion, any one or more of the above criteria is not met, the Administrator shall deny the request and provide to the Applicant by certified mail, return receipt requested, a written decision explaining the basis for rejecting the Alternative SDC Credit proposal.

D. Alternative SDC Exemption Request:

1. If an Applicant has requested a full or partial exemption under Section 17.15.050, and that request has been denied, the Applicant may request an Alternative SDC Exemption under this section. Any request for an Alternative SDC Exemption calculation must be filed with the Administrator in writing within 10 calendar days of the written decision on the initial credit request. The City shall not entertain such a request filed after 10 calendar days of the written decision on the initial credit request. Upon the timely request for an Alternative SDC Exemption, the Administrator shall review the Applicant's request and supporting evidence and make a determination within 21 days of submittal as to whether the Applicant's request satisfies the requirements of Section 17.15.050 for exemptions.
2. In support of the Alternative SDC Exemption request, the Applicant must provide complete and detailed documentation demonstrating that the

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Applicant is entitled to one of the exemptions described in Section 17.15.050.

3. The Administrator shall grant the exemption if, in the Administrator's opinion, the Applicant has demonstrated with credible, relevant evidence that it meets the pertinent criteria in Section 17.15.050.
4. Within 21 days of the Applicant's submission of the request, the Administrator shall provide a written decision explaining the basis for rejecting or accepting the request.

17.15.080 Payment.

(Amended by Ordinance Nos. 173437, 181322, 182389 and 183447, effective July 1, 2010.)

- A. The Transportation SDC required by this Chapter to be paid is due upon issuance of the Building Permit. However, in lieu of payment of the Full SDC, the applicant may elect to pay the SDC in installments as provided in ORS chapter 223 and Chapter 17.14 of this Code. If the Applicant elects to pay the SDC in installments, a lien will be placed against the property that is subject to the SDC, and that lien will be given first priority as provided by statute. The Applicant's election to pay the SDC by installments shall be memorialized in an SDC Deferral or Installment Agreement entered into by the Applicant and the City on a form provided by the City, and which may provide for the deferral of payments as set forth in Chapter 17.14 of this Code. In any event, the Applicant shall either pay the SDC in full or enter into an SDC Deferral or Installment Agreement as provided in this section, before the City will issue any building permits.
- B. Upon written request of the Bureau of Transportation, the City Auditor is authorized to cancel assessments of SDCs, without further Council action, where the New Development approved by the Building Permit is not constructed and the Building Permit is cancelled.
- C. For property that has been subject to a cancellation of assessment of SDCs, a new installment payment contract shall be subject to the code provisions applicable to SDCs and installment payment contracts on file on the date the new contract is received by the City.
- D. The City of Portland shall not be responsible for nor have any responsibility to honor or enforce agreements made by private parties regarding the payment or collection of SDC assessments.

17.15.090 Refunds.

(Amended by Ordinance No. 181322, effective January 1, 2008.) Refunds may be given by the Administrator upon finding that there was a clerical error in the calculation of the SDC. Refunds shall not be allowed for failure to timely claim credit or for failure to timely

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seek an Alternative SDC Rate calculation. The City shall refund to the Applicant any SDC revenues not expended within ten (10) years of receipt.

17.15.100. Dedicated Account and Appropriate Use of Account.

(Amended by Ordinance Nos. 181322, 182652 and 184756, effective November 1, 2011.)

A. There is created a dedicated account entitled the “SDC Account.” All monies derived from the SDC shall be placed in the SDC Account. Funds in the SDC Account shall be used solely to provide the SDC-CIP listed capacity increasing improvements according to the SDC-CIP as it currently exists or as hereinafter amended, and eligible administrative costs. All monies derived from the Overlay Rate Study shall be placed in a sub-account. The monies in the Overlay sub-account shall only be spent on projects serving the North Macadam urban renewal area. All monies derived from the Innovation Quadrant Overlay Project Report shall be placed in a sub-account. The monies in the Overlay sub-account shall only be spent on projects serving the Innovation Quadrant. In this regard, SDC revenues may be used for purposes which include:

1. project development, design and construction plan preparation;
2. permitting;
3. right-of-way acquisition, including any costs of acquisition or condemnation;
4. construction of new through lanes for vehicular, transit, or bicycle use;
5. construction of turn lanes;
6. construction of bridges;
7. construction of drainage and stormwater treatment facilities in conjunction with new roadway construction;
8. purchase and installation of traffic signs and signals;
9. construction of curbs, medians and shoulders;
10. relocating utilities to accommodate new roadway construction;
11. construction management and inspection;
12. surveying and soils and material testing;
13. construction of Accessways, bicycle facilities, Pedestrian Connections and Walkways;

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14. landscaping;
15. bus pullouts, and transit shelters, fixed rail transit systems and appurtenances;
16. demolition that is part of the construction of any of the improvements on this list;
17. payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the City to provide money to construct or acquire transportation facilities;
18. direct costs of complying with the provisions of ORS 223.297 to 223.314, including the costs of developing system development charges methodologies and providing an annual accounting of system development charges expenditures.

B. Money on deposit in the SDC Accounts shall not be used for:

1. any expenditure that would be classified as a maintenance or repair expense; or
2. costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements; or
3. costs associated with acquisition or maintenance of rolling stock.

17.15.110 Challenges and Appeals.

(Amended by Ordinance Nos. 173121 and 181322, effective January 1, 2008.)

- A.** Any person with interest may challenge the expenditure of SDC revenues by filing a challenge to the expenditure with the Administrator within two years after the date of the disputed SDC revenue expenditure. The fee for filing such a challenge shall be \$250.
- B.** Except where a different time for an Administrator's determination is provided in this Chapter, all determinations of the Administrator shall be in writing and shall be delivered to the Applicant within 21 days of an Application or other Applicant request for an Administrator determination. Delivery of such determination shall be deemed complete upon the earlier of actual delivery to the Applicant or upon deposit by the Administrator in the mail, first class postage prepaid, addressed to the address for notice Applicant has designated in the Application. Such determination shall be accompanied by a notice of the Applicant's right to appeal and an outline of the procedures therefore.
- C.** Any Applicant aggrieved by an Administrator's determination may appeal that determination to the Code Hearings Officer as provided in Chapter 22.10 of this

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Code. Notwithstanding any other provisions of this Code, there shall be a non-refundable fee of \$250 for any appeal pursuant to this subsection. Such fee must accompany any such appeal and no such appeal shall be considered filed or received until such fee is paid in full.

- D.** The City shall withhold all permits and other approvals applicable to the Applicant's property of the New Development pending resolution of all appeals under this Chapter unless the SDC is paid in full or the Applicant provides, for the pendency of the appeal, a financial guarantee or security for the charge in a form acceptable to the City Attorney

17.15.120 City Review of SDC.

(Amended by Ordinance Nos. 181322, 182652 and 184756, effective November 1, 2011.)

- A.** No later than every two (2) years as measured from initial enactment, the City shall undertake a review to determine the total SDC's assessed and collected by transportation district and the total SDC's expended and programmed by transportation district and project; to determine that sufficient money will be available to help fund the SDC-CIP identified capacity increasing facilities; to determine whether the adopted SDC rate keeps pace with inflation, whether the SDC-CIP should be modified, and to ensure that such facilities will not be overfunded by the SDC receipts.
- B.** In the event that during the review referred to above, it is determined an adjustment to the SDC is necessary for sufficient funding of the SDC-CIP improvements listed in City Rate Study North Macadam Overlay Rate Study or the Innovation Quadrant Overlay Project Report or to ensure that such SDC-CIP improvements are not overfunded by the SDC, the City Council may propose and adopt appropriately adjusted SDCs.
- C.** The City Council may from time to time amend or adopt a new City Rate Study by resolution.
- D.** Beginning January 1, 2009 through December 31, 2012, the City shall undertake an annual review to determine the amount of Transit Oriented Development (TOD) exemptions provided by district.

17.15.130 Time Limit on Expenditure of SDCs.

The City shall expend SDC revenues within ten (10) years of receipt, based on the priorities in the SDC-CIP list.

17.15.140 Implementing Regulations; Amendments.

(Amended by Ordinance Nos. 171698 and 181322, effective January 1, 2008.) The City Council delegates authority to the Director of Transportation to adopt administrative rules and procedures necessary to implement provisions of this Chapter including the

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appointment of an SDC program Administrator. All rules pursuant to this delegated authority shall be files with the office of City Auditor and be available for public inspection.

17.15.150 Amendment of SDC-CIP List.

(Amended by Ordinance No. 182652, effective April 8, 2009.) The City may, by resolution, amend its SDC-CIP as set forth in the City Rate Study and Overlay Rate Study, from time to time to add projects the City deems appropriate.

17.15.160 Severability.

(Amended by Ordinance No. 181322, effective January 1, 2008.) The provisions of this Chapter are severable, and it is the intention to confer the whole or any part of the powers herein provided for. If any word, definition, clause, section or provision of this Chapter shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of this Chapter shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein. In the event a definition is held to be invalid or is severed, the defined word or term shall be deemed to have the meaning given to that word or term under Oregon law if Oregon law contains such a definition. If there is no established definition of the word or term under Oregon law, the word or term shall have its ordinary dictionary meaning. It is hereby declared to be the Council's express legislative intent that this Chapter would have been adopted had such an unconstitutional or otherwise invalid provision not been included herein.

CHAPTER 17.16 - GENERAL PROVISIONS

Sections:

- 17.16.010 Specifications and Authority to Revise.
- 17.16.020 Interpretation of Specifications.
- 17.16.030 Progress Payments.
- 17.16.040 Interest on Progress Payment and Final Warrants.
- 17.16.050 Progress Payment not Deemed Final Acceptance.
- 17.16.060 Division of Warrants.
- 17.16.065 Purchase of Warrants by the City.
- 17.16.070 Claims against Contractors.
- 17.16.080 Statutory Provisions Relating to Labor and Wages.
- 17.16.090 Bonding City Property.
- 17.16.100 Facilities in Street Area Affected by Improvement.
- 17.16.110 Facilities in Street Area Damaged by Contractor.
- 17.16.120 Engineer's Standards.
- 17.16.130 Approvals by City Attorney.
- 17.16.140 Acceptance and Release of Property Interests.

17.16.010 Specifications and Authority to Revise.

(Amended by Ordinance Nos. 149769, 173295 and 184957, effective November 25, 2011.)

- A.** All work done and materials used for either a local or public improvement whether it be as a district or by permit shall conform to the provisions of this Title and to the current version of the standard construction specifications.
- B.** Revisions. The City Engineer, in consultation with the Chief Engineers of the Bureau of Environmental Services and the Portland Water Bureau, is authorized to revise the standard construction specifications of the City of Portland as needed, excluding Part 01100 Water Supply Systems contained therein, which shall be revised by the Chief Engineer of the Portland Water Bureau.

17.16.020 Interpretation of Specifications.

(Amended by Ordinance Nos. 149769, 173295 and 184957, effective November 25, 2011.)

The decision of the City Engineer as to all performances, materials and technical requirements of standard specifications and plans for a local improvement or public improvement shall be final and conclusive excepting work performed in accordance with Part 01100 of the standard construction specifications for which the Chief Engineer, Portland Water Bureau shall have final and conclusive decision. The interpretation of all other provisions of standard construction specifications shall be determined by the City Attorney.

17.16.030 Progress Payments.

(Amended by Ordinance Nos. 138075, 140744 and 173295, effective April 28, 1999.)

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- A.** Subject to applicable provisions of the City Charter and in accordance with the specifications adopted for particular work by the Council, progress payments may be made by the City periodically as required by the contract for the improvement work, on the basis of a certificate concerning the same, filed with the Auditor by the Responsible Engineer.
- B.** The progress payment certificate shall show the amount of work and material applied to the local improvement or public improvement and not included in any prior certificate, the reasonable value of the work and material, the contract price thereof, the amount to be retained pursuant to the contract, and the amount to be paid as a progress payment. Contract provision for the progress payments shall be deemed sufficient without further approval by the Council, except that if the contractor is found to be delinquent, if the payment is the last payment to be made before payment of retainage pursuant to the contract, or if any progress payment covers work which is in addition to or an extra over the basic contract, then a progress payment shall not be made pursuant to the Responsible Engineer's certificate until such certificate has been presented to the Council and approved by the Council, or the Council has separately authorized the extra work.
- C.** On any contract for a local improvement which does not contain a specific provision for progress payments, a single progress payment shall be made at the time the final estimate of the Responsible Engineer is filed with the City Auditor if such payment is requested by the contractor. The progress payment shall not exceed 95 percent of Council authorized contract costs included in the final estimate. This paragraph shall be applicable to contracts which are completed after the passage of this Ordinance.

17.16.040 Interest on Progress Payment and Final Warrants.

Payment for work done as a local improvement shall be made by warrant drawn on the Local Improvement Assessment Fund for the particular improvement created or to be created when assessments therefor are paid. Any warrant for a progress payment or final warrant drawn against a Local Improvement Assessment Fund, either to be created or already in existence, shall bear interest at the rate of 6 percent per year beginning on the 10th day after the date of the warrant. Total interest on such warrants shall not exceed the total amounts collected as interest from the properties assessed. When sufficient money is collected and is in the Local Improvement Assessment Fund to pay accrued interest on the oldest outstanding warrant and some portion or all of the principal on such warrant, the interest on the warrant shall cease as of the day when the principal amount or portion thereof is collected, to the extent of the amount collected.

17.16.050 Progress Payment Not Deemed Final Acceptance.

(Amended by Ordinance No. 173295, effective April 28, 1999.) No progress payment shall be deemed a final acceptance or any acceptance of the work or material represented by such progress payment, nor shall the progress payment affect the liability of the contractor or the contractor's surety relating to the public work or local improvement.

17.16.060 Division of Warrants.

When money has been collected and is in a Local Improvement Assessment Fund sufficient to pay all or a portion of the principal as well as the accrued interest on the oldest outstanding warrant, upon presentation of the warrant the Treasurer shall pay the accrued interest and principal amount collected upon the outstanding warrant and issue a new warrant for the unpaid principal balance. The new warrant shall bear interest from the 10th day after the date of the original warrant.

17.16.065 Purchase of Warrants by the City.

(Added by Ordinance No. 138072, amended by Ordinance No. 173295, effective April 28, 1999.) The City of Portland shall purchase local improvement warrants issued for progress payments and final payment to a contractor on a local improvement project under the conditions listed below upon written request from the contractor to the City Finance Officer:

- A. Either the official estimate of the Responsible Engineer or the bid of the contractor is less than \$50,000,
- B. Before the plans and specifications for the project were issued it has been determined by the Finance Officer that funds would be available in the Assessment Collection Fund for this purpose,
- C. The plans and specifications for the project will include a provision that such warrants will be purchased by the City from the contractor at the contractor's request,
- D. The purchase will be made by the City no earlier than 10 days and no later than 30 days after the issue date,
- E. The purchase of final warrants will be at face value without accrued interest. The purchase of progress payment warrants will be at face value discounted by an amount equal to 10 days of interest and without accrued interest.

17.16.070 Claims Against Contractors.

(Amended by Ordinance No. 173295, effective April 28, 1999.) Notwithstanding contractual provisions for payment of progress payment warrants, final payment warrants or payment of retainage, any person given a right by statute to institute an action on the contractor's bond may file a claim with the City Auditor for the labor, material, or payment to State funds for which the contractor is liable in connection with the performance of the contract. In the event such claim is filed and the contractor has money due and owing from the City, the money due and owing shall not be paid to the contractor until 20 days after the filing of the claim. If, prior to the expiration of such 20 day period, the money due and owing to the contractor has been ordered withheld or paid into court by a court of competent jurisdiction, if the claimant withdraws his or her claim, or if the contractor orders all or a portion of the amount due and owing to be paid to the claimant, then the Auditor shall divide the payment or treat the same as required by such order or withdrawal. However, if

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the only money due and owing to the contractor is the final retainage, then the City shall have first call upon the retained amount for correction of defects in the contract.

17.16.080 Statutory Provisions Relating to Labor and Wages.

All contractors employed by the City shall comply with all statutory requirements concerning hours of labor and prevailing wage rates. All certifications required by statute to be filed with the City shall be so filed.

17.16.090 Bonding City Property.

The Mayor or a Commissioner to whom particular City property has been assigned, which property is assessed for a local improvement, shall have authority to make application for bonding and to sign the application. For such application said Mayor or Commissioner shall be deemed the owner on behalf of the City.

17.16.100 Facilities in Street Area Affected by Improvement.

(Amended by Ordinance No. 173295, effective April 28, 1999.)

- A.** If a fire hydrant has been installed at established street grade and in a location approved by the City Engineer, and a local improvement or public improvement requires moving such hydrant, the Bureau of Water Works shall upon request of the City Engineer make the necessary change. The cost thereof shall be included in the cost of the improvement unless the Council directs payment from public funds.
- B.** In all other cases, any facility over, upon or under the street area, required to be moved either for construction or as the result of a local or public improvement shall be changed, moved, removed or relocated, as the City Engineer may direct, at the expense of the owner of the facility. The change includes any trenches and filling thereof or other work necessary for the change. However, this does not relieve the contractor from liability or responsibility under contract specifications. Liability of the owner of the facility for such change shall be conditioned upon notice in writing given by the contractor at least 10 days preceding the improvement work in the area. In case any such owner fails or refuses to make the change or relocation, then upon direction by the City Engineer the contractor on the improvement may perform such change or relocation, and upon approval of the contractor's bill therefor by the City Engineer, if the owner of the facility is the owner of land to be assessed for the local improvement, then the City shall add the amount of the bill for the work to the local improvement assessment to be assessed upon the property. If the contractor has performed such work of change or relocation of facility, and the owner thereof is not chargeable by assessment of benefit from the improvement, then the contractor shall look solely to the owner of such facility for reimbursement of the cost of change or relocation. In case of a public improvement constructed at the expense of City funds, City funds shall be chargeable for the cost of moving any City owned facilities.

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- C.** The contractor for a public improvement or local improvement shall not interfere with or impede any person engaged in changing or relocating the facility within a street area, as required in this Section.
- D.** The right is reserved to the City and to owners of public utilities in the street area to enter upon such street area for repairs, changes or installation of additional facilities in the street area of the improvement work.

17.16.110 Facilities in Street Area Damaged by Contractor.

(Amended by Ordinance Nos. 131165, 173295 and 183397, effective January 8, 2010.)

- A.** If in the course of a local or public improvement the contractor or his or her subcontractor damages or displaces a public improvement, such as a curb, sidewalk, water line or meter, manhole, drainage improvement or other installation, then the contractor shall repair or replace the public improvement at the contractor's own expense in a proper manner as approved by the City Engineer; except in the case of:

 - 1.** Damage to a sewer or drainage improvement shall be repaired in a proper manner as approved by the Chief Engineer of the Bureau of Environmental Services. Contractors may be granted the option of funding the City to make the repairs in their stead; and
 - 2.** Damage to a water line or meter shall be repaired by the Bureau of Water Works and billed to the contractor or others, in the manner specified in Title 5, Revenue and Finance, of this Code.
- B.** If, in the course of the work of a local improvement or public improvement, a contractor damages any underground facility owned by an adjacent property owner which is not located within 2 feet of the street grade established for that location, the contractor shall be liable for the cost of repair or replacement of the facility unless the plans, specifications and contract otherwise specifically prescribe. The repair or replacement shall be done by the owner of such facility at the expense of the contractor unless the owner directs the contractor to perform such work.
- C.** If, in the course of the work of a local improvement or public improvement, a contractor damages any underground facility owned by an adjacent property owner which is located within 2 feet of the established street grade in the area, then such facility shall be repaired, replaced or relocated as directed by the Responsible Bureau, subject to approval by the City Engineer, at the expense of the owner thereof, notwithstanding any failure to notify the owner of the need for relocation or change as prescribed in Section 17.16.100, unless the plans, specifications and contract otherwise prescribe.

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17.16.120 Engineer's Standards.

(Amended by Ordinance No. 173295, effective April 28, 1999.) The City Engineer may establish standards for particular types or classes of work to be performed by contractors or by persons permitted to construct facilities in streets, easements or other public property. Any person constructing the facility shall comply with such standards unless otherwise specifically authorized by the City Engineer to deviate from those standards.

17.16.130 Approvals by City Attorney.

All contracts, bonds, insurance policies and all forms to be used by the public pursuant to this Title shall first be approved as to form by the City Attorney before filing or use.

17.16.140 Acceptance and Release of Property Interests.

(Added by Ordinance No. 185398, effective July 6, 2012.)

- A.** Acceptance by the Bureau of Transportation: The Director of the Bureau of Transportation may approve, accept, and amend a right-of-way dedication, easement, or other real property interest for public improvements to the transportation system of the City when the consideration provided therefore does not exceed \$50,000.
- B.** Acceptance by the Bureau of Environmental Services: The Director of the Bureau of Environmental Services may approve, accept, and amend a sewer easement or other real property interest for public improvements to the public sewer of the City when the consideration provided therefore does not exceed \$50,000.
- C.** Release by the Bureau of Transportation: The Director of the Bureau of Transportation may release easements and associated infrastructure no longer needed for the transportation system of the City. This authorization does not extend to the vacation of public rights-of-way, which must comply with City Charter Section 1-104 and Oregon Revised Statutes Chapter 271.
- D.** Release by the Bureau of Environmental Services: The Director of the Bureau of Environmental Services may release easements and associated infrastructure no longer needed for the public sewer of the City.
- E.** Rental or Leasing of Real Property or Public Right-of-Way by the Bureau of Transportation: The Director of the Bureau of Transportation may rent or lease real property or public right-of-way assigned to the Bureau of Transportation which will not be needed for public use during the term of the rental or lease for any term permitted by statute.
- F.** Designation of City Property as Right-of-Way by the Bureau of Transportation: The Director of the Bureau of Transportation, upon approval by other affected Bureaus, may designate City-owned property as public right-of-way for public improvements to the transportation system of the City.

**CHAPTER 17.18 - GENERAL OBLIGATION
IMPROVEMENT WARRANTS**

(Chapter added by Ordinance No. 139575, effective
March 13, 1975.)

Sections:

- 17.18.010 General Obligation Improvement Warrants Authorized.
- 17.18.020 Procedure for Issuance and Delivery.
- 17.18.030 Application of Proceeds.
- 17.18.040 Repayment.
- 17.18.050 Payment or Bonding Mandatory.
- 17.18.060 Provision in Budget.

17.18.010 General Obligation Improvement Warrants Authorized.

(Amended by Ordinance Nos. 140586, 141599, 146747 and 157298, effective May 2, 1985.) Notwithstanding other provisions of this Code, the Council hereby authorizes the financing of local improvements by the issuance of general obligation improvement warrants in accordance with the procedures provided by State law except as otherwise provided herein. General obligation improvement warrants may be issued when authorized by ordinance in an amount equal to the indebtedness to be incurred by the City in constructing the local improvement including all costs of land acquisition, advertising, engineering and superintendence fees, and any special preliminary services or studies that may be assessed on benefited property, and an amount equal to the amount to be paid by the City to the contractor for the construction of a local improvement, not exceeding the bid price of each contract plus 15 percent for approved change orders. If the local improvement has not yet been bid and a successful bidder accepted, the engineer's estimate for construction cost may be used.

17.18.020 Procedure for Issuance and Delivery.

(Amended by Ordinance Nos. 140586, 141599, 146747 and 173295, April 28, 1999.)

- A. From time to time, the Council may, upon recommendation of the City Treasurer and Responsible Official, call for bids on the interest rate for general obligation improvement warrants on the estimated amount of proposed assessments for local improvement districts authorized or to be authorized. Bids shall meet the conditions and requirements provided for in the authorizing ordinance.
- B. Upon return of bids the Council may award to the highest and best qualified bidder offering the most advantageous interest rate, the full amount of general obligation improvement warrants to be issued for local improvements specified in the ordinance requesting bids. Provided further, the Council may reject any and all bids.
- C. The ordinance authorizing the call for bids shall also authorize the issuance of the general obligation improvement warrants to the successful bidder as determined by

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the Council, subject to the provisions of this Chapter. Thereafter, the City Treasurer is authorized to deliver to the successful bidder from time to time as the Treasurer deems necessary general obligation improvement warrants in an amount equal to the indebtedness to be incurred by the City in constructing the local improvement including all costs of land acquisition, advertising, engineering and superintendence fees, and any special preliminary services or studies that may be assessed on benefited property, and an amount equal to the amount to be paid by the City to the contractor for the construction of a local improvement, not exceeding the bid price of each contract plus 15 percent for approved change orders. If the local improvement has not yet been bid and a successful bidder accepted, the engineer's estimate for construction cost may be used.

- D.** General obligation improvement warrants shall be issued in denominations as stated in the ordinance authorizing call for bids; shall be numbered consecutively; shall be dated the first day of the month in which they are delivered to the successful bidder and shall mature within the time provided by State law. The successful bidder shall pay accrued interest from the date of the warrants to the time of delivery.
- E.** The City Treasurer shall deposit all proceeds from the issuance of said General Obligation Improvement Warrants in the Improvement Warrant Sinking Fund established in Section 5.04.210 of this Code.

17.18.030 Application of Proceeds.

(Amended by Ordinance No. 146747, effective Dec. 4, 1978.) The proceeds from each series of general obligation improvement warrants issued for a local improvement district construction contract shall be retained in the Improvement Warrant Sinking Fund until payment shall be authorized.

17.18.040 Repayment.

Upon completion of any local improvement contract and the spreading of assessments upon the property benefited thereby, all proceeds from the collection of unbonded assessments, the sale of improvement bonds, and the foreclosure of improvement liens for unbonded assessments realized from the local improvement with respect to which such general obligation improvement warrants are issued, shall be transferred from the Local Improvement District Assessment Fund created for the particular improvement and placed in the Improvement Warrant Sinking Fund in an account to be applied to the call and payment of such warrants as rapidly as funds are available as provided by statute.

17.18.050 Payment or Bonding Mandatory.

In the event the owner of any property benefited by the construction of a local improvement which has been financed by the issuance of general obligation improvement warrants shall fail to either pay any assessment upon such property or apply for bonding of such assessment as provided for in Section 17.12.140 of this Code within 60 days of the time the assessment is due and payable, the Treasurer shall immediately cause such property to

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be sold as provided in Charter Section 9 804 and deposit the proceeds of the sale in the Local Improvement District Assessment Fund created for that particular improvement to be transferred to the appropriate account within the Improvement Warrant Sinking Fund.

17.18.060 Provision in Budget.

The Council shall provide in its budget for the fiscal year in which general obligation improvement warrants will mature such amount for the payment thereof as shall be estimated or determined to be owing thereon and unpaid at the maturity thereof after application of collections made prior to such maturity as provided in this Chapter. Such monies shall be placed in the Improvement Warrant Sinking Fund to repay outstanding warrants as needed.

**CHAPTER 17.19 - NORTHWEST
TRANSPORTATION FUND**

(Chapter added by Ordinance No. 177993, effective
November 21, 2003.)

Sections:

- 17.19.010 Purpose.
- 17.19.020 Applicability.
- 17.19.030 Payment.
- 17.19.040 Implementing Regulations.
- 17.19.050 Dedicated Account and Appropriate Use of Account.

17.19.010 Purpose.

The purpose of the Northwest Transportation Fund is to ensure that a source of funding is available to finance the implementation of mitigation measures and the construction of transportation improvements that become necessary when new development causes the use of transportation facilities in the area to intensify.

17.19.020 Applicability.

The Northwest Transportation Fund applies to commercial development in Subdistrict B in the Guild's Lake Industrial Sanctuary Plan District and the area north of NW Pettygrove Street, on sites zoned EX in the Northwest Plan District. For each contribution to the Northwest Transportation Fund, a bonus of one square foot of additional floor area above the 1:1 base floor area ratio (FAR) that may be in non-residential use is earned, up to the maximum total floor area that is allowed on the site. The amount of floor area that is allowed on the site is regulated by Title 33, Planning and Zoning.

17.19.030 Payment.

(Amended by Ordinance Nos. 182389 and 182760, effective June 5, 2009.) Applicants must remit the Northwest Transportation Fund fee prior to the issuance of building permits.

- A.** The Northwest Transportation Fund fee of \$2.90 is based upon a cost per square foot of non-residential development up to the amount of floor area allowed by Title 33, Planning and Zoning. Any appeal of the application of the Northwest Transportation Fund fee is to the Director of Transportation. The Director of Transportation may establish an appeal fee that will cover the full cost of processing the appeal.
- B.** The Northwest Transportation Fund fee will be increased or decreased on July 1 of each year. The change will occur automatically, and the new dollar amount will be filed with the City Auditor. The change will be based on the 10-year moving average percentage fluctuation of the Oregon Composite Construction Cost Index. Any increase or decrease that is not a multiple of \$.05 will be rounded to the nearest multiple of \$.05.

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- C.** The Bureau of Transportation is authorized to refund the Northwest Transportation Fund fee, without further Council action, where the non-residential development approved by building permit is not constructed and the building permit is cancelled. There is a charge of \$500 for processing a refund request.

17.19.040 Implementing Regulations.

(Amended by Ordinance No. 182389, effective January 2, 2009.) The City Council delegates authority to the Director of the Bureau of Transportation to adopt administrative rules and procedures necessary to implement provisions of this Chapter. All rules relating to this delegated authority shall be filed with the City Auditor and be available for public inspection.

17.19.050 Dedicated Account.

All monies derived from the Northwest Transportation Fund shall be placed in the Northwest Transportation Fund Account. Funds in the Northwest Transportation Fund shall be used to provide transportation improvements in the area bounded by NW Pettygrove Street, NW Nicolai Street, the I-405 freeway, and NW 27th Avenue or in the immediate vicinity, as need arises. Funds may be used to address existing transportation deficiencies and the transportation impacts of growth. Funds in the Northwest Transportation Fund may be used for purposes that include:

- A.** Transportation analysis
- B.** Design and construction plan preparation
- C.** Permitting
- D.** Right-of-way acquisition, including costs of acquisition or condemnation
- E.** Relocation of public utilities
- F.** Construction of new lanes for vehicular or transit use
- G.** Construction of turn lanes
- H.** Construction of bridges
- I.** Design, purchase and installation of traffic signs and signals
- J.** Design and construction of pedestrian or bicycle facilities
- K.** Design and construction of drainage facilities
- L.** Design and construction of curbs, curb extensions, and medians
- M.** Construction management and inspection

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- N.** Surveying and soils and materials testing, including environmental testing
- O.** Landscaping
- P.** Transit facilities
- Q.** Demolition that is part of the construction of any of the improvements
- R.** Payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the City to provide money to construct or acquire the transportation facilities.
- S.** Administrative costs of establishing, maintaining, and administering the fund.

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CHAPTER 17.20 - CONTRACTOR
PREQUALIFICATION RULE

(Chapter repealed by Ordinance Nos. 174509 and
174904, effective January 1, 2001.)

**CHAPTER 17.23 - SPECIAL TRAFFIC
CONTROL DISTRICT**

(Chapter replaced by Ordinance No. 184957,
effective November 25, 2011.)

Sections:

- 17.23.010 Application.
- 17.23.020 Definitions.
- 17.23.030 Designated Boundary.
- 17.23.040 Special Jurisdiction.
- 17.23.050 Permits Required.
- 17.23.060 Traffic Standards.
- 17.23.070 Revocation.

17.23.010 Application.

This Chapter shall apply to any use of the street area within the Special Traffic Control District described in Section 17.23.030.

17.23.020 Definitions.

(Amended by Ordinance No. 185397, effective July 6, 2012.) As used in this Chapter, the following terms shall have the following definitions:

- A. **“Curb”** shall mean the stone or concrete edging along a street or sidewalk.
- B. **“Maintenance”** shall mean the function of protecting existing facilities within the street area so as to keep those facilities in safe and convenient operating condition. Under this definition, the work would be of a routine nature and would not involve cutting the pavement.
- C. **“Emergency”** shall mean any unscheduled repair of existing facilities within the street area which must be accomplished immediately to protect the life, health, and well being of the public, or to protect public or private property. Under this definition, “emergency” work shall encompass only immediately required repairs and shall not include extensive replacement or upgrading of the facility.

17.23.030 Designated Boundary.

The following described Special Traffic Control District will mean and include the following streets in the City:

The Special Traffic Control District shall be bounded by Naito Parkway to the east and the I-405 Loop to the west, south, and north. In addition to said boundary, the Special Traffic Control District shall include the following boundaries: beginning with the intersection of the west line of SW 18th and the south line of SW Salmon, running thence easterly along said south line of SW Salmon Street to the west line of SW 14th Avenue, running thence southerly to its intersection with the north line of SW Jefferson, thence easterly to the east line of SW 14th Avenue, thence northerly along the east line of SW 14th Avenue to its

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intersection with the north line of West Burnside; thence westerly along the north line of West Burnside to its intersection with the west line of SW 18th Avenue; thence southerly along the west line of SW 18th to the place of beginning. And, beginning with Naito Parkway to the west, the Willamette River to the east, SW Clay Street to the north, and SW River Parkway to the south.

17.23.040 Special Jurisdiction.

Within the Special Traffic Control District, the Director of the Bureau of Transportation shall have the authority to require temporary street closure permits. Such permits may allow for construction, repair, or maintenance of facilities within the street area and use of the street area to facilitate work on private property. The Director of the Bureau of Transportation shall have the authority to secure information from and coordinate the activities of all parties requesting use of the street area. The authority of the Director of the Bureau of Transportation shall not repeal the authority of the Building Bureau as outlined in Chapters 44 and 45 of the Uniform Building Code or as outlined in Section 17.44.020 of the Code of the City of Portland, Oregon.

17.23.050 Permits Required.

(Amended by Ordinance No. 187632, effective April 15, 2016.)

- A.** Any party desiring to perform work in the street or make use of the street area to perform work on private property shall first obtain a temporary street closure permit as prescribed in Chapter 17.24 of the Code of the City of Portland, Oregon, and pay the permit fees set forth in Chapter 17.24.
- B.** Any party performing emergency work shall notify the Director of the Bureau of Transportation at the time work is commenced and when finished. Emergency work may be performed without first obtaining the temporary street closure permit outlined in Subsection A. above or without complying with the requirements of Subsection A. above.
- C.** Any party desiring to perform work that utilizes the street area in the Special Traffic Control District shall obtain approval from the Director of the Bureau of Transportation to schedule their work. Any party desiring to perform work shall distribute notice of work to adjacent businesses five days in advance of proposed work dates. A written schedule of work dates and proof of notification to adjacent businesses shall be submitted to the Director of the Bureau of Transportation prior to final approval being granted.
- D.** The Director of the Bureau of Transportation may waive minimum notification requirements as listed above in Subsection C. if work is deemed to have minimal impact to the transportation system.
- E.** Notwithstanding the other provisions of this Section, the Director of the Bureau of Transportation shall have the authority to implement additional requirements for

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permits in the Special Traffic Control District when conditions in the downtown require more stringent regulations.

- F. Nothing contained herein shall limit the authority of the Director of the Bureau of Transportation in maintaining public peace and safety and upon request from the Director of the Bureau of Transportation the party performing any work in the street area shall reopen the street area to its normal use within two hours of notification from the Director of the Bureau of Transportation.

17.23.060 Traffic Standards.

Since the intent of this Code Section is to minimize traffic congestion in the Special Traffic Control District, permits issued within the Special Traffic Control District in accordance with Sections 17.23.050 and 17.24.010 must conform to traffic standards established by the City Traffic Engineer. Within the special control district, the Director of the Bureau of Transportation is hereby authorized and directed to enforce the traffic standards or such other traffic control plans as may be required as a condition of the permit. The Director of the Bureau of Transportation or City Traffic Engineer may require any party requesting to use the street area to submit a traffic control plan for review as a condition of granting a permit.

17.23.070 Revocation.

The Director of the Bureau of Transportation in carrying out the provisions set forth herein may enforce conditions set forth in permits issued under Section 17.23.050. The Director of the Bureau of Transportation may revoke any permit issued under Section 17.23.050 at any time in the event the public's need requires it, the permittee fails to comply with the conditions of the permit, or for any reason which would have been grounds for denial of the initial permit application.

CHAPTER 17.24 - PERMITS

(Chapter replaced by Ordinance No. 184957,
effective November 25, 2011.)

Sections:

17.24.000	Purpose and Intent.
17.24.005	Jurisdiction and Management of Public Right-of-Way.
17.24.010	Permits Required.
17.24.012	Financial Guarantee Required.
17.24.013	Insurance and Indemnification.
17.24.014	Permits to Construct and Maintain Structures in the Street Area.
17.24.015	Obligation of Property Owner for Structures in the Street Area.
17.24.016	Permit Revocation.
17.24.017	Temporary Street Closure.
17.24.020	Fees and Charges.
17.24.025	Fees for Public Improvement Permits.
17.24.026	Fees for Review of Land Use Applications.
17.24.030	Application for a Public Improvement Permit to construct a Street or Transportation Facility.
17.24.035	Deposit Required.
17.24.040	Refusal of a Public Improvement Permit.
17.24.050	Contents of Permit.
17.24.055	Assurance of Performance.
17.24.060	Permit Conditions.
17.24.067	Hazardous Substances.
17.24.070	Engineering and Superintendence for Street and Transportation Facility Public Improvements.
17.24.080	Work Done Under Permit.
17.24.085	Original Documents Become the Property of the City.
17.24.090	Certificate by City Engineer.
17.24.100	Street Pavement Preservation.
17.24.105	Regulations Governing Excavations and Disturbance of Pavement on Transit Mall.
17.24.110	Record of Permits.
17.24.120	Removal of Improvement.
17.24.130	Preservation of Cobblestones.

17.24.000 Purpose and Intent.

The purpose and intent of this Chapter is to:

- A.** Permit and manage reasonable access to the public right-of-way of the City;
- B.** Conserve the limited physical capacity of those public right-of-way held in trust by the City;

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- C.** Assure that all persons owning or operating facilities within the public right-of-way comply with applicable ordinances, rules and regulations of the City;
- D.** Assure that the City can continue to fairly and responsibly protect the public health, safety and welfare of its citizens.

17.24.005 Jurisdiction and Management of Public Right-of-Way.

- A.** The City has jurisdiction and exercises regulatory management over all public right-of-way within the City, as provided under City Charter, ordinances, and Oregon law.
- B.** The City has jurisdiction and exercises regulatory management over public right-of-way whether the City has a fee, easement, or other legal interest in the right-of-way, and whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.
- C.** No person may occupy or encroach on a public right-of-way without the permission of the City, as provided under Portland City Code.
- D.** The exercise of jurisdiction and regulatory management of 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.
- E.** The City retains the right and privilege to immediately require any person to remove, move or otherwise adjust its facilities located within the public rights-of-way whenever, in the determination of the Director of the Bureau of Transportation, the public need requires it. If the person ordered to remove, move, or adjust the facility does not do so as directed by the Director of the Bureau of Transportation the City may remove, move or otherwise adjust such facilities with its own forces or contract forces and the full cost of such removal, movement or adjustment shall be the responsibility of the person responsible for the facility.
- F.** The Bureau of Transportation shall be the agency responsible for management of the public right-of-way.

17.24.010 Permits Required.

- A.** Any person desiring to make a public improvement, do work in, or use the street area must first obtain a permit from the Director of the Bureau of Transportation as prescribed in this Chapter, and pay the permit fees set forth in Section 17.24.020, except for maintenance activities allowed without a permit, as set forth in Sections 17.42.020 and 17.42.025.
- B.** Except as set forth in paragraph E. below, no person shall be granted a permit to install, construct, reconstruct, repair, alter or maintain facilities for the distribution,

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transmission or collection of sewer, water, gas, petroleum products, steam, electricity, telecommunications, or other service and any associated wires, cables, poles, conduits, appliances or apparatus in, on, over, through or in any manner beneath the surface of the streets unless that person currently possesses a franchise or privilege granted by the City of Portland or is a City bureau charged with providing such service to the public to generate, transmit or provide any such service including but not limited to electricity, telecommunications, natural gas, sewer, water, stormwater, and pipeline services within the City.

- C.** Except for street or transportation facility construction and maintenance work done by or under contract with Bureau of Transportation, and except for work allowed to be performed Sections 17.42.020 and 17.42.025, it is unlawful for any person to do any work or perform any act as set forth in this Title without first obtaining a permit. It is unlawful for any person to break up, dig up, cut, excavate or fill in any street or to construct any sidewalk, curb, gutter or to do any work in or upon any street or in any way to tamper with hard surface pavements without first obtaining a permit therefor and paying the fee prescribed in Section 17.24.020. The permit shall be obtained from the Director of the Portland Bureau of Transportation unless specifically provided otherwise in this Title.
- D.** The failure of any permittee to comply with any and all permit conditions or related Code and Charter provisions while doing work in the street area shall be reasonable cause for revocation of the permit. Upon revocation of the permit the City may complete the work and charge such costs to the permittee.
- E.** Licensed plumbing contractors having a valid plumbing permit to install water service lines and a valid authorization from the Portland Water Bureau to connect to a public water meter may obtain permits to install water service lines between the property line and the public water meter.
- F.** The Director of the Bureau of Transportation may issue permits to the Bureau of Environmental Services for street openings to facilitate connections to public sewers and to install, repair and replace sewer mains, laterals, necessary appurtenances and drainage facilities constructed through public and local improvement procedures. The Bureau of Environmental Services shall obtain permits from the Director of the Bureau of Transportation for use of the street area in accordance with the schedule of fees set forth in Section 17.24.020.
- G.** The Director of the Bureau of Transportation may issue permits to the Portland Water Bureau for street openings to facilitate connections to the public water system and to install, repair, and replace water mains, laterals, and necessary appurtenances. The Bureau of Water Works shall obtain permits from the Director of the Bureau of Transportation for use of the street area in accordance with the schedule of fees set forth in Section 17.24.020.

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- H.** The Director of the Bureau of Transportation may issue permits to a Public Utility for street openings to facilitate connections to the public utilities systems and to allow the Public Utility to install, repair, and replace its poles, mains, laterals, and necessary appurtenances. A Public Utility shall obtain permits from the Director of the Bureau of Transportation for use of the street area in accordance with the schedule of fees set forth in Section 17.24.020.
- I.** When immediate repairs to an existing at grade, underground or overhead installation become necessary as the result of an emergency or accident involving public hazard or interruption of service to subscribers or customers, the emergency repairs may be started or made without permit after notice to the Director of the Bureau of Transportation. The owner of such facilities shall apply for appropriate permits as soon as possible, not to exceed two (2) business days following discovery of the emergency.

17.24.012 Financial Guarantee Required.

- A.** When issuing permits under this Chapter, the Director of the Bureau of Transportation may require a construction bond, performance bonds or other form of financial guarantee, approved by the Director of the Bureau of Transportation, as a condition of the permit.
- B.** The Director of the Bureau of Transportation may require a maintenance bond, or other financial guarantee, approved by the Director of the Bureau of Transportation, as a permit condition. The maintenance bond or other financial guarantee shall remain in force as long as the person or that person's predecessor has facilities located within the public right-of-way.
- C.** The acceptable forms and levels of the required financial guarantees shall be established by the Director of the Bureau of Transportation, as maintained on file in the office of the Bureau of Transportation.

17.24.013 Insurance and Indemnification.

- A.** Insurance. An applicant for a permit under this Chapter shall procure insurance, the adequacy of which shall be determined by the Director of the Bureau of Transportation, that names the City as an additional insured. The applicant shall supply the City with a certificate providing evidence of that insurance prior to issuance of the permit.
- B.** Indemnification. As a condition of a permit issued under this Chapter, the applicant shall hold harmless, indemnify and defend the City, its officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the defense thereof, including attorney fees, resulting from or arising out of the activities of the applicant, its officers, employees, agents and contractors under this permit. In addition, in

situations which occur prior to dedication of the right of way, the permittee acknowledges and assumes all risk of loss which may arise in the event the City or any other public agency subsequently requires changes in or additions to plans or refuses to approve all or any part of permittee's improvements.

17.24.014 Permits to Construct and Maintain Structures in the Street Area.
(Amended by Ordinance No. 187403, effective October 28, 2015.)

- A.** Except as otherwise provided in this Code, permits to construct, install and/or maintain privately-owned structures in dedicated street area may be issued by the Director of the Bureau of Transportation only to the owner of the property abutting the half of the street area in which the structure is proposed to be built. Such permits shall be revocable at any time as provided in Section 17.24.016. The burdens and benefits of any such permit shall run with the property abutting the half of the street area in which the structure is proposed to be built and all such permits shall be recorded against the title of the benefitting property except as otherwise specified below. All cost of such recordings shall be borne by the permittee. Upon sale or other disposition of the property, the permit shall automatically transfer to any new property owner, unless the permit specifically states that it is nontransferable.
- B.** Permits may be issued to parties other than the owner of the abutting property only under the following circumstances:

 - 1.** the Director of the Bureau of Transportation has determined that the permittee is an organization with public responsibilities and is of sufficient permanence to carry insurance, liability and maintenance responsibilities for the full life of the permit; or
 - 2.** the permittee is the owner of a benefited property against which the permit is recorded, and the underlying property owner of the right of way has agreed to issuance of the permit; or
 - 3.** as otherwise provided for in Section 17.24.010 and Chapter 17.56.
- C.** The benefits and burdens of permits issued to parties other than the owner of the abutting property shall run with the party or property specified in the permit, other portions of this code notwithstanding.

17.24.015 Obligation of Property Owner for Structures in the Street Area.

The owner of any real property shall be responsible for maintaining any structures in the half of the street area abutting the owner's property, whether such structures are under City permit or not, except that the abutting owner shall not be responsible for the maintenance of structures which have been installed by other than the abutting owner under a permit or other authority granted by the City of Portland.

The abutting property owner shall be liable to any person who is injured or otherwise suffers damage by reason of the property owner's failure to keep any structure located in

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the half of the street area immediately abutting his or her property in safe condition and good repair. Furthermore, said abutting property owner shall be liable to the City of Portland, its officers, agents and employees, for any judgment or expense incurred or paid by the City its officers, agents or employees, by reason of the existence of any such structure in the street area.

17.24.016 Permit Revocation.

Permits for structures in City streets may be revoked by the Director of the Bureau of Transportation at any time and for any reason the Director of the Bureau of Transportation deems to be in the interest of the City, and no grant of any permit, expenditure or money in reliance thereon, or lapse of time shall give the permittee any right to the continued existence of a structure or to any damages or claims against the City arising out of revocation.

Upon revocation the permittee, or any successor permittee, shall at permittee's own cost remove such structure within 90 days after written notice to the permittee by the City of such revocation, unless the Director of the Bureau of Transportation specifies a shorter period, and shall return the street area in which the structure was located to the condition of the street area immediately surrounding it, to the satisfaction of the Director of the Bureau of Transportation. If the permittee does not remove the structure and/or return the street area to a condition satisfactory to the, Director of the Bureau of Transportation, the Director of the Bureau of Transportation may do so, and the permittee shall be personally liable to the City for any and all costs of dismantling the structure and reconstructing the street area. The costs of removal and reconstruction shall become a lien upon the abutting property until paid by the permittee. The City may sell or otherwise dispose of structures or parts thereof removed from the public right of way under authority of this Section, and the owner of same shall not be entitled to any compensation for said items from the City.

17.24.017 Temporary Street Closure.

(Amended by Ordinance No. 185212, effective March 21, 2012.) The Director of the Bureau of Transportation may close or by permit allow to be closed temporarily any street or portion thereof for the following reasons:

- A.** To facilitate construction, demolition or installation of facilities on public or private property.
- B.** To restrict vehicular use of an unimproved street for the protection of the public or to eliminate a neighborhood nuisance.
- C.** To provide for block parties.
- D.** To provide for community events alcohol prohibited or community events alcohol allowed.

Such closures shall include the requirements of the Traffic Engineer and provide for appropriate insurance as required by the Director of the Bureau of Transportation, protecting the public and the City.

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A person will be denied a permit under PCC Section 17.24.017 C. & D. if more than 50 percent of the property owners abutting the street to be closed object to the closure or if another City Bureau objects to the closure based on concerns for neighborhood livability such as noise, disorderly conduct, litter, or public safety.

A person who is denied a permit under PCC Section 17.24.017 C. & D. may appeal the matter to City Council. The applicant shall file with the City Auditor within five days after denial a written notice of appeal. The notice shall identify the decision that is being appealed, and include the appellant's name, address, phone number, signature, and a clear statement of the specific reason(s) for the appeal. Upon receipt of such appeal, the Auditor shall then place the matter upon the Calendar of the City Council. At the hearing, the Council may affirm or modify the decision of the Director of the Bureau of Transportation as the Council may deem necessary.

17.24.020 Fees and Charges.

The Director of the Bureau of Transportation and/or City Council may establish fees and charges. All fees, charges, civil penalties, and fines established by authority of this Title will be listed in the Portland Policy Documents, as amended annually by Council effective with the fiscal year budget.

If a larger fee is required elsewhere in this Title for any class of permit, the larger fee shall apply, otherwise the fees and charges listed in the Portland Policy Documents shall be paid unless the Transportation Director or Council has granted a specific permit for a different fee. All fees, charges, civil penalties, and fines established by authority of this Title will be listed in the Portland Policy Documents, as amended annually by Council effective with the fiscal year budget. All fees for recording permits and other documents with the County Recorder shall be paid by the property owner or permittee.

17.24.025 Fees for Public Improvement Permits.

(Amended by Ordinance No. 187486, effective January 8, 2016.)

- A. Engineering and superintendence services in connection with public improvement projects shall be charged in accordance with Portland Policy Document TRN 3.450 – Transportation Fee Schedule. The City Engineer shall review actual yearly program costs of engineering and superintendence to insure that only usual and ordinary costs are included and adjust the rates accordingly.

17.24.026 Fees for Review of Land Use Applications.

The Bureau of Transportation shall establish fees which recover the Bureau of Transportation's costs of participating in pre-application conferences and reviewing applications for land use approvals which are required by either Title 33 or Title 34 of the Code of the City of Portland.

- A. Policy
 - 1. Fees are not intended to exceed the Bureau of Transportation's average cost of processing the type of review requested or average cost of participating in pre-application conferences.

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2. Fees shall include direct costs and overhead charges.
 3. Fee schedules shall be updated annually and made available in the Portland Policy Documents.
- B. Required Fees**
1. Each request for a pre-application conference shall be accompanied by the applicable fee.
 2. All land use review applications requested must be accompanied by the applicable fee.
- C. Concurrent Applications.** When more than one review is requested on the same project, the fee for each review will be charged.
- D. Appeal Fees.** The process and charges for appeals shall be as set forth in Subsection 33.750.030 C. Appeal Fees.
- E. Fee Waivers.** The Bureau of Transportation will waive its pre-application and review fees in those cases where the Planning Director has granted a fee waiver under the provisions of Section 33.750.050.
- F. Refunds.** The Bureau of Transportation will refund fees under the following circumstances:
1. **Unnecessary Fee.** When a fee is accepted by staff for a land use review that is later found to not be required, a full refund will be made.
 2. **Errors.** When an error is made in calculating the fee, the overpayment will be refunded.
 3. **Full Refunds.**
 - a. If upon receipt of the application by the Bureau of Transportation, it is evident that no transportation review is required, the Transportation review fee will be refunded. The determination of whether a Transportation review is required is at the sole discretion of the Director of the Bureau of Transportation.
 - b. If the applicant meets the Bureau of Planning's requirements under Subsection 33.750.060 D. for a 50 percent refund and the Bureau of Transportation has not begun its review, the Transportation review will be refunded. Determination of whether to grant the refund is at the sole discretion of the Director of the Bureau of Transportation.
 4. **No Refunds.**

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- a.** Appeal fees are not refundable except as set forth in Subsections 33.750.050 B. and 33.750.060 C.2.
- b.** Pre-application conference fees are non-refundable except as set forth in Subsection F. 1. and 2.
- c.** No refunds shall be given once a review has begun.

17.24.030 Application for a Public Improvement Permit to construct a Street or Transportation Facility.

- A.** All persons or agencies wishing to construct street or transportation facilities as a public improvement shall make application to the Director of the Bureau of Transportation for a permit. The application for permit shall contain such information as the Director of the Bureau of Transportation may designate, and shall specify the nature of the proposed improvement, the name of the street or streets to be improved or in which the improvement is to be located, the location of any off street improvements and the completion date therefor.
- B.** A public improvement permit for a street or transportation facility within a land division may be issued prior to recording of the final plat only after the following:
 - 1.** the improvement plans have been approved by the City Engineer,
 - 2.** the final plat, is approvable as determined by the Bureau of Development Services,
 - 3.** any necessary site permits have been obtained from the Bureau of Development Services,
 - 4.** any necessary easements outside the land division have been obtained,
 - 5.** the permittee has provided the following:
 - a.** Acknowledgment that the construction is on private property which is to become easement for public improvements or public right of way and to come under public control upon plat and easement recording with the county.
 - b.** Authorization for City personnel to enter upon the particular private property for the purpose of testing, inspection and surveying if required, during the course of construction of the public improvements.
 - c.** Acknowledgment that City inspection personnel may reject or require correction of work not in accordance with the approved

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plans and standard specifications, which would prevent future acceptance of the improvements.

- d. Acknowledgment that all public utilities to be located in public right of way must be installed prior to final acceptance of the public street improvements, or as directed by the Director of the Bureau of Transportation.
 - e. Acknowledgment that the plat and easements must be recorded with the County prior to final acceptance of the public improvements.
 - f. Agreement that the permittee will hold the City of Portland harmless against any liability which may occur during construction prior to dedication of the right of way or recording of the easement, and further agreement that the permittee assumes all risk of loss which may arise in the event the City or any other public agency subsequently requires changes in or additions to plans or refuses to approve all or any part of permittee's improvements.
 - g. Agreement that the permittee shall, at the permittee's own expense, maintain the public improvements for a period of 24 months following issuance of a certificate of completion by the City Engineer, as assurance against defective workmanship or materials employed in such improvement.
 - h. Acknowledgment that the issuance of this permit in no way waives any requirements by the City or any other public agency which may be associated with the development of the land division.
6. Any other conditions established by the Director of the Bureau of Transportation and or the City Engineer have been met.

17.24.035 Deposit Required.

Concurrent with making the permit application the party desiring the permit shall deposit a sum equal to one half of the estimated cost of engineering and superintendence as determined by the Director of the Bureau of Transportation except that when a consultant does the design and survey the deposit shall be 20 percent of the estimated cost of engineering and superintendence. This deposit shall be determined by using the appropriate schedule of services found in Section 17.24.070. All deposits must be made prior to any design work being done by the consultant. In the event that no permit is issued for the proposed improvement within 1 year from the time design and plans are reviewed and completed, the City shall retain the amount of the deposit as compensation for the preparation of design and plans or efforts of review. In the event a permit is issued for the proposed improvement within 1 year from the time such design and plans are completed, the amount of the required deposit shall be applied to the cost of the permit fee for such improvements.

17.24.040 Refusal of a Public Improvement Permit.

- A.** A permit application for a public improvement shall be refused when the street grade has not been established, if street grade is applicable directly or indirectly to the proposed improvement, while a proposal to change the grade is pending before the Council, or after plans have been filed with the Council to improve the street.
- B.** The Director of the Bureau of Transportation may refuse a permit if in his/her judgment the proposed use or improvement:

 - 1.** Is not suitable in the circumstances,
 - 2.** Will not be uniform with existing or proposed street improvements in the immediate vicinity, or
 - 3.** Includes movement of earth from one portion of street to another.
- C.** The City Engineer delegates to the Chief Engineer of the Bureau of Environmental Services authority to refuse a permit or establish permit conditions for modification or repair of any nonconforming sewer or drainage systems within existing or proposed right-of-way.
- D.** The Director of the Bureau of Transportation may refuse to issue a permit hereunder unless the application is modified as the Director of the Bureau of Transportation may deem necessary. The Director of the Bureau of Transportation may require the addition of curbs if a sidewalk improvement is proposed. The Director of the Bureau of Transportation may require the addition of curbs or sidewalks or both if the proposed improvement is a street improvement. If the Director of the Bureau of Transportation finds that water main extensions are likely to be needed within 5 years after the completion of a street improvement, the Director of the Bureau of Transportation shall refuse issuance of a street improvement permit unless the water main extensions are provided before the completion of a proposed street improvement. If an application is made for a street improvement and the Director of the Bureau of Transportation finds that public service installations will be needed below the surface of the street or that sanitary or storm drainage is necessary or that underground facilities are needed for future street light installations, the Director of the Bureau of Transportation may refuse the application unless such installations are included within the proposal or are arranged to be completed prior to the completion of the proposed street improvement.

17.24.050 Contents of Permit.

- A.** Any permit issued for the construction of a public improvement or use of the street area may contain such conditions as the Director of the Bureau of Transportation finds appropriate in the public interest. The permit shall specify the kind of work

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and or use allowed by the permit. The date by which the work is to be completed or if the permit is for use of the street area the date the use shall cease if applicable.

- B.** The contents of the permit shall include but are not limited to the following items:
- 1.** A requirement for proof of insurance in a form acceptable to the City Attorney.
 - 2.** A requirement that the permittee shall be responsible for a 24-month quality assurance period following issuance of a certificate of completion.
 - 3.** If the permit is for a local improvement a requirement for assurance of performance shall be required. If the permit is for a use of the street area the Director of the Bureau of Transportation may require an assurance of performance if he or she determines it is needed to protect the public interest.
 - 4.** If the permit is for a local improvement a schedule setting forth when the permitted activity may begin and the date by which the work will be completed.
 - 5.** A requirement that all stated fee's and charges or estimated fee's and charges have been paid and that the applicant will pay the balance of fee's and charges above the estimated cost prior to issuance of a certificate of completion.

17.24.055 Assurance of Performance.

- A.** Assurance of Performance shall be for a sum approved by the Director of the Bureau of Transportation as sufficient to cover 100 percent of the cost of design, superintendence, and construction of improvements authorized under permit. Such assurance may, at the discretion of the Director of the Bureau of Transportation, be in the form of separate assurances covering individual stages of a staged development or covering the installation of various individual improvements rather than a single assurance of performance covering 100 percent of the cost of all improvements to the entire land division. Deposits for engineering and superintendence as required by Title 17 or by Title 5 are in addition to the filing of such assurances of performance.
- B.** Assurance of performance for public improvements may be in one of the following forms as approved by the City Attorney:
- 1.** Surety bond executed by a company authorized to transact business in the State of Oregon.
 - 2.** Irrevocable letter of credit.

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3. Set-aside account
 4. Cash deposit.
 5. City Council passage of a LID Formation Ordinance for a local improvement district.
 6. Other forms as approved by the City Attorney.
- C. If an applicant for permit fails to carry out the provisions of the application for permit, or the permittee fails to carry out the provisions of the permit, and the City has unreimbursed expenses resulting from such failure, the City shall call on the assurance of performance for reimbursement. If the amount of the assurance of performance exceeds the expenses incurred by the City, it shall release the remainder. If the amount of the assurance for performance is less than the expenses incurred by the City, the applicant or permittee shall be liable to the City for the difference. Assurance of performance covering stages or portions of a total development may be released as such stage or portion is completed to the satisfaction of the Director of the Bureau of Transportation. Twenty percent of all funds deposited as assurance of performance will be retained through the maintenance or quality assurance period; other forms of assurance of performance shall contain written provisions for a similar guarantee through the maintenance period.

17.24.060 Permit Conditions.

(Amended by Ordinance No. 185397, effective July 6, 2012.) All work done in streets or other public places shall be done in the location approved by the Director of the Bureau of Transportation and in accordance with plans and specifications prepared or approved by the City Engineer. The permit may include conditions, and the conditions shall be binding upon the permittee (see Section 17.24.050). All work done shall be subject to the rejection or correction requirements of the City Engineer and subject to the final approval of the City Engineer. Any person or entity performing work in the street area shall:

- A. Begin the work promptly and diligently pursue the work until the work is completed;
- B. Upon completion of the work, make a written report to the Director of the Bureau of Transportation detailing the manner in which the work was executed, the location of the work and facilities, and other information regarding the work performed as the Director of the Bureau of Transportation may request. The report shall be certified as accurately depicting the horizontal and vertical location, size and type of material of all facilities constructed. The plans need not include details of the nature of the facilities. These plans shall be submitted to the City within sixty (60) days after completion of construction. The Director of the Bureau of Transportation may establish the format of such reports.

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- C.** When there are two or more curbs on the same side of the street centerline, lay all pipes, mains, sewers, conduits, lines, when the same are to run lengthwise in any street, at a distance at least 3-1/2 feet from the curb closest to the street centerline measuring toward the center of the street and at least 2 feet from the curb closest to the street centerline measuring to the outer edge of the street. All connections to the pipes, mains, sewers, conduits, and lines laying lengthwise in the street or to any lot shall be installed perpendicular to the curb. In cases where compliance with these regulations would cause unnecessary digging up of pavement, disruption of traffic, place a burden on the street system, or otherwise not be in the best interest of the public, the Director of the Bureau of Transportation may in his or her sole discretion permit and or require the laying of pipes, mains, sewers, conduits, lines, in a different location or manner;
- D.** Keep all stone, macadam, gravel or other pavement material separate from the excavated earth;
- E.** Refill any trench or hole that has been dug or opened in any street for the purpose of reaching or laying any sewer, gas, water or other pipe or main within 24 hours after laying or reaching the sewer, gas, water or other pipe or main, or as directed by the Director of the Bureau of Transportation, in the following manner:

 - 1.** If the street has not been improved with permanent pavement, the earth excavated from the hole or trench shall be refilled and thoroughly compacted until the grade of the roadway previously existing at such trench or hole is reached.
 - 2.** If the street has been improved with permanent pavement, the excavated area shall be refilled and compacted to the elevation of the bottom of the permanent pavement, which shall be re-laid compactly and made to conform to the grade, base and quality of the surrounding street pavement.
- F.** Erect appropriate traffic control devices and protective measures around the work site, and maintain warning lights or other warning devices as required by the Traffic Engineer at or around the work site during the hours between sunset and sunrise so that pedestrians and operators of vehicles may be duly warned of, and protected from the obstruction;
- G.** Install and maintain erosion control measures as directed by the Director of the Bureau of Transportation;
- H.** Comply with any other directions given by the Director of the Bureau of Transportation.

17.24.067 Hazardous Substances.

(Amended by Ordinance No. 185397, effective July 6, 2012.)

- A.** “Utility corridor fill” means fill that:

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1. Meets the requirements of the City's Standard Construction Specifications;
2. May be handled without the need for monitoring of exposure to contaminants under the Oregon OSHA occupational standards for maintenance workers or the use of personal protection equipment above Level D as described in 29 CFR 1910.120;
3. Meets the current DEQ definition of clean fill in OAR 340-093; and
4. The concentrations of any contaminants of concern in the fill material are below the DEQ soil and sediment clean fill screening levels for terrestrial and upland use.

B. "Right-of-way access area" means:

1. The area within a public right-of-way to a minimum depth of five feet below the final street and sidewalk grade and;
2. Any additional depth or width necessary for maintenance of public or private infrastructure including but not limited to sewers, hydrants, meters, conduits and pole bases as required by the Director of the Bureau of Transportation.

C. "Contaminant barrier" means a visual and physical barrier that is of a material, construction and thickness sufficient to minimize transmission of hazardous substances present in the surrounding fill to the utility fill and provide a visual demarcation of the boundary of the utility fill as specified in the City's standard construction specifications or as approved by the Director of the Bureau of Transportation with the concurrence of the Director of the Bureau of Environmental Services.

D. In addition to the requirements of this Chapter, permittees shall comply with applicable state and federal laws, regulations and orders concerning hazardous substances including but not limited to their use, storage, handling, disposal, remediation, spill reporting and release reporting.

E. Except as provided in Subsection 17.24.067 H., all fill placed in the right-of-way access area as part of a project permitted under this Chapter shall be utility corridor fill.

F. Permittees shall excavate soil or fill that does not meet the definition of utility corridor fill that is encountered in the right-of-way access area during permitted work and replace it with utility corridor fill.

G. If the soil immediately outside of the right-of-way access area does not meet the definition of utility corridor fill, a contaminant barrier shall be placed between the utility corridor fill and surrounding fill.

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- H.** On a site-specific basis, the Director of the Bureau of Transportation with the concurrence of the Director of the Bureau of Environmental Services may allow the placement of fill that does not meet the definition of utility corridor fill in the right-of-way access area.
- I.** If a permittee is required under state, federal or local law to report a spill or release of hazardous substances that occurs at, on, over, under or affects the public right-of-way, the permittee must the Bureau of Environmental Services Spill Prevention and Citizen Response Section within 24 hours of such a spill unless otherwise required by state, federal or local law.
- J.** If a permittee encounters contaminated media within the public right-of-way that poses an imminent threat to human health, the environment, or the waters of the State or requires the use of personal protective equipment above Level D to conduct the permitted work, the Permittee must notify the Director of Bureau of Transportation and Director of the Bureau of Environmental Services within two business days of encountering the contaminated media.

17.24.070 Engineering and Superintendence for Street and Transportation Facility Public Improvements.

- A.** The City Engineer shall:
 - 1.** Make all necessary surveys;
 - 2.** Mark all grades;
 - 3.** Prepare, fix, and prescribe all plans and specifications;
 - 4.** Provide engineering provisions and approvals;
 - 5.** Test and evaluate all project materials and resources as required;
 - 6.** Inspect and approve all work done. At the option of the City Engineer, Subsections 17.24.070 A.1., 2., and 3. above may be done by a professionally registered consulting engineer working under private contract with the permittee.
- B.** If a permittee, person, or agency seeks to have a public improvement constructed under contract in the name of the City, then the permittee shall be charged for engineering and superintendence services in an amount equal to the Director of the Bureau of Transportation estimate of the actual costs of such services in accordance with the provisions of Section 5.48.050. This fee shall be paid prior to the issuance of permittee's permit for public improvement.
- C.** If a permittee, person or agency seeks to have a public improvement constructed under private contract between the permittee and a contractor, or if the permittee

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desires to do the work personally or have it done under his or her direction, then the permittee shall be charged for engineering and superintendence services in an amount computed as follows below. This fee shall be paid prior to the issuance of permittee's permit for public improvements.

Engineering and superintendence fees:

1. City does design and survey see Subsection 17.24.025 A.
 2. Consultant does design and survey see Subsection 17.24.025 A.
 3. Consultant does design, City does survey see Subsection 17.24.025 A. plus survey actual costs by authority of Section 5.48.030.
- D.** If the specifications or other contract documents are not strictly complied with or the work is not completed within the time specified in the permit, the Director of the Bureau of Transportation shall refuse to accept the work. If the work is refused by the Director of the Bureau of Transportation, it shall not thereafter be accepted unless corrected to conform to plans and specifications and unless approved by the City Council.

17.24.080 Work Done Under Permit.

- A.** All work done under and in pursuance of a permit shall be under the authorization of the Director of the Bureau of Transportation, who shall determine the details of the improvement and whose orders in regard to the improvement and the execution of the same shall be obeyed by the applicant for the permit and by the persons doing the work.
- B.** The Director of the Bureau of Transportation shall have the authority to refuse issuance of permits for work within the street right of way to any Person until the requirements of permits previously issued are complied with. This authority includes, but is not limited to, denial of a permit when the applicant is delinquent in payment of fees or City charges for work performed for the applicant by the City or when the applicant has failed to complete work on any previously issued permit or permits.

17.24.085 Original Documents Become the Property of the City.

Any and all plans, specifications, survey notes or other original documents as required by the Director of the Bureau of Transportation that were either prepared for or produced during the design or construction of a public improvement, become the property of the City and shall be delivered to the Director of the Bureau of Transportation prior to acceptance of the improvement by the City Engineer.

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17.24.090 Certificate by City Engineer.

During the course of construction and prior to the issuance of a certificate of completion for a public improvement under this Chapter, the City Engineer shall inspect the improvement and determine if the various kinds of work performed are in compliance with the plans, specifications and allowances of the permit as to quality of workmanship. Furthermore, the City Engineer shall check the improvement for alignment, proper computation of quantities and conformance with the established grade. If all of the work required is completed and done to the satisfaction of the City Engineer, the City Engineer shall give a certificate therefor to that effect and that the improvement is accepted, if done within the completion date, as hereinabove set forth, and within recorded public right of way and easements. Otherwise, the acceptance may be made by the Council on the certification of conformity to Code provisions and proper grades filed by the City Engineer.

17.24.100 Street Pavement Preservation.

After any street has been constructed, reconstructed, or paved by City forces, under City contract, or under permit, the pavement surface shall not thereafter be cut or opened for a period of 5 years.

The Director of the Bureau of Transportation may grant exemptions to this prohibition in order to facilitate development on adjacent properties, provide for emergency repairs to subsurface facilities, provide for underground service connections to adjacent properties or allow the upgrading of underground utility facilities.

When granting exceptions to this regulation, the Director of the Bureau of Transportation may impose conditions determined appropriate to insure the rapid and complete restoration of the street and the surface paving. Repaving may include surface grinding, base and sub-base repairs, or other related work as needed, and may include up to full-width surface paving of the roadway.

In addition to the street opening permit, any person who is required to partially or fully repave a street shall obtain a street improvement permit and be responsible for the full cost of plan review, construction inspection, material testing, bonding, and all other City expenses related to the work.

If the Director of the Bureau of Transportation determines that final repaving of the street is not appropriate at that particular time for reasons relating to weather or other short term problems, the Director of the Bureau of Transportation may grant a delay until proper conditions allow for repaving.

17.24.105 Regulations Governing Excavations and Disturbance of Pavement on Transit Mall.

A. Definitions.

- 1.** For the purposes of this Section the Transit Mall is defined as Fifth Avenue and Sixth Avenue from the south line of SW Jackson Street to the north line of NW Irving Street, NW Irving Street from the west line of NW 5th Avenue to the east line of NW 6th Avenue and SW Jackson Street from the west line of SW Fifth Avenue to the east line of SW 6th avenue.

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2. Transit Mall Pavement is defined as all surface paving including the curb and any below grade slab or structural element supporting the surface paving located between the curb lines of the Transit Mall.
 3. Emergency for the purpose of this section means an unanticipated failure of an existing facility that creates a public hazard or an interruption of service to subscribers or customers that cannot be resolved using other routes or facilities.
- B.** No person shall undertake any excavation nor disturb the Transit Mall Pavement except as provided below.
1. Maintenance of the brick pavers, curbs, transit way or asphalt pavement by the City or TriMet.
 2. In order to provide for repairs to subsurface facilities made necessary by an emergency.
 3. In order to provide a utility service connection to an adjacent property when the utility can demonstrate to the satisfaction of the Director of the Bureau of Transportation that there is no alternative means of providing service to the property.
 4. The Director of the Bureau of Transportation may allow a public utility to excavate the transit mall pavement for,
 - a. replacement of an underground facility that has reached the end of its useful life or,
 - b. system expansion necessary to meet the public utilities obligation to serve its customers if, in the opinion of the Director of Transportation, the public utility has adequately demonstrated that no alternative location or means of providing service can adequately meet that need. The cost of providing service from an alternative location or alternative means shall not be a consideration in the Director of Transportation's decision.
 5. The Director of the Bureau of Transportation may require that an applicant requesting to do work under the provisions of Subsection 17.24.105 B.4. provide the Director a minimum of two years advance notice of the need to replace or expand facilities to allow for coordination with any planned major maintenance work to be performed by TriMet, the Portland Bureau of Transportation or another utility with permission to operate within the City of Portland.

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- C. When granting permits to excavate or disturb Transit Mall pavement , the Director of the Bureau of Transportation will impose conditions determined appropriate to insure the rapid and complete restoration of the Transit Mall Pavement to the originally constructed pavement section and surfacing.
1. Any person who is required to reconstruct Transit Mall Pavement shall provide engineered plans detailing how the work will be done and the Transit Mall pavement will be restored. The permittee shall be responsible for the full cost of the reconstruction. Full cost includes any City fee's and charges including but not limited to plan review, construction inspection, traffic mitigation, material testing, and all other expenses related to the work incurred by the Portland Bureau of Transportation.
 2. If the Director of the Bureau of Transportation determines that final restoration of the Transit Mall pavement is not appropriate at that particular time for reasons relating to weather or other short term conflict, the Director of the Bureau of Transportation may grant or order a delay until proper conditions allow for the restoration to occur.

17.24.110 Record of Permits.

The Director of the Bureau of Transportation shall keep a record of improvements under permit and the issuance of permits under this Chapter, and the date of certificate of approval and acceptance if made.

17.24.120 Removal of Improvement.

In the event the Director of the Bureau of Transportation or the City Council does not accept an improvement made pursuant to permit under this Chapter within 1 year after completion and tender for approval, then the permittee shall remove the same and restore the public area to its prior condition at the permittee's own expense, whenever and to the extent directed by the Director of the Bureau of Transportation.

17.24.130 Preservation of Cobblestones.

- A. As used in this Section, "permit" means a valid permit issued under Section 17.24.010 and "permittee" means a person to whom a permit is issued, or if no permit is required, the person undertaking the work.
- B. Cobblestones, also referred to as Belgian building or paving blocks, located in streets of the City are City property and remain City property notwithstanding their excavation by a permittee.
- C. It is the duty of the Bureau of Transportation to make available to the permittee a copy of the regulations authorized by this Section.
- D. A permittee shall preserve for delivery to the City quantities of 150 or more cobblestones displaced by excavations of City streets. A report of the number and location of the cobblestones shall be sent to the Bureau of Parks, Operations

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Division, and permittee shall deliver the cobblestones to a site as directed by the Bureau of Parks. The Commissioner of the Bureau of Parks hereby is delegated authority to issue additional regulations providing for the preservation of cobblestones excavated from City street areas.

- E.** At the request of the Portland Historical Landmarks Commission, but not less than once annually, the Bureau of Parks shall advise the Commission of the number of cobblestones then being stored. The deployment of stored cobblestones shall be determined by the Portland Historical Landmarks Commission (and/or recommended to the City Council). Criteria for deployment shall be established by the Commission.

CHAPTER 17.25 - SIDEWALK CAFES

(Chapter added by Ordinance No. 150637, effective
October 23, 1980.)

Sections:

- 17.25.010 Permit Required.
- 17.25.020 Definitions.
- 17.25.030 Application Fee and Permit Fee.
- 17.25.040 Permit Application.
- 17.25.050 Permit Requirements.
- 17.25.060 Location Rules and Review.
- 17.25.070 Liability and Insurance.
- 17.25.080 Forms and Conditions of Permit.
- 17.25.090 Denial, Revocation, or Suspension of Permit.
- 17.25.100 Appeal.

17.25.010 Permit Required.

(Amended by Ordinance No. 182870, effective June 3, 2009.) Operating a Sidewalk Cafe on City sidewalks is unlawful without a permit. No person shall conduct a business as herein defined without first obtaining a permit from the Bureau of Transportation and paying the fee therefor to the City of Portland. It shall be unlawful for any person to operate a sidewalk cafe on any sidewalk within the City of Portland except as provided by this Chapter.

17.25.020 Definitions.

(Amended by Ordinance Nos. 177028, 182870 and 184957, effective November 25, 2011.)

- A.** Operate a Sidewalk Cafe. Operate a Sidewalk Cafe means serving food or beverage from a cafe or restaurant located in an adjacent building to patrons seated at tables located within the Sidewalk area adjacent to the cafe or restaurant.
- B.** Sidewalk. Sidewalk means that portion of the street between the curb lines or the lateral lines of roadway and the adjacent property lines intended for use by pedestrians.
- C.** Commercial zone. Commercial zone means abutting property which is zoned C, Commercial, or E, Employment pursuant to Title 33, Planning and Zoning of this Code or any other zone which may be created as a successor zone to such existing commercial zones.
- D.** Transit Mall. Transit Mall means the entire length of 5th and 6th Avenues bounded by I-405 on the south and NW Irving on the north.
- E.** Clear Pedestrian Zone. The Clear Pedestrian Zone is the area reserved for travel. No café operations are allowed in this area and the area must meet City standards

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and be free of hazards as described in the Sidewalk Maintenance Program Policy & Operating Guidelines (Portland Policy Document TRN-1.11).

- F.** Area of Operation: Area of Operation means the area of Sidewalk established by the City Engineer and demarcated on the sidewalk according to the specifications of the City Engineer within which the business is allowed to Operate a Sidewalk Café.
- G.** Responsible Party: Responsible Party means an individual who works on-site at the business and is responsible for overseeing the Operation of the Sidewalk Café, such as the restaurant manager or other person with similar responsibility.
- H.** Permittee: Permittee means the individual who applied for the sidewalk café permit and to whom the permit is issued. The Permittee bears ultimate responsibility for the operation of the Sidewalk Café.
- I.** Storage of Materials: Storage of Materials means any arrangement of furniture and materials that precludes operating a sidewalk café.

17.25.030 Application Fee and Permit Fee.

(Amended by Ordinance Nos. 177028 and 182870, effective June 3, 2009.) Fees for operating a sidewalk café are established by the City Engineer. Fees are assessed as prescribed in Section 17.24.010.

Each application for a sidewalk café permit shall be accompanied by an application fee. The application fee is nonrefundable and additional to the permit fee. The permit fee shall be collected prior to issuance of the permit. Permits renewed prior to April 1st do not require an application fee.

17.25.040 Permit Application.

(Amended by Ordinance No. 182870, effective June 3, 2009.) Application for a permit to operate a sidewalk cafe shall be made at the office of the City Engineer in a form deemed appropriate by the City Engineer. Such application shall include, but not be limited to, the following information:

- A.** Name and address of the applicant.
- B.** A drawing showing the width of the applicant's cafe or restaurant facing the sidewalk indicating the area requested to be used, location of doorways, and the width of sidewalk (distance from curb to building face), location of tree wells, parking meters, bus shelters, sidewalk benches, trash receptacles, driveway (curb cut), or any other semi permanent sidewalk obstruction.
- C.** A color rendition in perspective for review by the Bureau of Development Services shall be furnished upon request by the City Engineer.
- D.** A letter signed by the property owner, consenting to a sidewalk cafe adjacent to the property on which the restaurant is located.

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- E. A signed agreement between the Responsible Party and the City stating the Responsible Party understands all terms and conditions of the permit.

17.25.050 Permit Requirements.

No person shall operate any restaurant or cafe, to provide food or alcoholic liquor, on any public street or sidewalk unless such person has obtained a valid permit, to operate that business in such a manner, pursuant to this Chapter.

17.25.060 Location Rules and Review.

(Amended by Ordinance Nos. 182870 and 185397, effective July 6, 2012.)

- A. A sidewalk café shall only be allowed where the sidewalk is at least 8 feet wide. Café operations will be allowed only within the Area of Operation, which shall be established by the City Engineer.

The following table shows the minimum width of the Clear Pedestrian Zone for a given sidewalk width.

Sidewalk Width	Clear Pedestrian Zone Minimum Width
Greater than or equal to 8' 0" and less than or equal to 10' 0"	5' 6"
Greater than 10' 0" and less than 15' 0"	6' 0"
Greater than or equal to 15' 0"	8' 0"

- B. Sidewalk width is determined by City records. Adjustments may be made at the discretion of the City Engineer when field measurements conflict with City records.
- C. As a tool to allow compliance in areas with space conflicts a sidewalk café may be allowed pinch points that are less than the required Clear Pedestrian Zone minimum width. At a pinch point, the Clear Pedestrian Zone minimum width may be reduced by 6 inches for a length of no more than 2 feet. Pinch points must be at least 4 feet from adjacent pinch points. Pinch points are to be used at the discretion of the City Engineer.
- D. The Clear Pedestrian Zone shall be free of all obstructions, permanent and temporary. This includes objects such as posts, signs, street lights, fire hydrants, bicycle racks, bicycles utilizing bicycle racks, vegetation, trees, tree-wells, planters, literature and news racks, parking meters, bus shelters, benches, tables, chairs, umbrellas, heaters, and waste receptacles.
- E. Obstructions controlled by the café or property owner that extend into the Clear Pedestrian Zone shall be at least 7 feet above the sidewalk surface within the Clear Pedestrian Zone.

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- F.** Curbside seating may be allowed, subject to approval, and must allow a 2 foot buffer from the curb closest to the property line. Loading zones, bus stops, adjacent travel lanes or other conditions may prohibit curbside seating. The 2 foot buffer may be waived at the Bureau of Transportation's discretion when seating is adjacent to bike corrals or no-parking zones.
- G.** Within the Clear Pedestrian Zone there shall also be a continuous, straight passage at least 2 feet in width, known as the clear visual zone, to provide pedestrians with a clear visual indication of the direction and location of the Clear Pedestrian Zone. The Clear Pedestrian Zone is allowed to meander to navigate obstructions, but its ability to do so is limited by the clear visual zone.
- H.** To ensure compliance with the Americans with Disabilities Act, there shall be a continuous passage at least 4 feet in width with a maximum 2 percent pavement cross slope within the Clear Pedestrian Zone.
- I.** The approved Area of Operation shall be established by the City Engineer.
- J.** Within the Transit Mall, additional criteria regarding Clear Pedestrian Zone minimum widths may be applied per the City Engineer's discretion.

17.25.070 Liability and Insurance.

(Replaced by Ordinance No. 182870, effective June 3, 2009.) A signed statement that the permittee shall hold harmless the City of Portland, its officers and employees, and shall indemnify the City of Portland, its officers and employees for any claims for damages to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit. Permittee shall furnish and maintain such public liability and property damages insurance as will protect permittee and City from all claims for damage to property or bodily injury, including death, which may arise from operations under the permit or in connection therewith. Such insurance shall provide coverage of not less than \$1,000,000 (one million dollars). Such insurance shall be without prejudice to coverage otherwise existing therein, and shall name as additional insured the City of Portland, its officers and employees, the property owner, and shall further provide that the policy shall not terminate or be canceled prior to the completion of the contract without 30 days written notice to the City of Portland Bureau of Transportation, 1120 SW Fifth Avenue, Room 825.

17.25.080 Form and Conditions of Permit.

(Amended by Ordinance Nos. 182870 and 184957, effective November 25, 2011.) The permit issued shall be in a form deemed suitable by the City Engineer. In addition to naming the name of the business and other information deemed appropriate by the City Engineer, the permit shall contain the following conditions:

- A.** Each permit issued shall terminate December 31st of the year in which issued.

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- B.** The permit issued shall be personal to the Permittee only and is not transferable in any manner.
- C.** The permit may be suspended by the City Engineer when an ordinance providing for a “community event” shall so provide.
- D.** The permit is specifically limited to the approved Area of Operation.
- E.** The Responsible Party shall use positive action to assure that its use of the sidewalk in no way interferes with or embarrasses sidewalk users or limits their free and unobstructed passage.
- F.** The sidewalk and all things placed thereon shall at all times be maintained in a clean and attractive condition. Trash containers may be provided for use by the cafe patrons.
- G.** The Permit shall be posted in a conspicuous place near the main entrance visible from the sidewalk at all times.
- H.** All furniture and equipment used in the operation of a sidewalk café shall be removed within a period of 10 days from the right-of-way when not available for use by patron’s. Removal of furniture and equipment may be required, on a case by case basis, outside of the business’ hours of operation if determined necessary for safety or other reasons at the discretion of the Director of the Bureau of Transportation. The Portland Police Bureau or the Office of Neighborhood Involvement may provide recommendations for the consideration by the Director of the Bureau of Transportation.
- I.** Responsible Party shall notify the Bureau of Transportation of any changes to the contact information provided in the City /Responsible Party Agreement.
- J.** Outdoor cooking shall be prohibited.

17.25.090 Denial, Revocation or Suspension of Permit.
(Amended by Ordinance No. 182870, effective June 3, 2009.)

- A.** The City Engineer may deny, revoke, or suspend the permit for any sidewalk cafe authorized in the City of Portland if it is found:
 - 1.** That the provisions of this Chapter have been violated.
 - 2.** The Permittee does not have insurance which is correct and effective in the minimum amount prescribed in Section 17.25.070.
- B.** Upon denial or revocation, the City Engineer shall give notice of such action to the Responsible Party and Permittee in writing stating the action which has been taken and the reason therefor. The action shall be effective upon giving such notice to

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the Responsible Party. Any denial or revocation may be appealed to the City Engineer by filing within 10 days.

17.25.100 Appeal.

(Replaced by Ordinance No. 182870, effective June 3, 2009.) Any Applicant aggrieved by an Administrator's determination may appeal that determination to the Code Hearings Officer as provided in Chapter 22.10 of this Code. Notwithstanding any other provisions of this Code, there shall be a non-refundable fee of \$250 for any appeal pursuant to this subsection. Such fee must accompany any such appeal and no such appeal shall be considered filed or received until such fee is paid in full.

CHAPTER 17.26 - SIDEWALK VENDORS

(Chapter replaced by Ordinance No. 154042,
effective January 1, 1983.)

Sections:

- 17.26.010 Conducting a Business on City Sidewalks Unlawful without Permit.
- 17.26.020 Definitions.
- 17.26.030 Item for Sale.
- 17.26.040 Permit Fee.
- 17.26.050 Application for Permit.
- 17.26.060 Location Selection.
- 17.26.070 Location Review.
- 17.26.080 Payment for Written Consent is Unlawful.
- 17.26.090 Design Review.
- 17.26.100 Fire Marshal Inspection.
- 17.26.110 Application Time Limit.
- 17.26.120 Form and Condition of Permit.
- 17.26.125 Renewal of Permits.
- 17.26.130 Restrictions.
- 17.26.140 Special Event Designation.
- 17.26.150 Denial, Suspension or Revocation of Permit.
- 17.26.160 Appeal.
- 17.26.170 Penalty for Violation.
- 17.26.180 Violation a Nuisance, Summary Abatement.

17.26.010 Conducting a Business on City Sidewalks Unlawful without Permit.

No person shall conduct business as herein defined on any City sidewalk without first obtaining a permit from the Office of the City Engineer and paying the required fee. It shall be unlawful for any person to sell any goods or services on any sidewalk within the City of Portland except as provided by this Chapter.

17.26.020 Definitions.

(Amended by Ordinance Nos. 164492 and 177028, effective December 14, 2002.)

- A. **“Conduct business.”** Conduct business means the act of selling or attempting to sell services, or edible or nonedible items for immediate delivery.
- B. **“Sidewalk.”** Sidewalk means that portion of the street between the curb lines or the lateral lines of a roadway and the adjacent property line intended for the use of pedestrians.
- C. **“Commercial zone.”** Commercial zone means abutting property which is zoned C, Commercial, or E, Employment, pursuant to Title 33, Planning and Zoning, of this Code or any other zone which may be created as a successor zone to such existing commercial zones.

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- D. “Permit operating area.”** Permit operating area means the sidewalk from the midpoint of one block face to the midpoint of an adjacent block face.
- E. “Special events.”** Special events mean an event specifically approved by an individual ordinance or permit granting use of street and sidewalk areas within a specifically defined area for a period of time not exceeding 10 days to a community based organization.

17.26.030 Item for Sale.

(Amended by Ordinance No. 167130, effective Nov. 24, 1993.) The City Engineer shall maintain a list of items and services which are either approved or prohibited for sale from sidewalk vending carts. Any item or service not on the list may be considered for approval based on the following criteria:

- A.** All items or services to be sold must:
 - 1.** Be vended from a regulation size vending cart;
 - 2.** Not lead to or cause congestion or blocking of pedestrian traffic on the sidewalk;
 - 3.** Involve a short transaction period to complete the sale or render the service;
 - 4.** Not cause undue noise or offensive odors;
 - 5.** Be easily carried by pedestrians.

Requests to have an item or service considered for approval shall be submitted in writing to the City Engineer who shall determine whether the item or service conforms to the above criteria. If the item or service conforms to the above criteria, it shall be listed as approved for sale by sidewalk vendors. If the item or service does not conform, it shall be listed as prohibited for sale by sidewalk vendors. The decision of the City Engineer if adverse to the party making the request, may be appealed to the Council.

17.26.040 Permit Fee.

(Amended by Ordinance No. 182760, effective June 5, 2009.) Each application for a permit to conduct business on a sidewalk shall be accompanied by an application fee. The application fee is nonrefundable and additional to the permit fee. The permit fee shall be collected prior to issuance of the permit. The permit fee between September 1st and December 31st shall be 30% of the yearly permit fee. Permits renewed prior to expiration do not require an application fee.

17.26.050 Application for Permit.

(Amended by Ordinance Nos. 165594 and 182760, effective June 5, 2009.) Application for a permit to conduct business on a sidewalk shall be made at the office of the City

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Engineer on a form deemed appropriate by the City Engineer. Such application shall include but not be limited to the following information:

- A.** Name and address of the applicant;
- B.** The expiration date of applicant's City business license;
- C.** Type of items sold or services rendered. Individual applications shall be accepted for one type of product or service only.
- D.** A valid copy of all necessary permits required by State or local health authorities;
- E.** A signed statement that the permittee shall hold harmless the City of Portland, its officers and employees and shall indemnify the City of Portland, its officers and employees for any claims for damage to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit. Permittee shall furnish and maintain such public liability, food products liability, and property damage insurance as will protect permittee, property owners, and City from all claims for damage to property or bodily injury, including death, which may arise from operations under the permit or in connection therewith. Such insurance shall provide coverage of not less than \$1,000,000 (one million dollars) per occurrence. Such insurance shall be without prejudice to coverage otherwise existing therein, and shall name as additional insures the City of Portland, their officers and employees, and shall further provide that the policy shall not terminate or be canceled prior to the completion of the contract without 30 days written notice to the Auditor of the City of Portland.
- F.** Means to be used in conducting business including but not limited to a description of any vending cart, to be used for transport or to display approved items or services.
- G.** A separate application shall be required for each vending cart to be used for transportation or display;
- H.** The proposed location for conducting business and the written consent of the property owner(s) adjacent to the permit operating area, along with a signed statement that permittee shall hold harmless the adjacent property owner(s) for any claims for damage to property or injury to persons which may be occasioned by any activity carried on or under the permit. This consent and hold harmless statement must be submitted on a form deemed appropriate by the City Engineer. No application shall apply to more than one location. No application will be accepted for a permit operating area within which a current permit has been issued or an application is pending. Valid 1982 permits which allowed two carts within a permit operating area may apply for renewal provided they have not lapsed or been revoked.

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- I.** No food vendor application will be accepted for a permit operating area where a restaurant or fruit and vegetable market, with direct access to the sidewalk, is adjacent or within 100 feet on the same block. No application will be accepted for a flower vendor for a permit operating area where a flower shop, with direct access to the sidewalk, is adjacent or within 100 feet on the same block. The above requirement may be waived if the application is submitted with the written consent of the proprietor of the restaurant, fruit and vegetable market or flower shop. The consent must be submitted on a form deemed appropriate by the City Engineer.

This provision is not an exception to the location and distance prohibitions included in Section 16.70.550 of the Code of the City of Portland, and no application shall be accepted for a location which would be in violation of that Section.

17.26.060 Location Selection.

- A.** Permit operating areas which have not been issued a current permit shall be available only upon receipt of the written consent of the property owners adjacent to the permit operating area.
- B.** No vendor or vending business may obtain permits for adjacent permit operating areas on the same block. Valid 1982 permits are exempt from this restriction provided they have not lapsed or been revoked.
- C.** The City Engineer may establish an additional permit operating area on a block face which exceeds 300 feet in length.

17.26.070 Location Review.

Upon receipt of an application for a permit the City Engineer shall review the proposed permit operating area to determine if the said area is suitable for sidewalk vending. In making this determination, the City Engineer shall consider the following criteria:

- A.** The permit operating area must be within a commercial zone.
- B.** The use of the permit operating area for sidewalk vending must be compatible with the public interest in use of the sidewalk areas as public right of way. In making such determination the City Engineer shall consider the width of sidewalk, the proximity and location of existing street furniture, including, but not limited to, signposts, lamp posts, parking meters, bus shelters, benches, phone booths, street trees and newsstands, as well as, the presence of bus stops, truck loading zone, taxi stands or hotel zones to determine whether the proposed use would result in pedestrian or street congestion.

The City Engineer shall inform the applicant whether the proposed permit operating area is suitable or unsuitable. In the event the applicant is dissatisfied with the City Engineer's decision regarding a certain application, he may appeal the decision to the Commissioner In Charge. The decision of the Commissioner, if adverse to the applicant or any notified party may be appealed to the City Council.

17.26.080 Payment for Written Consent is Unlawful.

No person or corporation shall either pay or accept payment for written consent required for the issuance or continued operation of a sidewalk vending permit.

17.26.090 Design Review.

(Amended by Ordinance Nos. 176955, 177028 and 182760, effective June 5, 2009.)

- A.** The applicant for a sidewalk vendor permit shall submit detailed scale drawings of the cart to be used, material specifications, and an isometric drawing in color of at least two views showing all four sides of the vending cart and any logos, printing or signs which will be incorporated and utilized in the color scheme. The City Engineer shall submit the isometric drawings of the vending device to the Bureau of Development Services for approval prior to issuing a permit. Vending carts shall be measured by the City Engineer prior to the issuance of a permit or the renewal of a sidewalk vendor's permit to ensure compliance with Section 17.26.090 A of this Chapter.
- B.** The Bureau of Development Services shall furnish the City Engineer standards required by the Portland Design Commission to be incorporated in the sidewalk vendors application packet.

17.26.100 Fire Marshal Inspection.

(Amended by Ordinance No. 182760, effective June 5, 2009.) Prior to the issuance of any permit, the Fire Marshal shall inspect and approve any vending cart to assure the conformance of any cooking or heating apparatus with the provisions of the City Fire Code.

17.26.110 Application Time Limit.

(Amended by Ordinance No. 182760, effective June 5, 2009.) The applicant must complete all reviews, inspections and present all required documents to the City Engineer within 60 days from date of location approval. Failure to meet this requirement shall result in cancellation of the application and forfeiture of the application fee. The City Engineer may extend this time limit, upon written request and a finding of reasonable need.

17.26.120 Form and Condition of Permit.

The permit issued shall be in a form deemed suitable by the City Engineer. In addition to naming the permittee and other information deemed appropriate by the City Engineer, the permit shall contain the following conditions:

- A.** Each permit will expire at midnight, December 31st of the year issued;
- B.** The permit issued shall be personal only and not transferable in any manner;
- C.** The permit is valid only when used at the permit operating area designated on the permit. The permit operating area may be changed by submitting a new letter of consent accompanied by an additional application fee;

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- D.** The permit is valid for one cart only;
- E.** The location within the permit operating area may be changed, either temporarily or permanently, by written notice of the City Engineer;
- F.** The permit is subject to the further restrictions of this Chapter;
- G.** The permit as it applies to a given permit operating area may be suspended by the Council for a period up to 10 days when an ordinance providing for a “community event” shall so provide.

17.26.125 Renewal of Permits.

Application for renewal of permits shall be received from November 1st through December 31st. Application shall be on a form deemed suitable to the City Engineer, accompanied by a permit fee. Applications received after December 31st shall be processed as new applications. The City Engineer shall review each application to determine that:

- A.** Any required consent has not been withdrawn;
- B.** The applicant has a currently effective insurance policy in the minimum amount provided in Section 17.26.050 E;
- C.** All required permits are current;
- D.** The cart size is in conformance with Section 17.26.130 E. If the City Engineer finds that the application meets all the above requirements, he shall issue a new permit.

17.26.130 Restrictions.

(Amended by Ordinance Nos. 182760 and 185397, effective July 6, 2012.)

- A.** Any person conducting business on the sidewalks of the City of Portland with a valid permit issued under this Chapter may transport and/or display approved items or services upon any vending cart, under or subject to the following conditions:
 - 1.** The operating area shall not exceed 24 square feet of sidewalk which shall include the area of the vending cart, and, when externally located, the operator and trash receptacle.
 - 2.** The length of the vending cart shall not exceed 6 feet.
 - 3.** The height of the vending cart, excluding canopies, umbrellas, or transparent enclosures, shall not exceed 5 feet.
- B.** No person may conduct business on a sidewalk in any of the following places:

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1. Within 10 feet of the intersection of the sidewalk with any other sidewalk except that the City Engineer may waive this restriction in writing for any location upon finding that construction of extra width sidewalks makes such use consistent with the standards established by Section 17.26.070.
 2. Within 8 feet of the adjacent property line;
 3. Within 10 feet of the extension of any building entrance or doorway, to the curb closest to the property line.
 4. Within 10 feet of any handicapped parking space, or access ramp.
- C.** All persons conducting business on a sidewalk must display in a prominent and visible manner the permit issued by the City Engineer under the provisions of this Chapter and conspicuously post the price of all items sold.
- D.** All persons conducting business on a sidewalk must pick up any paper, cardboard, wood or plastic containers, wrappers, or any litter in any form which is deposited by any person on the sidewalk or street within 25 feet of the place of conducting business. Each person conducting business on a public sidewalk under the provisions of this Chapter shall carry a suitable container for placement of such litter by customers or other persons.
- E.** All person conducting business on a sidewalk shall obey any lawful order of a police officer to move to a different permitted location to avoid congestion or obstruction of the sidewalk or remove his vending cart entirely from the sidewalk if necessary to avoid such congestion or obstruction.
- F.** No person shall conduct business as defined herein at a location other than that designated on his permit.
- G.** No permittee shall make any loud or unreasonable noise of any kind by vocalization or otherwise for the purpose of advertising or attracting attention to his wares.
- H.** No permitted vending cart shall be left unattended on a sidewalk nor remain on the sidewalk between midnight and 6 a.m.
- I.** No permittee shall conduct business in violation of the provisions of any ordinance providing for a special event.

17.26.140 Special Event Designation.

(Amended by Ordinance No. 182760, effective June 5, 2009.) The special event designation allows vendors to conduct business on City sidewalks at the Rose Festival parades and other major special events that the City Engineer shall so designate, subject to the following conditions:

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- A.** Application shall be made to the City Engineer on a form deemed appropriate by the City Engineer. Each application shall apply to only one event or parade. Application is open to any vendor who possesses a valid sidewalk vending permit. Each application shall be accompanied by:
 - 1.** All necessary permit fees.
 - 2.** The proposed location for conducting business along with the temporary written consent of the property owners adjacent to the permit operating area. This temporary consent must be on a form deemed appropriate by the City Engineer. No application will be accepted for a permit operating area within which a permit has been issued or an application is pending.
- B.** Application must be made at least 5 working days prior to an event to qualify for participation.
- C.** All temporary locations shall be on side streets adjacent to the parade or event.
- D.** Temporary locations are valid only for the date and hours specified by the City Engineer.
- E.** All other conditions of this Chapter, except as herein stated, shall remain in effect.

17.26.150 Denial, Suspension or Revocation of Permit. (Amended by Ordinance No. 182760, effective June 5, 2009.)

- A.** The City Engineer may revoke or suspend the permit, or deny either the issuance or renewal thereof, of any person to conduct business on the sidewalks of the City of Portland based on the following findings:
 - 1.** that such person has violated or failed to meet any of the provisions of this Chapter;
 - 2.** that the cart operation has become detrimental to surrounding businesses and/or the public, due to either appearance or condition of the cart.
 - 3.** any required permit has been suspended, revoked or canceled; or
 - 4.** the permittee does not have a currently effective insurance policy in the minimum amount provided in Section 17.26.050 E.
- B.** Upon denial, suspension or revocation, the City Engineer shall give notice of such action to the permit holder or applicant, as the case may be, in writing stating the action the City Engineer has taken and the reasons therefore. If the action of the City Engineer is a revocation based on Subsections A.3. and 4. of this Section, the action shall be effective upon giving such notice to the permittee, otherwise such notice shall contain the further provision that it shall become final and effective

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within 10 days. Any revocation effective immediately may also be appealed to the Council by such filing within 10 days. Any revocation, suspension or denial may be appealed to the City Council by filing a written notice of appeal with the City Auditor within 10 days of receipt of notification.

17.26.160 Appeal.

The Auditor shall place the appeal on the Council calendar at the first convenient opportunity therefor and shall notify the City Engineer thereof. At the hearing upon appeal, the Council shall hear all witnesses including the City Engineer or his representative who shall state the grounds for this action, and the applicant or person whose permit has been revoked or suspended may supply testimony in writing by witnesses or otherwise and may question witnesses on his own behalf or on behalf of the City. The Council shall hear and determine the appeal and the decision of the Council shall be final and effective immediately.

17.26.170 Penalty for Violation.

Any person violating any of the provisions of this Chapter shall, upon conviction thereof, be punished by a fine not exceeding \$500 or by imprisonment for a period not exceeding 6 months, or by both such fine and imprisonment. In the event that any provisions of this Chapter is violated by a firm or corporation, the officer or officers, or the person or persons responsible for the violation shall be subject to the penalty herein provided.

17.26.180 Violation a Nuisance, Summary Abatement.

(Amended by Ordinance No. 182760, effective June 5, 2009.) The placement of any vending cart on any sidewalk in violation of the provisions of this Chapter is declared to be a public nuisance. The City Engineer may cause the removal of any vending cart found on a sidewalk in violation of this Chapter and is authorized to store such vending cart until the owner thereof shall redeem it by paying the removal and storage charges therefore to be established by the Commissioner In Charge.

**CHAPTER 17.27 - STRUCTURAL
DRIVEWAYS**

(Chapter replaced by Ordinance No. 184957,
effective November 25, 2011.)

Sections:

- 17.27.200 Structural Driveway Defined.
- 17.27.205 Structural Driveways in Public Streets.
- 17.27.210 Permit Application.
- 17.27.220 Engineer's Review.
- 17.27.230 Design Standards.
- 17.27.240 Permit.
- 17.27.250 Revocation of Permit.
- 17.27.260 Removal of Structural Driveways.
- 17.27.270 Fees.
- 17.27.280 Inspection of Construction Required.

17.27.200 Structural Driveway Defined.

A structural driveway is any structure intended to provide vehicular access to parking and maneuvering space on private property from a public right of way.

17.27.205 Structural Driveways in Public Streets.

The Director of the Bureau of Transportation may grant a revocable permit to an abutting property owner for the construction and maintenance of a structural driveway within a public street if in the Director of the Bureau of Transportation's judgment there is no other available means of obtaining vehicular access to a structure on abutting private property.

17.27.210 Permit Application.

The applicant shall submit to the Director of the Bureau of Transportation two complete site plans, two sets of structural plans and calculations bearing the registration stamp and signature of an engineer licensed in the State of Oregon to design structures, and a non refundable application fee of \$250. The Director of the Bureau of Transportation may require the applicant to submit a complete geotechnical report and any recommendations made in connection with such report may be required.

17.27.220 Engineer's Review.

- A. The City Engineer will review the application to determine compliance with design standards, possible conflicts with public facilities, and compatibility with existing or future street plans. If in the course of the review the City Engineer determines that modifications to the proposed plan are necessary, the applicant shall make the requested modifications and resubmit the plan to the City Engineer with all required corrections.

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- B.** The decision of the City Engineer as to the suitability of the proposed location, materials used, technical requirements of specifications and plans shall be final and conclusive.

17.27.230 Design Standards.

- A.** Load ratings and structural design shall be in accordance with the most current edition of the Standard Specifications for Highway Bridges published by the American Association of State Highway and Transportation Officials (AASHTO) in effect at the time of permit issuance or such alternative specifications as are adopted by the City Engineer.
- B.** Structural driveways shall have a minimum load rating of H 15 except that in cases where the structural driveway accesses only one single family residential structure from a Local Service Traffic Street as defined by the Transportation Element of the Comprehensive Plan, the City Engineer may allow a structural driveway in conformance with Uniform Building Code standards if, in the opinion of the City Engineer, the circumstances are such that the lower rating will not create a hazard to the public or users of the structural driveway and permanent vehicle barriers are installed to prevent access to the structure by vehicles exceeding eight feet in height.
- C.** The City Engineer may require vehicle barriers, railings, and other appurtenances in excess of AASHTO standards and higher load ratings if in the City Engineer's opinion such appurtenances are necessary to protect the public and users of the structural driveway.

17.27.240 Permit.

- A.** Permits for structural driveways will be issued only to the owner of the property abutting the half of the street area in which the structural driveway is proposed to be built. The burdens and benefits of any such permit shall run with the property abutting the half of the street area in which the structural driveway is proposed to be built. Upon sale or disposition of the property, the permit shall automatically transfer to any new owner of the property, except when the permit specifically prohibits such transfer.
- B.** The abutting property owner shall be liable to any person who is injured or otherwise suffers damage by reason of the property owners use of the street area. Furthermore, said abutting property owner(s) shall be liable to the City of Portland for any judgment or expense incurred or paid by the City by reason of the existence of a structural driveway in the street area.
- C.** This permit shall be for the use of the street area only, and shall not exempt the permittees from obtaining any license or permit required by the City Code or Ordinances for any act to be performed under this permit, nor shall this permit

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waive the provisions of any City Code, Ordinance, or the City Charter, except as herein stated.

- D.** The conditions in a permit for a structural driveway are burdens upon the abutting property which shall run with the land, and the permit shall be recorded with the Multnomah County Records Division, and the cost of recording shall be paid by the applicant.

17.27.250 Revocation of Permit.

- A.** A structural driveway permit may be revoked by the Director of the Bureau of Transportation:
- 1.** Upon determination of a public need for the area;
 - 2.** If the structural driveway is in conflict with any public improvement plan;
 - 3.** If the permittee fails to maintain the structure to the City Engineer's satisfaction;
 - 4.** If the permittee allows a dangerous condition, as determined by the City Engineer, to continue for more than twenty days after being given notice to correct the condition; or
 - 5.** Upon failure to comply with any condition of the permit.
- B.** The City Council may revoke any structural driveway permit for any reason the Council determines to be in the best interest of the City.
- C.** No grant of any permit, expenditure of money in reliance thereon, or lapse of time shall give the permittee any right to the continued existence of a structure or to any damages or claims against the City arising out of revocation.

17.27.260 Removal of Structural Driveways.

Upon revocation of the permit, the permittee or any successor permittee, shall at permittee's own cost remove such structure within 30 days after written notice to the permittee by the City of such revocation, unless the City Council specifies a shorter period, and shall return the street area in which the structure was located to the condition of the street area immediately surrounding it, to the satisfaction of the Director of the Bureau of Transportation. If the permittee does not remove the structure and/or return the street area to a condition satisfactory to the Director of the Bureau of Transportation, the Director of the Bureau of Transportation may do so, and the permittee shall be personally liable to the City for any and all costs of dismantling the structure and reconstructing the street area. The costs of removal and reconstruction shall become a lien upon the abutting property until paid by the permittee.

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17.27.270 Fees.

The fee for plan review, permit issuance, and any City inspection of structural driveways shall be the full cost incurred by the City for such services. The minimum fee shall be \$250. If full cost will exceed \$250, the applicant shall pay any additional costs prior to issuance of the permit. Amounts paid by the applicant in excess of full City costs, which exceed the \$250 minimum fee, will be refunded to the applicant.

17.27.280 Inspection of Construction Required.

The City Engineer may inspect the construction; require the permittee to retain the services of a special inspector who will submit inspection reports directly to the City Engineer, or a combination of the above. It shall be permittee's responsibility to obtain the required inspections and failure to do so is grounds for revocation of the permit

**CHAPTER 17.28 - SIDEWALKS, CURBS AND
DRIVEWAYS**

(Chapter replaced by Ordinance No. 167684,
effective May 18, 1994.)

Sections:

- 17.28.010 Sidewalk Defined.
- 17.28.011 Planting and Parking Strip Defined.
- 17.28.015 Owner Defined.
- 17.28.020 Responsibility for Sidewalks and Curbs.
- 17.28.025 Property Owner Responsible for Snow and Ice on Sidewalks.
- 17.28.030 Notice for Construction of Sidewalks and Curbs.
- 17.28.035 Curb and Intersection Corner Ramps.
- 17.28.040 Construction Alternatives.
- 17.28.050 City Construction if Owner Fails to Construct.
- 17.28.060 Location, Size and Materials of Sidewalks and Curbs.
- 17.28.065 Bicycle Parking.
- 17.28.070 Owners to Repair Sidewalks and Curbs Notice to Repair.
- 17.28.080 Permit for Sidewalk and Curb Repairs.
- 17.28.090 Repair by City of Portland.
- 17.28.100 Driveways Defined.
- 17.28.110 Driveways - Permits and Conditions.
- 17.28.120 After Construction Driveways Deemed Part of Sidewalk.
- 17.28.130 Reconstruction of Existing Driveways.
- 17.28.140 City Charges for Construction or Repair of Sidewalks, Curbs and Driveways.
- 17.28.150 Billing for Charges.
- 17.28.160 Assessment of Charges.

17.28.010 Sidewalk Defined.

(Amended by Ordinance No. 177028, effective December 14, 2002.) A “**sidewalk**” means the portion of the street intended for the use of pedestrians. Unless the street area has been designated as a pedestrian mall, or unless the entire street has been designated primarily for pedestrian use, for the purpose of this Chapter, “sidewalk” is that part of a street on the side there of intended for the use of pedestrians, improved by surfacing.

17.28.011 Planting and Parking Strip Defined.

(Added by Ordinance No. 184957; amended by Ordinance No. 185397, effective July 6, 2012.) “**Planting Strip**” and “**Parking Strip**” means the area between the curb, or in the case where there is no curb the edge of the roadway, and the abutting property line not improved by surfacing that is intended for the use of pedestrians. Any openings made in a surfaced area between the roadway and the abutting property line for the purpose of planting trees or other vegetation shall be considered part of the planting or parking strip. Grates or other coverings of said areas shall not be considered as surfacing intended for the use of pedestrians.

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17.28.015 Owner Defined.

“Owner” means the owner of the real property or the contract purchaser of real property of record as shown on the last available assessment roll in the office of the county assessor.

17.28.020 Responsibility for Sidewalks and Curbs.

(Amended by Ordinance Nos. 182760, 183397 and 184957, effective November 25, 2011.)

- A.** The owner(s) of land abutting any street in the City shall be responsible for constructing, reconstructing, maintaining and repairing the sidewalks, curbs, driveways and parking strips abutting or immediately adjacent to said land, except as provided in Subsections B. and C. Said property owner(s) shall be liable for any and all damages to any person who is injured or otherwise suffers damage resulting from the defective condition of any sidewalk, curb, driveway or parking strip adjacent to said land, or by reason of the property owner’s failure to keep such sidewalk, curb, driveway or parking strip in safe condition and good repair. Said property owner(s) shall be liable to the City of Portland 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 said property owners’ failure to satisfy the obligations imposed by the Charter and Code of the City of Portland to maintain, construct, and repair such sidewalks, curbs, driveways and/or parking strips.
- B.** Curbs shall be maintained by the City, except when in combination with the sidewalk and when they have been willfully damaged or damaged by tree roots. Intersection corners and curbs adjacent thereto may be installed by the City when sidewalks and curbs are constructed up to the intersection on the same side of the street.
- C.** Green street or other public stormwater management facilities located within the right of way shall be modified or repaired only by the City or under an appropriate permit from the Bureau of Environmental Services.
- D.** The City Engineer shall maintain general construction and maintenance specifications for sidewalks, curbs, driveways and/or parking strips. The City Engineer shall use the specifications to determine compliance with this Chapter of Code. The Director of the Bureau of Transportation shall provide copies of the specification to any person upon request, and make the specifications available for public inspection during normal office hours.

17.28.025 Property Owner Responsible for Snow and Ice on Sidewalks.

(Added by Ordinance No. 176585, effective July 5, 2002.)

- A.** The owner(s) and/or occupant(s) of land adjacent to any street in the City shall be responsible for snow and ice removal from sidewalks abutting or immediately adjacent to such land, notwithstanding any time limitations.

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- B.** Property owner(s) and/or occupant(s) shall be liable for any and all damages to any person who is injured or otherwise suffers damage resulting from failure to remove snow and/or ice accumulations.
- C.** Property owner(s) and/or occupant(s) shall be liable to the City of Portland for any amounts paid or incurred consequent from claims, judgment or settlement, and for all reasonable investigation costs and attorney fees, resulting from the responsible property owner's or occupant's failure to remove snow and ice accumulations from such sidewalks as imposed by this Code.

17.28.030 Notice for Construction of Sidewalks and Curbs.

(Amended by Ordinance Nos. 182760 and 184957, effective November 25, 2011.) Where the sidewalk or curb in front of any lot, part thereof, or parcel of land is or becomes so worn or deteriorated as, in the opinion of the City Engineer, to require a new sidewalk or curb to be constructed, or where no sidewalk or curb exists and, in the opinion of the Director of the Bureau of Transportation, a sidewalk or curb or both are needed, it shall be the duty of the City Engineer to post a notice on the adjacent property headed "Notice to Construct Sidewalk" (or curb, or both). The notice shall in legible characters direct the owner, agent, or occupant of the property immediately to construct a sidewalk or curb or both in a good and substantial manner and in accordance with the City ordinances, regulations and plans therefore which will be furnished by the City Engineer upon application. The City Engineer shall file with the Auditor an affidavit of the posting of the notice, stating when and where the same was posted, and shall furnish upon request proper specifications, standards and information for the construction thereof. The City Engineer shall send by mail a notice to construct the sidewalk or curb, or both, to the owner of the property, if known, or to the agent of the owner, if known, directed to the post office address of the owner or agent, when the post office address is known to the City Engineer. If the post office address is unknown to the City Engineer, the notice shall be directed to the owner or agent at the address where the notice was posted. A mistake in the name of the owner or agent, or a name other than that of the owner or agent of such property, or any mistake in the address, shall not render void the notice, but in such case the posted notice shall be sufficient.

17.28.035 Curb and Intersection Corner Ramps.

(Amended by Ordinance No. 184957, effective November 25, 2011.)

- A.** All newly constructed or reconstructed sidewalk intersection corners shall have included, either within the corner or within the curb area immediately adjacent thereto, ramps allowing access to the sidewalk and street by persons with disabilities as mandated by the Americans with Disabilities Act.
- B.** The ramps referred to in Subsection (a) shall be constructed in a good and substantial manner and in accordance with the plans and specifications established by the City Engineer. The particular plan to be used at a given intersection corner shall be appropriate to the location as determined by the City Engineer.

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17.28.040 Construction Alternatives.

(Amended by Ordinance Nos. 182760 and 184957, effective November 25, 2011.) In case three or more adjacent properties are posted with notice to construct sidewalk or curb, or both, as set forth in Section 17.28.030, they may petition for such construction as a local improvement. Otherwise it shall be the duty of the owners of properties posted with such notice to construct the same. Before constructing the sidewalk or curb, or both, the owner, designated agent or the occupant of the property intending to construct the same, shall obtain from the Director of the Bureau of Transportation a permit therefore, which permit shall prescribe the kind of sidewalk or curb, or both, to be constructed, the material to be used and the width thereof. After notice to construct sidewalk or curb, or both, has been posted, the owner, agent or occupant shall construct the same within 30 days from the date of posting, or within said time shall show cause, if any there be, by a written remonstrance addressed to the City Council stating why the same should not be constructed. The Council will grant a hearing to the remonstrator at a regular meeting as soon thereafter as the same can be filed on regular Council Calendar. The Council will thereupon determine whether or not such sidewalk or curb, or both, shall be constructed. If the remonstrator is not present at the time of such determination by the Council, the City Auditor shall forthwith notify such person of such determination of the Council by mail sent to the address given upon the written remonstrance. Failure of the City Auditor to send the notice, or failure of the remonstrator to receive the same, or any other mistake therein, shall not render void or ineffective the lien to be imposed upon the property in the event of City construction. In the event that the Council determines that the sidewalk or curb, or both, shall be constructed, the owner or designated agent or the occupant shall within 10 days thereafter begin the construction thereof and diligently prosecute the same to final completion.

17.28.050 City Construction if Owner Fails to Construct.

(Amended by Ordinance No. 182760, effective June 5, 2009.) If no petition for local improvement is filed, and if the owner, agent or occupant of property posted with notice construct sidewalk or curb, or both, shall fail, neglect or refuse to begin the construction of the sidewalk or curb within 30 days after posting of notice, or within 10 days after order by the Council in the event of a remonstrance, the City shall construct the same as soon thereafter as such work can be conveniently scheduled. The cost for the City to have the repairs made shall be assessed upon the property.

17.28.060 Location, Size and Materials of Sidewalks and Curbs.

(Amended by Ordinance Nos. 182760 and 184957, effective November 25, 2011.) The Director of the Bureau of Transportation shall determine the distance between the improved sidewalk and the property line, which, in residential areas shall generally be 2 feet unless a different distance is specified. The width of the improved sidewalks, the grade thereof, materials for construction or reconstruction, and the location and size of curbs, shall be designated by the City Engineer. The class and kind of any fill materials and requirement thereof shall be designated by the City Engineer. Based on a finding of necessity, the Director of the Bureau of Transportation may permit installation of a temporary sidewalk for a specified period, and the City Engineer shall designate specifications for the temporary improvement.

17.28.065 Bicycle Parking.

(Added by Ordinance No. 177028; amended by Ordinance Nos. 178173, 182389, 182760 and 184957, effective November 25, 2011.) Bicycle parking in the right-of-way adjacent to multifamily, commercial, institutional, employment, or industrial land uses helps to achieve the City's goal of making the bicycle an integral part of daily life in Portland. Bicycle parking in the right-of-way provides convenient, accessible, and clearly visible parking in areas where buildings are generally built to the sidewalk.

- A.** As a part of street improvements adjacent to developing or redeveloping property, the Director of the Bureau of Transportation may, where determined appropriate and practicable, require one or more bicycle racks.
- B.** The location and type of rack shall be determined by the Director of the Bureau of Transportation based on sidewalk width, location of other elements in the right-of-way, and adjacent land uses.
- C.** Bicycle Parking Fund. An owner of a building without surface parking, or without parking or open areas within 50 feet of the main entrance may choose to pay a fee to the Bureau of Transportation Bicycle Parking Fund in lieu of short-term bicycle parking required by Table 266-6 in Title 33, Planning and Zoning. The Bureau of Transportation will use the collected fees to install bicycle parking and associated improvements in the right-of-way.

 - 1.** Authority. The City Council delegates authority to the Director of the Bureau of Transportation to adopt administrative rules and procedures necessary to implement provisions of this section. All rules pursuant to this authority shall be filed with the Office of City Auditor and be available for public inspection.
 - 2.** Calculation of required fund contributions. Applicants must contribute the cost to purchase, install and maintain bicycle parking and associated improvements. The cost to purchase, install, and maintain bicycle parking will be adjusted annually as determined by the Director of the Bureau of Transportation.
 - 3.** Payment. The Bicycle Parking Fund fee is due to be paid upon issuance of a building permit. The Director of the Bureau of Transportation is authorized to refund the Bicycle Parking Fund fee where the development approved by building permit is not constructed and the building permit is cancelled.
 - 4.** Width of Sidewalk Corridor. The sidewalk corridor where bicycle parking is to be installed must meet or exceed the width recommended in the Pedestrian Design Guide for installation of bicycle parking. In no case may bicycle parking, installed through the Bicycle Parking Fund be placed in a sidewalk corridor of less than 10 feet in width.

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17.28.070 Owners to Repair Sidewalks and Curbs Notice to Repair.

(Amended by Ordinance Nos. 183348 and 184957, effective November 25, 2011.) After a sidewalk has been improved or constructed, either alone or in combination with a curb, the owner of land abutting the street area in which the sidewalk has been constructed shall be responsible for maintaining such sidewalk and curb in good repair. If the City Engineer finds that any such sidewalk or curb needs repair, he or she shall post a notice on the adjacent property headed "Notice to Repair Sidewalk" (or curb) which shall in legible characters direct the owner, agent, or occupant of the property immediately to repair the sidewalk or curb, or both in a good and substantial manner in accordance with the plans, specification and regulations of the City. The City Engineer shall send by mail a notice to repair the sidewalk or curb, or both, to the owner, if known, of such property, or to the agent (if known) of the owner, directed to the post office address of the owner or agent when known, or if the post office address is unknown, the notice shall be directed to the owner or agent at the address where the notice was posted. A mistake in the name of the owner or agent, or a name other than that of the true owner or agent of the property, or mistake in address shall not invalidate said notice, but in such case the posted notice shall be sufficient.

17.28.080 Permit for Sidewalk and Curb Repairs.

(Amended by Ordinance Nos. 183348 and 186083, effective July 12, 2013.) After notice to repair defective sidewalk or curb, or both, has been posted, the owner, agent or occupant shall make the repairs within 60 calendar days from the date of posting. Any person desiring to repair a defective sidewalk, curb or both, either before or after notice to repair has been posted, shall first obtain a permit.

The permit shall prescribe the kind of repair to be made, the material to be used, and specifications therefore, including the location and size. Any person desiring to construct or reconstruct sidewalk or curb, or both, shall first obtain a permit therefore and pay the fees elsewhere prescribed in Chapter 17.24.

17.28.090 Repair by City of Portland.

(Amended by Ordinance Nos. 183348 and 186083, effective July 12, 2013.) If the owner, agent or occupant of any lot, part thereof or parcel of land which has been posted with notice to repair a sidewalk or curb, or both, shall fail, neglect or refuse to make repairs within the period of 60 calendar days after posting, the City Engineer may as soon as the work can be conveniently scheduled, make the repairs, and the cost shall be determined and assessment made as provided in this Chapter.

17.28.100 Driveways Defined.

(Amended by Ordinance No. 184957, effective November 25, 2011.) As used in this Chapter, the following terms shall have the meaning as set forth below.

- A. "Driveway"** means a paved way for vehicular traffic extending from the roadway to the property line across a sidewalk, whether or not such sidewalk is improved, for the purpose of providing access to parking or maneuvering space on abutting property.

- B. “Residential driveway”** means a driveway serving a one or two family residence.
- C. “Commercial driveway”** means a driveway serving any property except a one or two family residence.

17.28.110 Driveways - Permits and Conditions.

(Amended by Ordinance Nos. 177028, 179845, 182760, 184957 and 186083, effective July 12, 2013.) Upon appropriate application and payment of fees, as provided in Chapter 17.24, the Director of the Bureau of Transportation may issue a permit to construct a driveway in the street area subject to the following conditions:

- A.** All driveways shall be constructed according to plans, specifications, and any special conditions fixed by the City Engineer.
- B.** Location. No portion of a driveway, excluding ramps if required, shall be located closer than 25 feet from the corner of a lot where two streets intersect.
- C.** Width of driveways. A permit to construct a driveway in the street area is subject to the following width provisions:

1. Residential driveway:

Private Property Frontage	Minimum Width	Maximum Width
25 ft. or less	9 ft	12 ft
26 ft. to 50 ft.	9 ft.	20 ft
51 ft. to 75 ft	9 ft	25 ft
76 ft. to 100 ft.	9 ft	30 ft

More than one driveway may be allowed for frontage up to 100 feet with the approval from the Director of the Bureau of Transportation and the City Traffic Engineer. No less than 5 feet of straight curb must separate service driveways regardless of ownership. Each 100 feet of frontage, or fraction thereof, under single ownership shall, for purposes of this Chapter, be considered a separate frontage.

2. Commercial driveway:

Private Property Frontage	Minimum Width	Maximum Width
50 ft. or less	10 ft	20 ft.
51 ft. to 100 ft.	20 ft.*	30 ft.

*A commercial driveway for a residential use that provides access for 10 parking spaces or less can be a minimum width of 10 feet, provided the access is on a local service street and will be designed to allow forward motion of all vehicles. However, the City Traffic Engineer may establish

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conditions regarding width that are deemed necessary to ensure the safe and orderly flow of pedestrians, bicycles and vehicular traffic. These conditions are based on evaluation of speeds, volumes, sight distance, and any other transportation factors that are relevant.

More than one driveway may be allowed for frontage up to 100 feet with the approval from the Director of the Bureau of Transportation and the City Traffic Engineer. No less than 5 feet of straight curb must separate service driveways regardless of ownership. Each 100 feet of frontage or fraction thereof under single ownership shall for purposes of this Chapter be considered a separate frontage.

3. Driveways shall be measured lengthwise with the sidewalk on the property line side, and such measurement shall not include the width of ramps extending to the regular sidewalk grade. Ramps, if required, do not constitute part of required minimum or allowed maximum width. Determination of the need or appropriateness of ramps shall be within the sole discretion of the City Engineer.
 4. Any driveway at variance with these width limitations shall not be permitted unless the Director of the Bureau of Transportation specifically approves or requires the same. Any applicant requesting a driveway at variance with these standards shall provide such information as the Director of the Bureau of Transportation and the City Traffic Engineer may require in support of the application. The Director of the Bureau of Transportation may establish conditions deemed necessary to insure the safe and orderly flow of pedestrian and vehicular traffic and the decision of the Director of the Bureau of Transportation as to the widths and location of driveways shall be final and conclusive.
 5. The Director of the Bureau of Transportation may require joint or shared use of a driveway by two properties in separate ownership. The Director of the Bureau of Transportation may establish conditions regarding the number, configuration, and use of driveways necessary to ensure the safe and orderly flow of pedestrians, bicycles, and vehicular traffic, preserve on-street parking, preserve or establish street trees, maximize opportunities for vegetated stormwater management, reduce conflicts with pedestrians and bicycles and enhance the pedestrian environment.
- D.** The Director of the Bureau of Transportation may refer any driveway permit application to the City Traffic Engineer and/or the Oregon Department of Transportation as appropriate, for a review of the location and width. The City Traffic Engineer shall recommend such conditions and limitations regarding the location and operation of driveways as are found necessary to insure the safe and orderly flow of pedestrian, bicycles and vehicular traffic and preserve on-street parking.

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- E.** The Director of the Bureau of Transportation may require any applicant for a driveway permit to provide evidence that the proposed driveway will access legal parking and maneuvering space on property as set forth in Title 33, Planning and Zoning regulations. The Director of the Bureau of Transportation may refuse to issue a permit if the applicant cannot show evidence that on property parking and maneuvering space is in compliance with Title 33, Planning and Zoning regulations.
- 1.** If the Director of the Bureau of Transportation finds that a property owner is permitting access where a properly constructed driveway does not exist, the Director of the Bureau of Transportation may post notice and require termination of access or construction of a driveway in accordance with the requirements of this Chapter.
- F.** Revocability of driveway permits.
- 1.** The Director of the Bureau of Transportation may revoke any driveway permit or require the modification of any driveway if:
- a.** The area occupied by the driveway is needed for the public convenience;
- b.** Continued operation of the driveway interferes with the safe and orderly flow of pedestrians, bicycles or vehicular traffic; or
- c.** The abutting owner has failed to comply with all specifications and conditions of the permit; or
- d.** The driveway does not access legal parking and maneuvering space on abutting property.
- 2.** The Council may revoke any driveway permit if they deem such action will be in the public interest.
- G.** Enforcement powers. Within 60 calendar days of written notice from the Director of the Bureau of Transportation to close or modify a driveway, the abutting property owner shall obtain any required permits and make the required corrections. If the abutting owner fails to make the required corrections within 60 calendar days, the City may perform the required work at the expense of the abutting property owner and the cost shall be determined and assessment made as provided in this Chapter.

17.28.120 After Construction Driveways Deemed Part of Sidewalk.

After a driveway has been constructed, it shall be deemed a part of the sidewalk whether or not there is a sidewalk improvement extending along the balance of the frontage property, for all purposes of repair or reconstruction. Requirements relating to construction or reconstruction of a sidewalk as provided in this Chapter, shall be applicable to

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reconstruction of a driveway, except that the property owner shall have no option to petition for a local improvement solely for such purpose.

17.28.130 Reconstruction of Existing Driveways.

(Amended by Ordinance No. 186716, effective August 15, 2014.) If the City Engineer finds that any driveway does not conform to the requirements of this Chapter and should be reconstructed for the protection or convenience of pedestrians or vehicles using the street area, the City Engineer may post notice and require the reconstruction or removal of the driveway. If the abutting property owner fails to make the required corrections within 60 days the City may perform the required work at the expense of the abutting property owner, and the cost shall be determined and assessment made as provided in this Chapter.

17.28.140 City Charges for Construction or Repair of Sidewalks, Curbs and Driveways.

(Amended by Ordinance No. 182760, effective June 5, 2009.) The property owner shall be charged for the construction, reconstruction or repair of sidewalks, curbs and driveways. The cost for the City to have repairs made will be assessed upon the property.

- A.** Special structural, excavation and fill jobs and jobs in areas of traffic and pedestrian congestion shall be charged at the discretion of the City Engineer. Determination of whether a job is of special type shall be made by the City Engineer.
- B.** Cost basis charges for work may be made at the discretion of the City Engineer if the actual cost can be conveniently and accurately determined.

17.28.150 Billing for Charges.

(Amended by Ordinance No. 183348, effective December 18, 2009.)

- A.** When work is completed by the City on any construction, reconstruction or repair of a sidewalk, curb or driveway, the amount of the charge shall be determined by the City Engineer or responsible bureau and reported to the City Auditor. The City Auditor shall calculate a proposed assessment that includes the amount of the improvement charge plus 10% of the charge to defray the administrative costs of notice, assessment and recording.
- B.** The City Auditor shall prepare a proposed assessment notice for the owner of each property or the owner's agent as shown in the County tax records. The notice shall be mailed at least 21 calendar days before the public hearing on the proposed assessment, and the notice shall consist of the following information:
 - 1.** The legal description and site address of the property;
 - 2.** The amount of the proposed assessment against the property;
 - 3.** The manner and deadline for filing a written remonstrance to the proposed assessment amount;

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4. The date, time and location of the public hearing for Council consideration of the proposed assessment; and
 5. Contact information for sidewalk repair.
- C.** Any owner of property proposed to be assessed for sidewalk repair may file a remonstrance to the proposed assessment with the City Auditor. The remonstrance must be in writing and received by the City Auditor via US mail or hand delivered no later than 5:00 PM eight (8) calendar days prior to the hearing by the City Council on the proposed final assessment. Upon receipt of a timely filed remonstrance the City Auditor shall remove the property from the filing of the proposed assessment before the council hearing date, and shall refer the remonstrance to the responsible bureau for follow-up and response.
- D.** The City Auditor shall mail the proposed assessment notice by first class mail to the owners of the affected property. The notice shall be deemed given upon deposit in the U.S. mail.

17.28.160 Assessment of Charges.

(Amended by Ordinance Nos. 182760 and 183348, effective December 18, 2009.)

- A.** The City Auditor shall refer to the City Engineer or responsible bureau all remonstrances and remove from further assessment action the proposed assessments which are associated with the remonstrances. The City Engineer or responsible bureau shall review each remonstrance by taking the following actions:
1. Determine whether the improvement work was required by Code and whether the conditions required the improvements, whether the required improvements are consistent with Code and City specifications, and whether the improvement charges are calculated as provided by Code; and
 2. Determine the extent of actions or adjustments which are necessary to bring the proposed assessment into compliance with Code and program standards; and
 3. Mail a statement of findings to the remonstrating property owner, and file a copy with the City Auditor. The findings shall include a statement that the property owner may appeal the determination to the Council.
- B.** The Council shall conduct a public hearing on the proposed assessments, however is should be held no sooner than 20 days following the date of the proposed assessment notice as provided in this Chapter. The Council shall consider and make its determinations based on the requirements of this Code and the City specifications maintained by the City Engineer. The Council shall affirm or modify the proposed assessments based on its findings. The Council's decisions shall be

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implemented by ordinance which sets forth its findings and decision. The decision of the Council may be appealed to the court by writ of review.

- C.** Following adoption of the assessing ordinance, the City Auditor shall mail a final assessment notice to the owners of the affected property as shown on the last available assessment roll in the office of the county assessor. The notice shall be deemed given upon deposit in the U.S. mail. The notice shall contain the following information:
- 1.** The legal description and site address of the property;
 - 2.** The final assessment amount;
 - 3.** A statement that the final assessment is recorded in the Docket of City Liens, and is a lien which has first priority against the property as provided by state statute;
 - 4.** The manner and deadline for paying the final assessment in full or requesting to pay the final assessment in installments if authorized by Code;
 - 5.** The interest, penalties and collections costs which shall be charged if the final assessment is not paid or an installment payment contract is not filed before the deadline contained in the notice; and
 - 6.** A statement that delinquent final assessments may be collected by foreclosure and property sale.
- D.** The City Auditor shall maintain a Docket of City Liens containing final assessments on property. Any unpaid final assessment shall be recorded in the City lien docket, and it shall be binding upon the property owner and all subsequent property owners of the property or any segregated part of it. The docket shall stand thereafter as a lien docket the same as ad valorem property taxes assessed in favor of the City against each lot or parcel of land until paid, for the following:
- 1.** The amount of the unpaid final assessments docketed, with accrued interest at the rate determined by the City Council, or in the case of an installment contract, at the rate set forth in the contract; and
 - 2.** Any additional interest, penalties, or billing charges imposed by the City with respect to any installments of final assessments which are not paid when due.
- E.** All unpaid final assessments together with accrued and unpaid interest and penalties and billing charges are a lien on each lot or parcel of land respectively, in favor of the City and the lien shall have first priority over all other liens and encumbrances whatsoever.

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- F.** The City shall enforce assessment liens and installment payment contracts under this Chapter in the same manner as other City assessments as set forth in Title 5.

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CHAPTER 17.30 - STREET IMPROVEMENTS

(Chapter repealed by Ordinance No. 177124,
effective January 10, 2003.)

**CHAPTER 17.32 - PUBLIC SEWER AND
DRAINAGE SYSTEM PERMITS,
CONNECTIONS AND MAINTENANCE**

(Chapter replaced by Ordinance No. 186659;
effective July 18, 2014.)

Sections:

17.32.010	Purpose.
17.32.020	Definitions.
17.32.030	Permit Required.
17.32.040	Types of Permits and Reviews
17.32.050	Work Allowed and Required Under Permit.
17.32.060	Permit-Related Records.
17.32.070	Maintenance of Sewer and Drainage Systems.
17.32.080	Use and Access Permits
17.32.090	Connection Permits.
17.32.100	Public Works Permits
17.32.110	Permit and Review Fees.
17.32.120	Reimbursements for Work.
17.32.130	Inspections.
17.32.140	Enforcement.
17.32.150	Compliance Cases and Appeals.
17.32.160	Conflict.
17.32.170	Severability.

17.32.010 Purpose.

This Chapter regulates access and connection to, and the use, construction, modification, maintenance, repair or removal of, components of the City sewer, storm sewer and drainage systems and their easements. This Chapter operates in conjunction with Chapter 17.38 to regulate the collection, conveyance and disposal of sanitary and stormwater discharges from public and private properties. This Chapter is administered by the Director of the Bureau of Environmental Services (BES).

17.32.020 Definitions.

(Amended by Ordinance No. 186902, effective December 26, 2014.) As used in this Chapter, the following definitions apply:

- A. “Building Sewer”** means that portion of the horizontal piping system that receives the discharge of building drains and extends to a public sewer, private sewer, private sewage disposal system, or other approved discharge point; and is located on private property.
- B. “Capacity”** means the flow volume or rate for which a specific facility is designed to safely contain, receive, convey, infiltrate, or reduce pollutants from sanitary

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sewage, stormwater, wastewater, or other discharge in order to meet a specific performance standard.

- C. **“City Storm Sewer and Drainage System”** means a City conveyance or system of conveyances, including but not limited to pipes, pumps, drainage ditches, constructed channels, groundwater-related disposal systems, underground injection control devices, stormwater management facilities, and storm drains, that are designed or used to collect and transport stormwater. “City storm sewer and drainage systems” does not include natural streams, creeks, ponds, lakes, a combined sewer, or part of a Publicly Owned Treatment Works, as defined in 40 CFR 122.2
- D. **“Combined Sewer”** means a sewer designed to convey both sanitary sewage and stormwater.
- E. **“Commercial or Industrial Occupancy”** means any structure or facility wherein preparation, processing, treating, making, compounding, assembling, mixing, improving, or storing any product or any solid, liquid or gaseous material for commercial or industrial purposes occurs, or wherein cleaning, processing or treating of tanks, vats, drums, cylinders or any other container used in transportation or storage of any solid, liquid or gaseous material for commercial or industrial purpose occurs.
- F. **“Common Private Sewer System (also called Party Sewer)”** means that portion of a building sewer that:
1. Is not owned by the City of Portland;
 2. Is used for draining more than one building under different ownership; and
 3. Conveys the discharge to a sewer service lateral, public sewer, private sewage disposal system, or other point of disposal.
- Common private sewers are found on private property and in private and public rights-of-way, including easements.
- G. **“Connection”** means the connection of all sanitary waste and drainage disposal lines from all development on a property to the public sewer and drainage system.
- H. **“Conveyance”** means the transport of sanitary sewage, stormwater, wastewater or other discharge from one point to another point.
- I. **“Director”** means the Director of the Bureau of Environmental Services or the Director’s designee.
- J. **“Discharge Point”** means the connection point or destination for a discharge leaving a site.

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- K. “Drainage”** means the flow of waters across public and private properties.
- L. “Drainage Improvements”** means management facilities or modifications to storm sewers, drainage systems or drainage patterns to address safety issues, increase capacity, or improve water flows or quality.
- M. “Green Street”** means a vegetated stormwater management facility located within a public or private right-of-way.
- N. “Groundwater Discharge”** means a discharge pumped or directed from the ground. Groundwater-related discharges include but not limited to, subsurface water from site remediation and investigations, well development, Brownfield development, discharges from footing and foundation drains, and subsurface water associated with construction or property management dewatering activities.
- O. “Nonconforming Sewer”** means a private sanitary sewer that is:
1. Not on the same public or private property as the structure or structures being served by the sewer; and
 2. Not located within a recorded sewer easement or subject to a recorded covenant for easement regarding use of the sewer and meeting the standards for easements specified in administrative rules.
- P. “Public Right-of-Way”** means the area within the confines of a dedicated public street, an easement owned by the City, or other area dedicated for public use for streets or public utility facilities.
- Q. “Public Sewer Easement”** is a grant of the right by a property owner to the City to use land for placement and maintenance of public sewer facilities.
- R. “Route of Conveyance”** means the BES-approved path of conveyance from a property or private stormwater system to the approved discharge point.
- S. “Route of Service”** means the BES-approved path of connection of a building sewer or private stormwater conveyance to a City sewer, storm sewer or drainage system.
- T. “Sampling Manhole”** means a manhole in a sewer lateral or other monitoring access acceptable to BES, and that allows for observation, sampling or measurement of all discharges to the City’s sewer or drainage system.
- U. “Stormwater”** means water that originates as precipitation on a particular site, basin, or watershed.
- V. “Wye”** means a connection joint or pipe between a public sewer and more than one sewer service lateral, building sewer, or common private sewer system.

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17.32.030 Permit Required.

- A.** It is unlawful for any person to take the following actions without first obtaining authorization from the Director and approval from the BES Chief Engineer via permit, contract or other legal agreement and paying applicable fees:
- 1.** Access any City sewer or drainage system component;
 - 2.** Encroach into a City sewer easement;
 - 3.** Dig up, break into, excavate, disturb, dig under, or undermine any public street or City sewer easement for the purpose of laying or working upon any City or private sewer or drainage improvement of any kind;
 - 4.** Make connection with, obstruct or interfere with the City sewer, storm sewer or drainage system;
 - 5.** Cut, break, connect, modify or remove any component of the City sewer or drainage system;
 - 6.** Direct water, from any source, on private property to run onto any City sidewalk, street, easement or right of way.
- B.** In the case of the need for emergency repair to a City sewer, storm sewer or drainage system component to protect public health, safety or the environment, the person making the repair may commence work without first obtaining a permit provided that:
- 1.** The person immediately notifies the City of the need for repair;
 - 2.** Any emergency repair work is limited to what is needed to remove the emergency situation as deemed necessary by BES Chief Engineer;
 - 3.** The work is performed in compliance with standard City construction specifications, the Sewer and Drainage Facilities Design Manual, and the Stormwater Management Manual; and
 - 4.** The person making repairs files an application for a BES permit within three business days of the emergency and complies with all permit conditions and pays all applicable fees.
- C.** Repair of nonconforming sewers located in public right-of-way or a City easement is prohibited unless the BES Chief Engineer determines that it is in the public interest to allow the nonconforming system to remain.
- D.** The Portland Bureau of Transportation may require a permit and approval from the BES Chief Engineer to construct and attach drainage improvements to the City

sewer, storm sewer and drainage system as needed to provide stormwater drainage for public streets.

- E.** Except as otherwise allowed by the Director, it is unlawful for any person to allow or cause a connection that will result in the discharge of sanitary sewage into a City storm sewer and drainage system.
- F.** Except as otherwise allowed by the Director, it is unlawful for any person to allow or cause a connection that will result in the discharge of storm drainage, collected groundwater or other water to a public sewer designated by the BES Chief Engineer to be used solely for sanitary sewage.

17.32.040 Types of Permits and Reviews.

The Director has established a permitting system to review, approve and enforce proposals to access, use, connect, modify, repair or remove components of the City sewer, storm sewer and drainage system. BES administrative rules identify application submittal requirements, permit issuance decision-making, inspection, bond, and warranty requirements. In general, the Director authorizes the following permits, reviews, and authorizations:

- A.** Access and system use permits for limited use of sewer systems for monitoring, sampling or other non-structural activity;
- B.** Encroachment reviews for City sewer and drainage systems and their easements, including both temporary staging and permanent structural modifications;
- C.** Connection permits for new laterals or permanent routing of any discharges to the City sewer, storm sewer or drainage system;
- D.** Public works permits for construction, modification, repair or removal of a component to the City sewer, storm sewer or drainage system; and
- E.** Pre-issuance reviews on projects in the vicinity of City sewer, storm sewer and drainage systems that are required to obtain other City permits or authorizations to conduct work.
- F.** Authorization the activities described in Section 17.32.030 through a binding contract or other legally binding agreement or a BES discharge permit or authorization.
- G.** The BES Chief Engineer may refuse to issue a permit if:
 - 1.** In the judgment of the BES Chief Engineer, the proposed work or activity is not suitable in the circumstances or will not be consistent with or protective of existing or proposed public sewer, storm sewer or drainage improvements or activities in the immediate vicinity;

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2. The application is not modified as the BES Chief Engineer deems necessary;
3. The City Engineer has not issued a street opening permit if the public sewer or drainage improvement or proposed work or activity is occurring or will occur within a public right-of-way or area to be designated as a public right-of-way;
4. The application is to repair, replace or upgrade an existing private sewer or drainage system that is nonconforming; or
5. The requirements of any previously issued permit have not been met including the payment of delinquent fees or City charges.

17.32.050 Work Allowed and Required Under Permit.

- A. Upon receipt of the completed application, proper and satisfactory bond, and payment of all applicable fees, the BES Chief Engineer may issue the requested permit, unless there are reasons of public interest to the contrary. The permit may include restrictions or conditions as deemed necessary by the BES Chief Engineer.
- B. All persons doing work under a permit must comply with all the conditions of the permit as specified by the Director and perform work to the standards set by the BES Chief Engineer. The BES Chief Engineer may establish standards for particular types or classes of work to be performed by persons permitted to work on BES facilities in streets, easements, or other public property. Such conditions may include:
 1. Full payment of permit fees.
 2. Specifics about the kind of work and the time in which the same is to be completed.
 3. Such other requirements as the BES Chief Engineer finds appropriate in the public interest.
- C. The BES Chief Engineer may refuse to accept work that is not in full compliance with the plans, specifications, permit or other contract documents. If the work is refused, it will not be accepted unless it is brought into full compliance.
 1. All work must comply with the following design and construction standards;
 - a. Sanitary, wastewater or other discharges to the sanitary or combined system must comply with the Sewer and Drainage Facilities Design Manual.

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- b.** Stormwater, groundwater discharge or other waters discharged to the City's storm sewer and drainage system must comply with the Stormwater Management Manual and Chapter 17.38.
- D.** All components of the City sewer, storm sewer and drainage system must be located within public rights-of-way, including easements. The width of public rights-of-way must be adequate to allow reasonable access for inspection, maintenance, repair and replacement, using standard construction methods. The minimum width for City sewer, storm sewer or drainage easements located outside of the public right-of-way is 15 feet. The Director may require enlargement of an easement as necessary to address topographic conditions, the design of the improvement, or other relevant factors.
- E.** It is unlawful for any person who obtains a permit to fail or refuse to immediately remove all surplus sand, earth, rubbish, and other material from public streets and other public areas. All public streets, easements, and other public properties must be repaired or replaced to a condition satisfactory to the City Engineer, or the BES chief Engineer for sewer, storm sewer and drainage easements, at the permittee's own expense for the period of two years from the date of the completion of the work, as acknowledged in writing by the City.

17.32.060 Permit-Related Records.

BES will keep a record of permitted activities and improvements made under permit, permits issued under this Chapter, permit conditions, and the dates of acceptance of improvements. Any plans, specifications, survey notes, or other original documents as required by the BES Chief Engineer that were prepared for or produced during permit application or the design of, construction of, or connection to of a public sewer or drainage improvement, become the property of the City and must be delivered to the BES Chief Engineer before acceptance of the improvement by the BES Chief Engineer. The permittee must provide copies of any sampling data or other information obtained as a result of accessing the City sewer, storm sewer and drainage system.

17.32.070 Maintenance of Sewer and Drainage Systems.

Sewer system maintenance obligations including inspection, rehabilitation, routine cleaning and repair are based on ownership of the system:

- A.** Private Systems. A sewer or drainage system that was not constructed by the City, built under a public works permit, or otherwise accepted pursuant to Subsections 17.32.070 B.1. or B.2. must be maintained by the parties served by the system, regardless of whether the system is located within a public right-of-way.
 - 1.** If any portion of an existing sewer or drainage system extends into a public right-of-way, the property owner must obtain a permit pursuant to Chapter 17.24 before beginning work within the right-of-way.

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2. For a sewer or drainage system located in a public right-of-way that is under either private or unclear ownership, the BES Chief Engineer may grant or deny a permit to repair, upgrade, or replace the system as provided by Section 17.32.030. Such a system may only remain in the public right-of-way at the discretion of the BES Chief Engineer.
 3. Incidental, inadvertent, or emergency City maintenance of private sewer or drainage systems or systems with unclear ownership does not obligate the City to perform future maintenance, imply acceptance of the system, or confer ownership of the system on the City.
- B. Public Systems.** A sewer or drainage system constructed by the City, constructed under a public works permit, or accepted by the City pursuant to Subsections 17.32.070 B.1. or B.3. will be maintained by the City as explained below in this Section unless otherwise specified by written agreement with the City.
1. **Limits of City Maintenance Responsibility.** The City maintains City sewer and drainage improvements that are located in City rights-of-way and that are described as part of the City public sewer, storm sewer and drainage system. However, the City only maintains sewer laterals as follows:
 - a. For a City-paved street with curbs, the City will maintain a lateral from the sewer main to the street-side curb face nearest the property being served. If there is more than one curb, as with stormwater facilities, the City will maintain to the street-side curb face closest to the property line. Otherwise, the City will maintain only the wye or tee connection for sewer laterals.
 - b. For a City-paved street without curbs, the City will maintain a lateral from the sewer main to the edge of the City paved street area.
 - c. Under Subsections 17.32.070 B.1.a. and b., when the sewer main is located in the right-of-way between the property line and the street-side curb face closest to the property line, the City will maintain only the wye or tee connection for the lateral.
 - d. For an unpaved street, the City will maintain those portions of any sewer lateral within an area of right-of-way up to 28 feet wide and centered on the centerline of the City right-of-way, as determined by the City, as follows:
 - (1) When the sewer main is within the 28-foot maintenance area, the City will maintain the lateral to the limit of the maintenance area;
 - (2) When the sewer main is outside the 28-foot maintenance area and at least a portion of the sewer service lateral lies

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within the maintenance area, the City will maintain the lateral to the limit of the maintenance area; and

- (3)** When the sewer main is outside the 28-foot maintenance area and no portion of the sewer service lateral lies within the maintenance area, the City will maintain only the wye or tee connection for the lateral.
- e.** In City sewer, storm sewer and drainage system easements, the City will maintain public sewer mains and only the wye or tee connections for sewer service laterals.
 - f.** Those portions of a sewer service lateral not addressed by Subsections 17.32.070 B.1.a. through d. are the responsibility of the property owner receiving service through the lateral.
- 2.** Acceptance of Systems with Unclear Ownership. The Chief Engineer may agree to conduct future maintenance of a sewer or drainage system located in a public right-of-way or City utility easement where the ownership is unclear if, in the judgment of the BES Chief Engineer, the public will benefit thereby and:

 - a.** The system conveys only domestic sanitary or stormwater flows from residential property; or
 - b.** The system has been specifically modified through City permit or by the City to accept stormwater flows from City rights-of-way or other City-controlled property.
 - c.** Acceptance of a system under this Section does not include or imply acceptance by the City of any maintenance responsibility, cost, liability or damage that arises from conditions or use of the system before acceptance by the City.
- 3.** Acceptance of Systems from Other Agencies., utilities or Individuals. The BES Chief Engineer may accept sewer, storm sewer and drainage systems from other public or private utilities, public agencies, non-profit groups or other persons as the BES Chief Engineer deems appropriate. This acceptance may include full ownership or only assumption of maintenance responsibilities.
- 4.** Adoption of Private Systems in the Public Right-of-Way. The BES Chief Engineer may agree to take ownership of a private sewer system or drainage improvement in the City right-of-way as provided by administrative rule. At the discretion of the BES Chief Engineer, a system meeting the following general criteria may be adopted:

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- a.** All the properties connected to the system are participating in the City's Nonconforming Sewer Conversion Program pursuant to Chapter 17.33;
 - b.** The sewer system conveys only domestic sanitary or stormwater flows from residential property;
 - c.** The owners of all properties connected to the system provide the City with detailed information about the design, location, and condition of the system, and the properties connected to it as specified by administrative rule;
 - d.** The owners of all the properties connected to the system relinquish all claims to the system; and
 - e.** All branch fees assessed by the City are paid or financed.
- 5.** A system accepted under Subsection 17.32.070 B.1. or adopted under Subsection 17.32.070 B.2. will be added to the City maintenance roles as of the date of acknowledgment by the BES Chief Engineer.
- 6.** The City's responsibility for maintenance of any sewer or drainage system, branch or connection point is subject to the City's annual budget appropriation and will be limited to the level of service dictated by the City Council's discretionary budget decision. The City assumes no responsibility for activities requiring a level of maintenance in excess of the level for which funds have been appropriated.
- 7.** Any private piping, collection or conveyance structures needed to provide service to or used to transport discharges to the City's sewer, storm sewer or drainage system, will be the sole responsibility of the property owner(s) served by such systems. System installation, maintenance and repair will occur at the expense of the applicable property owner(s).
- 8.** Volunteer Maintenance. Property owners adjacent to City green street or other drainage improvement are not responsible for routine maintenance of the facilities but may voluntarily perform the following tasks with BES approval:
 - a.** Trash and debris removal (not including sediment);
 - b.** Weed removal;
 - c.** Leaf pick up and removal;
 - d.** Removal of dead plantings;

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- e. Watering of vegetation; and
- f. Clearing inlets and outlets to allow stormwater to freely enter and exit the facility

C. Nuisance Abatement.

1. The BES Chief Engineer may determine that a sewer or drainage improvement located in a public right-of-way that is under either private or unclear ownership constitutes a public nuisance if it:
 - a. Impairs or threatens to impair the operation, maintenance or installation of any street or public utility;
 - b. Is so deteriorated that its flows infiltrate or threaten to infiltrate any public utility or impact or threaten to impact the support structures of any street or public utilities;
 - c. Violates City operation, maintenance or construction standards or rules, or
 - d. Otherwise creates a public health or safety hazard.
2. Summary abatement of the nuisance is authorized when the BES Chief Engineer determines it is necessary to take immediate action to meet the purposes of this Title.
3. Notice to the responsible party before summary abatement is not required. Following summary abatement, the BES Chief Engineer will notify all owners identified in this Chapter or Chapter 25.09 as having maintenance or repair responsibilities. An error in the name of the property owner or address listed in the county assessment and taxation records does not affect the sufficiency of the notice.
4. The City will bill each property that the City determines caused or contributed to the nuisance to recover the costs of abatement. If the amount due is not paid in full within 30 days of the date of notice, the City may place a lien against the property.

See Figure 13 for an example visual representation of ownership situations.

17.32.080 Use and Access Permits.

- A. Access to or use of the City sewer, storm sewer and drainage system requires the written approval of the Director and payment of all applicable fees. Public agencies or BES discharge permittees may be eligible for multi-use or programmatic

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permits. Structural modification of the City sewer, storm sewer and drainage systems requires a public works permit under Section 17.32.100.

- B.** Drainage System Modifications. Modifications of any public or private stormwater management systems require the written approval of the Director.

17.32.090 Connection Permits.

Connecting to a City sewer, storm sewer or drainage system, requires the written permission of the Director and payment of all applicable fees. A permit application must include the purpose of the work; the name of the street or proposed or existing easement or right of way where work is proposed; the location of potentially affected components of the City sewer, storm sewer and drainage system; the location of the building or lot to be connected by the work (if any); and the location and the area to be drained.

- A.** If the application is for a permit is to connect a commercial or industrial occupancy it must also include:
 - 1.** A description of the business, a plat of the property, plans and specifications for any special installations;
 - 2.** A description of the character and quantity of waters and wastes to be discharged through the connection;
 - 3.** A proposed schedule for work; and
 - 4.** Any further information required by the BES Chief Engineer.
- B.** If the application is for a permit to connect properties outside the City limits, connection approval will be at the sole discretion of the BES Chief Engineer. No connection from property outside the City limits or within a neighboring jurisdiction will be permitted which, in the opinion of the BES Chief Engineer, may overload or otherwise compromise any component of the City sewer, storm sewer or drainage system. Connection of properties outside the City's boundaries is subject to the requirements and limitations of the City's adopted urban services policy.
 - 1.** Application for a permit to connect must be made in writing by the owner or other person having a recorded equitable interest in the property for which the connection is desired. Before a permit can be issued, all fees and special charges must be paid and any permits that may be required for street or highway opening and use must be obtained.
 - 2.** Any person connecting a property outside the City limits to the City sewer, storm sewer or drainage system must enter into a maintenance agreement as may be required by the Director.

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3. Flows from outside the City limits may be required to meet the standards in the stormwater management Manual or the Sewer Drainage Facilities Design Manual, as determined by the BES Chief Engineer based on the needs of the City sewer, storm sewer and drainage system.
- C. All permitted work must meet the following general sewer and drainage system construction standards, if applicable:
1. All discharges must be routed to the City sewer, storm sewer and drainage system by gravity service when possible, unless otherwise approved by the BES Chief Engineer.
 2. If separate City storm and sanitary sewers are available, separate connection must be made to the City's sewer, storm sewer and drainage system from the private property:
 - a. Sanitary sewage from private property must be separately conveyed to the property line and connected through individual laterals for discharge to the City separate sanitary or combined sewer.
 - b. Drainage from private property, whether from the roof of a building, the surface of a structure, footings of a structure or any other surface, groundwater discharge or other drainage must be conveyed separately from sanitary sewage to City systems via an approvable route of conveyance or discharge point to the City storm sewer and drainage system;
 - c. If separate storm and sanitary sewers are not available, but a combined sewer is available, the BES Chief Engineer may require or allow:
 - (1) Separate connections for the separate sewage lines from the property to the City's combined sewer;
 - (2) Joining of the separate lines at the curb line closest to the property line or edge of an easement for single discharge into the City's combined sewer; or
 - (3) Onsite infiltration of surface, groundwater discharge or other drainage to minimize or eliminate the need for offsite discharge.
 3. All discharges must be connected via an approved route of service or route of conveyance to a discharge point approved by the BES Chief Engineer.
- D. The BES Chief Engineer may require that a property owner modify or abandon an existing sewer connection when a new or renovated public sewer becomes

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available. The BES Chief Engineer may dictate a new route of service or route of conveyance and new approved connection point to the City sewer, storm sewer and drainage system for sewage, wastewater or other drainage discharges. A new connection may be:

1. Required or provided by BES as part of an infrastructure replacement project that addresses issues such as but not limited to pipe stability, capacity expansion, water quality improvement, or reduction of inflow or infiltration into existing laterals.
2. Require for a property with a private sewer, storm sewer and drainage system located in City right-of-way to obtain a City encroachment permit;
3. Required in order to remove an illegal connection that is subject to an enforcement action.

17.32.100 Public Works Permits.

A. The construction, modification, repair or removal of a component of the City sewer, storm sewer and drainage system requires a public works permit prior to beginning work. All applicants must complete a public works application form that provides:

1. A description of the proposed work and the applicable public improvements.
2. Locations and names of proposed streets where work is proposed, location of any off-street improvements, and the name of a new proposed plat development, if any.
3. Any other information the BES chief Engineer deems appropriate.

A permit will be issued by the City after the sewer or drainage improvement plans and/or description of proposed work have been approved by the BES Chief Engineer.

B. Prior to City issuance of a permit, the applicant must provide a performance bond, cash, or other financial guarantee in an amount not to exceed the City's estimate for construction and engineering.

C. The BES Chief Engineer will only issue a permit for the construction of a public sewer or drainage improvement in advance of plat recording of a subdivision or planned unit development after:

1. The sewer or drainage improvement plans have been approved;
2. The final plat, with or without required signatures affixed, has been submitted to the Bureau Development Services;

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3. The Bureau of Development Services has given written assurances that subdivision or planned unit development approval conditions have been or will be met;
 4. All applicable easements outside the subdivision or planned unit development have been obtained, and
 5. The applicant has complied with Section 17.32.050 of this Code.
 6. The issuance of a BES public works permit in no way waives any requirements by the City or any other public agency that may be associated with the development of a plat or Planned Unit Development.
- D.** Persons wishing to utilize City design services must include payment of a deposit in an amount to be determined by the Director with the permit application. All deposits must be made before any City design work begins. BES will retain the deposit as compensation for the preparation of design and plans or for review efforts if:
1. A permit application or issued public works permit has had no action or communication for one year from the previous contact; or
 2. A permit is not issued for the proposed improvement within one year from the time the design and plans are reviewed and completed.
 3. If a public works permit is issued for the proposed improvement within one year from the time the design and plans are completed, the amount of the required deposit will be applied to the cost of the permit fee for such improvements.
- E.** In addition to the standard permit conditions of Section 17.32.050, public works permits must meet the following standard conditions:
1. The resulting public improvement must be located in a public easement or public right of way and will come under City control upon plat and easement recording with the County.
 2. The permittee shall hold the City of Portland harmless in writing against any liability that may arise from or in connection with the permitted activity prior to any dedication of rights-of-way or recording of easements. The permittee must assume all risk of loss that may arise in the event the City or any other public agency subsequently requires changes in or additions to plans or refuses to approve all or any part of the permittee's improvements.
 3. The permittee must, at the permittee's own expense, maintain any permitted City sewer or drainage improvement for a period of 24 months following the issuance of a letter of permit completion by the City Engineer. The

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warranty period ensures that workmanship and materials are not defective and that the improvement is operating properly. BES may extend the warranty period for any repairs, alterations or rehabilitations that needed to occur during the original warranty period.

4. Any drainage improvements made on private property and private or shared private/public facility systems allowed in a City right-of-way or easement will remain the maintenance responsibility of the private property owner as a condition of the approved permit and associated maintenance agreement unless accepted as a City maintenance responsibility by the Director.
5. All plats and easements must be recorded with the County prior to final acceptance of the public sewer or drainage improvements.

F. Acceptance of Improvements.

1. Notice of Construction Completion. During the course of construction, and before issuance of a letter of permit completion from the BES Chief Engineer or a certificate of completion from the Bureau of Transportation for joint projects, the BES Chief Engineer will inspect the sewer or drainage improvement and to determine if the improvements were constructed in compliance with the plans, specifications and conditions of the permit and if they meet City standards for quality of workmanship. The BES Chief Engineer will check the improvement for alignment and conformance with the established grade. Once this acceptance is garnered, the maintenance and warranty period will commence.
2. Certificate of Completion of the Maintenance and Warranty Period. All of the work required during the warranty period must be completed to the satisfaction of the Chief Engineer prior to completion certificate issuance and issuance of a warranty completion certificate accepting the improvement.
3. In the event the BES Chief Engineer does not accept a public sewer or drainage improvement within one year after completion of the warranty period, the permittee must remove the improvement and restore the public area to at least its prior condition or to the extent directed by the BES Chief Engineer or City Engineer at the permittee's expense.

17.32.110 Permit and Review Fees.

Permit and review fees are described on the BES annual rate ordinance required by Chapter 17.36. BES may withhold issuance of any permit until applicable connection charges and review fees are paid in full. Multi-tiered permit fees may be applicable.

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- A.** Access, Use and Encroachment Reviews and Permits. Sewer access, use and encroachment permit review fees will recover the cost of BES reviews including all applicable overhead and inspection charges.
- B.** Connection Permits. Connection permit review fees will recover the cost of all City reviews including all applicable overhead charges for review and inspection. Overhead rates are set annually by the Director.
- C.** Public Works Permits. Public works permit review fees recover the true costs of engineering and superintendence services in connection with public sewer or drainage improvement projects based on City records of time, materials, services, overhead and indirect costs incurred to provide the services. Public works permit and review fees recover the costs for all projects completing work whether performed by contract in the name of the City, by private contract between a permittee and a contractor, or directly by the permittee.
- D.** All fees must be paid prior to receiving a permit and commencing work.
- E.** BES may withhold a portion of permit fees and charges to cover costs associated with opening and reviewing a permit. Canceled connection, use, encroachment, proximity review and standard public works permits are generally not eligible for refund unless meeting the criteria set by the Director. Complex public works permits are eligible for refund of the applicable portions of the public works permit deposit not already spent on City design or review services.

17.32.120 Reimbursements for Work.

- A.** Backflow Device Reimbursement. A property owner may submit an application for partial reimbursement of the cost for installation of a sewer backflow device on a combined sewer line. To be eligible, the building or structure must be connected to the City combined sewer system and be in an area vulnerable to sewer backups, as determined by the BES Chief Engineer. All backflow devices installed pursuant to this Section will be owned by the building owner, who must assume the costs of maintenance, repair and replacement.
 - 1.** Backflow devices must be installed per Title 25, Plumbing Regulations.
 - 2.** As of July 1, 1996, if the reimbursement is approved, the building owner must pay the first \$100 of the cost of such installation, and the City pays the next \$1,500 of such costs. The building owner must pay any amount in excess of \$1,600. Payment to the property owner of the City's share of the expense is made upon the Bureau of Development Services' final inspection and the owner's submittal of the plumber's billing for the work.
 - 3.** City participation in the cost of installation does not guarantee or in any manner warrant any backflow device, nor does the City give any warranty

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that the device will prevent future flooding. The City does not assume any responsibility for damages incurred as a result of flooding subsequent to installation of any backflow device. The owner may look to a warranty or guarantee from the manufacturer of the backflow device or the installation contractor.

B. Sewer and Drainage System Extensions.

- 1.** Payment for Extension. When a City sewer or drainage improvement is extended past or to properties, all property owners benefiting from the extension will be assessed a share of the anticipated cost of the extension based on either Local Improvement Districts as described in Chapter 17.08; or other charges as specified in Section 17.36.040.
- 2.** Reimbursement for Extension. The property owner or developer paying for a sewer or drainage system extension that will serve unserved properties will be reimbursed by the City for part of the cost of such extension:
 - a.** The amount of reimbursement for a sewer extension is limited to the amount of revenue that would be received from the line and branch charge established in Section 17.36.040 if, upon acceptance of the sewer by the City, all properties adjacent to and capable of receiving gravity service were to connect. The reimbursement will not exceed the cost of an equal length of 8-inch-diameter sewer line, as determined by the BES Chief Engineer.
 - b.** The amount of reimbursement for a drainage improvement extension is limited to the cost to manage the drainage basin area drained to new facilities that will be accepted by the City for long term maintenance.
 - c.** The reimbursement for any project will not exceed 50 percent of the amount budgeted by the City in any fiscal year, unless otherwise approved by the Director. The total reimbursement in any fiscal year must not exceed the amount budgeted for that purpose in that year; however funds may be committed against the next year's budgeted amount.

17.32.130 Inspections.

- A.** Right of Entry. To the extent permitted by law, BES may enter all private and public premises at any time for the purpose of inspecting for potential violations, connections or for any other lawful purpose. This authorization includes but is not limited to inspection surveying, sampling, testing, photographic documentation, record examination, copying, and installation of devices. Entry may not be

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conditioned upon BES representatives signing any type of confirmation, release, consent, acknowledgement, or agreement.

B. Entry Protocols.

1. The BES representative will present a City photo identification card at the time of entry.
2. The BES representative will comply with reasonable, routine safety and sanitary requirements of the facility or site as provided by the facility operator at the time of entry. The facility operator must provide the BES representative with any facility-specific safety protective equipment necessary for entry.

17.32.140 Enforcement.

A. Violations. It is a violation for any person to fail to comply with the requirements of this Chapter or associated rules. Each day a violation occurs or continues may be considered a separate violation. BES will hold the person or persons solely responsible for complying with BES enforcement actions. Violations of this Chapter or associated rules include, but are not limited to:

1. Failure to obtain a permit for actions in Section 17.32.030, including failure to supply correct application materials;
2. Failure to comply with the conditions of a permit;
3. Failure to comply with the conditions of or prohibited access to a public sewer or drainage easement;
4. Failure to comply with a written directive or timeline of the Director made under authority of this Chapter;
5. Damage to or modification of a public sewer or drainage improvement; and
6. Failure to comply with enforcement actions as identified in the BES Enforcement Program administrative rules (PPD item ENB-4.15).

B. Enforcement Tools. BES may use any or all of the following tools to enforce this Chapter or associated administrative rules: notice of investigation, warning notice, notice of violation, compliance order, requirement to obtain a permit, notice of termination, withholding of permits, withholding of final inspection, violation abatement, legal action, criminal case referral, or referral to other regulatory agencies. BES enforcement actions are described in program-specific administrative rules and the BES Enforcement Program administrative rules (PPD item ENB-4.15).

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- C.** Civil Penalties. Persons violating this Chapter or associated rules may be assessed civil penalties of up to \$10,000 per day per violation according to program-specific administrative rules and the BES Enforcement Program administrative rules (PPD item ENB-4.15). Penalties and other charges will accrue interest from the date of initial City notice assessing the penalty until the penalty is paid in full.
- D.** Cost Recovery. The Director may recover all reasonable costs incurred by the City that are attributable to or associated with violations of this Chapter or associated administrative rules per PPD item ENB-4.15.
- E.** City Summary Abatement. To the extent permitted by law, the Director may recover from the person causing the violation all costs incurred by the City to summarily abate the following:
 - 1.** A violation that is not remedied through required corrective actions;
 - 2.** A situation that poses an imminent danger to human health, public safety, or the environment; or
 - 3.** Continued noncompliance with PCC or associated rules.
- F.** Nothing in this Chapter is intended to impose liability on the City for any injury or damage resulting from the failure of any person to comply with the provisions of this Chapter.

17.32.150 Compliance Cases and Appeals.

(Amended by Ordinance No. 186902, effective December 26, 2014.)

- A.** Reviews and Appeals. A person may request a modification to a BES decision related to this Chapter via an administrative review with BES staff. After the requestor has exhausted all BES program and enforcement program reviews, the requestor may file for an appeal with the Code Hearings Officer per PCC Title 22.
 - 1.** Reviews and appeals of the following may be requested:
 - a.** The determination of a violation of this Chapter or associated rules.
 - b.** The type and level of enforcement action taken by BES.
 - c.** The type and amount of penalty imposed by BES.
 - d.** Compliance due dates.
 - e.** A requirement to obtain a permit.
 - f.** A denial of a permit or a final inspection.

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- a. Required remediation actions.
 2. Reviews and appeals may not be requested for:
 - a. The amount of cost recovery assessment against the person by BES.
 - b. A requirement to meet a technical standard.
 - c. Refusal to accept an improvement into the public maintenance system.
 - d. Refusal to grant permits for modification of a public improvement.
 - e. Specification of the required route of service to connect with a public improvement.
 - f. Other issues identified in individual program-specific administrative rules.
 3. Appeals to the City Code Hearings Officer. An appellant must pay a filing fee in the amount of the Code Hearing fee as part of the appeal request. If the Code Hearings Officer finds in favor or in partial favor of the appellant, BES will reimburse the appellant for the full amount of the fee, and send a check to the appellant via certified mail.
- B. BES Code Compliance Cases.** BES may file a case before the Code Hearings Officer under PCC Title 22 to compel compliance with City regulations. The person committing the violation will be offered the opportunity to present evidence.

17.32.160 Conflict.

This Chapter supersedes all ordinances or elements thereof to the extent that they are inconsistent with or conflict with any part of this Chapter.

17.32.170 Severability.

If any provision, paragraph, word, or Section of this Chapter or associated administrative rules is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, and sections shall not be affected and shall continue in full force and effect.

**CHAPTER 17.33 - REQUIRED PUBLIC
SEWER CONNECTION**

(Chapter replaced by Ordinance No. 183397,
effective January 8, 2010.)

Sections:

17.33.005	Intent.
17.33.020	Definitions.
17.33.030	Sewer Connection Mandated.
17.33.040	Mandated Sewer System Connection Charges.
17.33.050	Converting Nonconforming Sanitary Sewer Connections.
17.33.060	Required Sanitary Sewer Conversion Charges.
17.33.070	Deferrals of Required Sewer Connections.
17.33.075	Financial Assistance for Required Sewer Connection.
17.33.080	Declaration of Nuisance.
17.33.090	Abatement by Owner.
17.33.100	Connection Enforcement.
17.33.110	Actions before the City Code Hearings Officer.
17.33.130	Notice Sufficiency.
17.33.150	Severability.

17.33.005 Intent.

A. The intent of this Chapter is to:

- 1.** Facilitate timely connection of individual properties to the public sewer system when a public sanitary sewer is available;
- 2.** Facilitate the conversion of nonconforming private sewer systems to individual property connections along the route of service approved by the City; and
- 3.** Provide for financial assistance to property owners required to make a new sewer connection.

B. The Bureau of Environmental Services (BES) shall identify the most appropriate means to construct public sewer improvements to facilitate sanitary sewer connections along approved routes of service based on factors that protect public health and safety, and minimize the financial impacts on the City's sanitary sewer utility and utility ratepayers. BES shall establish the criteria used to make system improvement decisions in administrative rules. Unless otherwise established, BES is responsible for administering the provisions of this Chapter.

17.33.010 Administrative Rules and Procedures.

(Repealed by Ordinance No. 185397, effective July 6, 2012.)

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17.33.020 Definitions.

(Amended by Ordinance Nos. 185397 and 186902, effective December 26, 2014.) For the purpose of this Chapter, the following definitions and applicable definitions of Section 17.32.020 will apply:

- A. **“Available Public Sewer”** means a public sewer that is within 100 feet or one-half block, whichever is less, of property to be served, without crossing another property to make the new connection, or such other conditions of availability as are established by administrative rule. In cases of onsite conveyance or disposal system failure, sewer shall be deemed available if within 300 feet.
- B. **“Branch Sewer”** means the public portion of the horizontal piping system that connect from the plumbing system of a building or buildings to a public sewer.
- C. **“Common Private Sewer System (also called Party Sewer)”** means that portion of a building sewer that:
 - 1. Is not owned by the City of Portland;
 - 2. Is used for draining more than one building under different ownership; and
 - 3. Conveys the discharge to a sewer service lateral, public sewer, private sewage disposal system, or other point of disposal.

Common private sewers are found on private property and in private and public rights-of-way, including easements.
- D. **“Connection”** means the connection of all sanitary waste and drainage disposal lines from all development on a property to the public sewer and drainage system.
- E. **“Director”** means the Director of the Bureau of Environmental Services or the Director’s designee.
- F. **“Immediately Available Public Sewer”** means a public sewer to which a property can connect without further extension of the public system.
- G. **“Owner-Occupant”** means an owner who uses the property as his or her primary residence. The individual who has the responsibility for assessments and is occupying the property will be considered the owner-occupant regardless of who holds the deed to the property. An owner who lived at the property before moving to a nursing home or similar facility is considered to be residing at the property if the property is not producing income.
- H. **“Nonconforming Sewer”** means a private sanitary sewer that is:
 - 1. Not on the same public or private property as the structure or structures being served by the sewer; and

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2. Not located within a recorded sewer easement or subject to a recorded covenant for easement regarding use of the sewer and meeting the standards for easements specified in administrative rules.

- I. **“Onsite Sewage Disposal System”** means a cesspool or the combination of a septic tank or other treatment unit and effluent sewer and absorption improvement

See Figure 13 at the end of this Title for graphical representation of these definitions.

17.33.030 Sewer Connection Mandated.

(Amended by Ordinance No. 185397, effective July 6, 2012.)

- A. **Applicability.** Properties having development that generates or may generate sanitary waste must decommission onsite sewage disposal systems and connect to the public sewer when:
 1. The development is not completely connected to a public sewer system;
 2. A public sewer is immediately available without the need for further sewer extension; and
 3. A sewer branch has been provided to curb closest to the property line or property line.
- B. **Timing.** Properties that meet these criteria must be connected to a public sewer within three years of when notice being sent to the property owner or legal title holder of the immediate availability of the public sewer system, the requirement to connect, and the time limit for connection. Four additional notices of the connection requirement will be sent at least 360, 180, 90 and 30 days prior to the date of the connection deadline.
- C. **Location.** All connections shall be made along a route of service approved by the Director.
- D. Any construction for which a building permit is required under the terms of Title 24 of this Code and which meets the requirements of Subsection A. above, shall connect to the public sewer system prior to the issuance of a final inspection report or Certificate of Occupancy by the authorized City agency.
- E. Proof of the sewer connection shall be by documents of the City, by proof provided by the property owner, or development of physical evidence or inspection. The sufficiency or adequacy of any proof presented shall be left to the sole discretion of the Director.
- F. Three (3) years from notification of the requirement to connect, a property that has not connected becomes connection delinquent and is subject to proceedings to compel connection to the public sewer system.

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- G.** When property subject to the requirement imposed by this Section is sold and has less than 180 days remaining in the three-year connection period referred to above is sold, the new owner may enter into an agreement with the City to extend the time to connect to the public sewer system for 180 days from the date of the sale of the property. In the event a new owner elects to enter into an agreement, said election shall constitute a waiver of the right to the administrative review provided for in Section 17.33.100. As used herein, the term “sale” includes every disposition or transfer including the transfer of equitable title or legal title to real property.

17.33.040 Mandated Sewer Service Connection Charges.

(Amended by Ordinance No. 185397, effective July 6, 2012.) A property owner must pay or finance sanitary sewer system development charge and, if not previously assessed, sewer line and branch charges collectively known as sewer connection charges described in Chapter 17.36 prior to the issuance of sewer connection permits. Property owners may elect to pre-pay sewer connection charges no more than 5 years before availability of public sewer.

Only one agreement per property may be entered into under the terms of this subsection. As used herein, the term “sale” includes every disposition or transfer including the transfer of equitable title or legal title to real property.

17.33.050 Converting Nonconforming Sanitary Sewer Connections.

(Amended by Ordinance No. 185694, effective November 23, 2012.)

- A. Applicability.** A property using a nonconforming sewer must convert to a conforming sewer connection when a public sewer is available. The new connection must be made along a route of service approved by the Director. In addition, when a public sewer is extended into an area, the City may request that property owners in the area who are not required to connect nevertheless, volunteer to participate in the Nonconforming Sewer Conversion Program regardless of their distance from the new sewer.
- B. Exemption.** The Director may exempt properties with nonconforming sewer connections from the requirement to convert to a conforming sewer connection if:
- 1.** The Director determines that conversion of a nonconforming connection to a conforming connection would have detrimental effects on public health or safety or the environment; or
 - 2.** Other circumstances exist justifying exemption as identified in BES administrative rules.
- C. Timing.** The City requires property owners to convert or abandon a nonconforming sanitary sewer connection within 180 days of the date on the notice of sewer availability. All individual sewer connections shall be made in conformance with the Sewer and Drainage Facilities Design Manual. The City will provide written notice to all affected property owners at 180, 90, and 30 days prior to the conversion

deadline. The Director may choose to delay enforcement of this deadline for a property where a connection would be unreasonably technically difficult, a public sewer is not immediately available or substantial financial hardship would result.

17.33.060 Required Sanitary Sewer Conversion Charges.

(Amended by Ordinance No. 185694, effective November 23, 2012.) Property owners must pay the sanitary sewer conversion charges as required by Chapter 17.36 at the time the City provides a new sewer connection or when the property owner requests a permit for a new conforming sewer connection. A property owner can elect to pay or finance conversion charges and connection costs as required in Chapter 17.36 and associated program administrative rules. Council adopts sanitary sewer conversion charges annually as part of the BES rate ordinance.

- A. Timing.** Property owners must pay or finance sewer conversion charges prior to the issuance of permits required by Chapter 17.32. BES will assess sewer conversion charges based on the sewer conversion rates in effect at the time of connection.
- B. Relationship to Special Assessments for Local Improvement Districts.** BES will apply the following conditions to the calculation of special assessments for local improvement districts organized for the purposes of this Section:

 - 1. The estimated special assessment roll will be limited to the amount of the sanitary sewer conversion charges as established in the annual BES rate ordinance.
 - 2. In the event that a benefited property owner paid or financed branch fees or sanitary sewer conversion charges prior to the preparation of the estimated special assessment roll as provided in this Section, BES will establish a zero assessment for the benefited property.
 - 3. BES will pay to the LID Construction Fund the difference between the final total costs of each local improvement district organized for the purposes of this Section, and the sum of estimated assessments that were established at the formation of the district.
 - 4. To the greatest extent practicable BES will refund property assessments in the event that the total actual costs of the local improvement district are less than the sum of sanitary sewer conversion charges calculated for the benefited properties, taking into account the following:

 - a. BES will apportion the difference to each affected property in proportion to the property's share of the sum of sanitary sewer conversion charges paid, financed or incorporated into the local improvement district special assessment roll.

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- b. The final assessment roll will reflect the apportionment based on the actual project costs.
- c. Where a property owner paid or financed the sanitary sewer conversion charge prior to the notice of estimated assessment, BES will determine the most administratively efficient method to refund or credit the apportioned difference allocated to the property. Any refund or credit will be provided to the current equitable title holder of the property at the time the Council adopts the final assessment roll for the local improvement district.

17.33.070 Deferrals of Required Sewer Connections.

(Amended by Ordinance No. 185694, effective November 23, 2012.) A deferral of the requirement to connect to a public sewer may not exceed five years, although it may be renewed based on a re-evaluation of eligibility, and it does not transfer with the sale or transfer of property. The property remains subject to the requirements of this Chapter following termination of the connection deferral. Eligibility criteria vary for the Mandatory Sewer Connection and the Nonconforming Sewer Conversion programs. Deferral requests will be considered on the following, as described more fully in program administrative rules:

- A. **Mandatory Connection.** Deferrals may be granted for the following:
 - 1. Applicant-based criteria. These include financial, medical or other hardship criteria related to the property owner; and
 - 2. Property-related criteria. These are based on hardship conditions related to the property and the work required to complete the sewer connection.
- B. **Nonconforming Sewer Conversion.** The Director may defer conversion to conforming sewer connections according to criteria established in administrative rule.

17.33.075 Financial Assistance for Required Sewer Connection.

(Amended by Ordinance No. 185397, effective July 6, 2012.) The City shall provide financial assistance in the form of loans for both Mandated Sewer Connection and Nonconforming Sewer Conversion programs to eligible property owners based on administrative rules and procedures adopted by the Director. The Director shall offer a variety of loan instruments to meet specific property owner needs. Applicants may request financing assistance for the following costs:

- A. Sewer connection work performed on private property to decommission existing onsite conveyance and disposal systems and make new approved sewer connections.
- B. Connection fees charged by the City as described in Section 17.36.040.

17.33.080 Declaration of Nuisance.

(Amended by Ordinance No. 186902, effective December 26, 2014.) Any property not connected to a public sewer system as required by Section 17.33.030, Section 17.33.050, or Subsection 17.32.070 C. is hereby declared a nuisance and subject to abatement or correction as provided for in Section 17.33.100. The Director is authorized to take steps necessary to abate such a nuisance, including abatement work in public rights-of-way or easements, authority to order remediation on private or public property, or to expend City funds to abate the nuisance. The Director is further authorized to charge the responsible parties for all costs of the abatement effort. The Director will establish the procedures and forms to be used to notify property owners about sewer system availability and connection delinquencies. Costs of nuisance abatement may be assessed as a lien against property as provided in this Code.

17.33.090 Abatement by Owner.

The owner of a connection delinquent property shall have at least 30 days from the date of the Notice to Remove Nuisance to file documentation of the removal or abatement of the nuisance or to file a written request for an administrative review of the nuisance abatement requirement. Following notification of the administrative review and determination by the Director, the property owner shall have 10 days to file a written request for an appeals hearing by the Code Hearings Officer as set forth by Title 22 of this Code.

17.33.100 Connection Enforcement.

(Amended by Ordinance Nos. 185397 and 186902, effective December 26, 2014.)

- A.** The City shall attempt to resolve issues with affected property owners within BES to the extent possible. The following enforcement steps shall be used:
 - 1.** Administrative Review. Affected property owners shall be offered the opportunity for administrative review with the applicable BES program manager to determine if agreement can be reached concerning the timing and actions to achieve a conforming connection to the public sewer. If an affected property owner does not pursue an administrative review, BES shall issue its final determination setting forth the requirements and deadline to connect and finance or pay for fees. Failure of the property owner to meet this deadline shall be deemed a violation of this Chapter.
 - 2.** Final Determination. The BES final determination shall be the substantive decision for City program code compliance proceedings before the City Code Hearings Officer pursuant to Title 22 of the City Code. BES shall submit information addressing the following facts:
 - a.** The subject property has one or more on-site structures with plumbing facilities that require sanitary waste disposal pursuant to State Plumbing Code or related City Code.

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- b.** The subject property is not fully connected or has a nonconforming connection to the City sewer system.
 - c.** The subject property has direct access via an intended route of service to a branch, or other component of the City sewer system abutting a property line or a permanent easement acquired for the benefit of the property.
 - d.** The deadlines described in the sewer availability notice, notice of connection deferral and/or the Notice to Remove Nuisance have expired without full compliance with the sewer connection requirement.
 - e.** The property owner does not have a current sewer connection deferral.
- B.** If the nuisance described in the notice has not been removed or information is not provided establishing that such nuisance does not exist, the City may apply for an order authorizing the City to access private or public property to abate the nuisance. The order will include the terms and requirements for abatement by the Code Hearings Officer. The Code Hearings Officer has discretion to modify connection dates, required actions by property owners, and types and timing of City abatement activities.
 - 1.** The City will maintain an accurate record of all expenses incurred, including an overhead charge of 26 percent, an administration fee for each occurrence as specified in the administrative rules, sewer user charges and permit fees, which shall be assessed as a lien on the property in accordance with the provisions of Chapter 22.06.
 - 2.** It is unlawful for any person to attempt to obstruct, impede, or interfere with any officer, employee, contractor, agent, or authorized representative of the City whenever they are engaged in the work of connecting a property to the public sewer or removing or abandoning an existing sewage disposal system under an abatement order of the Code Hearings Officer.
 - 3.** Neither the City nor any of its officers, employees, contractors, agents, or authorized representatives are liable for any damage to the real property, improvements or personal property due to the non-negligent enforcement or administration of this Chapter.
- C.** Except as provided elsewhere in this Title or when the public welfare is endangered; BES may at its discretion withhold any service that is provided by BES from the owner(s) (or the owner's agent) of connection delinquent property. This may include but is not limited to refusal to accept application for permits for development on property of the said owner(s) other than the connection delinquent

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property. Withholding of other services may continue until the connection delinquency has been corrected.

- D.** The City may seek, in any court of competent jurisdiction, a judgment against the person or property failing to connect to a sewer in accordance with the provisions of this Chapter. In any such action, the measure of damages shall be the costs for abatement by the City, administrative costs, permit fees, overhead costs, penalties, and connection charges as determined by the Director or Code Hearings Officer.

17.33.110 Actions before the City Code Hearings Officer.

(Amended by Ordinance Nos. 185694 and 186902, effective December 26, 2014.)

- A. Code Compliance Hearings.** Any property owner who fails to comply with this Chapter or the Mandatory Sewer Connection or the Nonconforming Sewer Conversion Programs administrative rules (ENB-4.18 and ENB-4.27, respectively) may be summoned to code compliance hearing before the City Code Hearings Officer per Title 22. The Code Hearings Officer is authorized to order compliance with City sewer connection regulations, including site entry to physically connect sewer systems.

- B. Property Owner-Initiated Appeals.** Property owners may initiate appeals to the Code Hearings Officer on the following BES decisions:

1. The amount of connection charges and the methodology used to determine them.
2. The 180-day sewer connection deadline. BES may grant deadline extensions based on sewer availability and extenuating circumstances.

An appellant must pay a filing fee in the amount of the Code Hearing fee as part of the appeal request. If the Code Hearings Officer finds in favor or in partial favor of the appellant, BES will reimburse the appellant for the full amount of the fee, and send a check to the appellant via certified mail.

17.33.130 Notice Sufficiency.

For purposes of this Chapter, notice shall be deemed to have been received upon the mailing of said notice by first class mail or upon delivery of the notice in person. An error in the name of the owner or agent of the owner or the use of a name other than that of the true owner or agent for the property shall not render the notice void.

17.33.150 Severability.

The provisions of this Chapter are severable, and it is the intention to confer the whole or any part of the powers herein provided for. If any word, definition, clause, section or provision of this Chapter shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of this Chapter shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein. In the event a definition

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is held to be invalid or is severed, the defined word or term shall be deemed to have the meaning given to that word or term under Oregon law if Oregon law contains such a definition. If there is no established definition of the word or term under Oregon law, the word or term shall have its ordinary dictionary meaning. It is hereby declared to be the Council's express legislative intent that this Chapter would have been adopted had such an unconstitutional or otherwise invalid provision not been included herein.

CHAPTER 17.34 - SANITARY DISCHARGES

(Chapter added by Ordinance No. 153801; amended
by Ordinance Nos. 163816 and 180037, effective
April 28, 2006.)

Sections:

17.34.005	Intent of Chapter.
17.34.010	Declaration of Policy.
17.34.020	Definitions.
17.34.030	General Discharge Prohibitions.
17.34.040	Discharge Limitations.
17.34.050	Pretreatment and Pollution Control Required.
17.34.060	Accidental Spill Prevention and Control.
17.34.070	Industrial Wastewater Discharge Permits.
17.34.075	Other Sanitary Discharge Permits or Authorizations.
17.34.080	Inspection and Sampling.
17.34.090	Reporting Requirements.
17.34.110	Enforcement.
17.34.115	Requests for Reconsideration.
17.34.120	Records Retention.
17.34.130	Conflict.
17.34.140	Severability.
17.34.150	Fees.

17.34.005 Intent of Chapter.

(Added by Ordinance No. 180037, effective April 28, 2006.) It is the intent of the City to provide needed sewer service to all users while meeting the outlined objectives. This Chapter provides the structure under which the service will be provided for industrial wastewater dischargers so that the system is protected and can continue to provide efficiently for the wastewater treatment needs of the City. This chapter describes a group of regulations that applies to all sanitary discharges, including those regulated under BES Pre-treatment and City discharge authorization programs. This chapter applies to all separate sanitary and combined sewer systems, which are both considered sanitary sewers for the purposes of this chapter.

17.34.010 Declaration of Policy.

(Amended by Ordinance Nos. 172879, 180037 and 185397, effective July 6, 2012.) It is the policy of the Bureau of Environmental Services (BES) to provide the planning, engineering and administration necessary to develop and manage sewer facilities that are adequate for the conveyance, treatment and disposal of waste water from within the City and to operate the sewer system in such a manner which protects public health and the environment. In carrying out this policy, the objectives of this Chapter are:

- A.** to prevent pollutants from entering the sewer system which will interfere with its normal operation or contaminate the resulting sludge;

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- B. to prevent the introduction of pollutants into the sewer system which will not be adequately treated and will pass through into the environment;
- C. to improve the opportunity for recycling and reclamation of wastewater and sludge;
- D. to insure protection of worker safety and health;
- E. to insure that all dischargers comply with applicable federal, state and local laws and regulations governing wastewater discharges and that sanctions for failure to comply are imposed.

17.34.020 Definitions.

(Replaced by Ordinance No. 185397; amended by Ordinance Nos. 185870, 186403 and 186902, effective December 26, 2014.) As used in this Chapter and associated rules the following definitions apply:

- A. **“Branch Sewer”** means the public portion of the underground piping system that connects from the plumbing system of a building or buildings to a public sewer.
- B. **“Categorical Pretreatment Standards”** mean limitations on pollutant discharges to POTWs from specific types of new or existing industrial users. These standards are promulgated by the EPA in accordance with Sections 307 (b) and (c) of the Clean Water Act. This term includes prohibitive limitations established pursuant to 40 CFR 403.5
- C. **“Clean Water Act (CWA)”** means the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251 et seq.).
- D. **“Combined Sewer”** means a sewer designed to convey both sanitary sewage and stormwater.
- E. **“Director”** means the Director of The Bureau of Environmental Services or the Director’s designee.
- F. **“Discharge”** means any disposal, injection, dumping, spilling, pumping, emitting, emptying, leaching, leaking, or placing of any material so that such material enters or is likely to enter a waterbody, groundwater, or a public sewer or drainage system.
- G. **“Discharge Authorization (DA)”** means a written approval by the Director which prescribes certain requirements or restrictions for a discharge to the City sewer and drainage system.
- H. **“Discharger”** means any person who causes or permits a direct or indirect discharge to the City’s sewer and drainage system.

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- I. “Domestic Waste”** means any waste consistent with that generated from single or multiple residential dwellings including, but not limited to, wastes from bathrooms, laundries and kitchens.
- J. “Domestic Wastewater”** means any water that contains only domestic waste.
- K. “Hazardous Substance”** means any substances referenced in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S. Code §9601 et seq.), section 502(13) of the Clean Water Act or other substance at concentrations specified in those lists or, if no concentration is specified, at concentrations designated by the Director.
- L. “Industrial User”** means any person who discharges industrial or commercial wastewater to the City sewer system.
- M. “Industrial Wastewater”** means any discharge resulting from, or used in connection with, any process of industry, manufacturing, commercial food processing, business, agriculture, trade or research. Industrial wastewater includes, but is not limited to, the development, recovery or processing of natural resources and leachate from landfills or other disposal sites.
- N. “Industrial Wastewater Discharge Permit”** means a permit to discharge industrial wastewater into the City sewer system issued under Section 17.34.070 and which prescribes certain discharge requirements and limitations.
- O. “Interference”** means a discharge that alone or in conjunction with other discharges, inhibits or disrupts the normal operation of the City sewer system or contributes to a violation of any requirement of the POTW’s NPDES permit. This includes any increase in the magnitude or duration of a violation, any increase in cost due to damage to the system, additional treatment of sewage, sewage sludge use or disposal, or in compliance with local, state or federal regulations or permits related to sewage treatment and sludge disposal.
- P. “National Pollutant Discharge Elimination System (NPDES)”** means the Clean Water Act (40 CFR Part 122) regulations that require dischargers to control and reduce pollutants in discharges to waters of the United States.
- Q. “Pollutant”** means an elemental or physical material that can be mobilized or dissolved by water or air and that could create a negative impact to human health, safety, or the environment.
- R. “POTW”** means Publicly Owned Treatment Works, which includes any devices and systems, owned by a State or municipality, used in the collection, transportation, storage, treatment, recycling and reclamation of wastewater.

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- S.** **“Pretreatment”** means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater in accordance with federal, state and local laws, regulations and permits prior to or in lieu of discharging or otherwise introducing such pollutants into the City sewer system.
- T.** **“Slugload”** means any discharge that is non-routine or episodic and that has a reasonable potential to cause interference, pass-through, or violation of applicable local, state or federal regulations, including City local limits or conditions of the City’s NPDES permit. Slugloads include but are not limited to accidental spills and non-customary batch discharges.
- U.** **“Toxic Substance”** means any chemical listed in Oregon’s water quality standards for toxic pollutant tables in OAR, Division 340-041-0033; the CWA effluent guidelines list of toxic pollutants at 40 CFR 401.15; or the toxic chemical release reporting specific toxic chemical listings at 40 CFR 372.65 at concentrations specified in those lists or, if no concentration is specified, at concentrations designated by the Director.
- V.** **“Upset”** means an exceptional incident in which a discharger temporarily is in a state of noncompliance with the applicable categorical pretreatment standards of this Chapter or associated rules. Upset must be due to factors beyond the reasonable control of the discharger and not caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation of treatment facilities.
- W.** **“Wastewater”** means any non-domestic sewage flows including but not limited to washwaters, industrial wastewater, commercial discharges, and other nonstormwater discharges.

17.34.025 Authority of Director of Environmental Services to Adopt Rules.

(Repealed by Ordinance No. 185397, effective July 6, 2012.)

17.34.030 General Discharge Prohibitions.

(Amended by Ordinance Nos. 172879, 180037 and 185397, effective July 6, 2012.)

- A.** It is unlawful to discharge industrial wastewater into the City sewer system except in compliance with this Chapter and rules adopted hereunder.
- B.** Prohibited discharges. It is unlawful to discharge, cause to discharge, or allow to discharge directly or indirectly into the City sewer system any substance, alone or in combination with others, that may inhibit, interfere with, injure, harm, damage, create a hazard to or impair the performance of the City’s conveyance, collection or treatment processes and systems. Prohibited discharges also include those that create or could create a nuisance or a threat to human health or the environment or that:

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1. Contains substances that are not amenable to treatment or reduction by the sewage treatment process employed or are only partially amenable to treatment;
2. Contain liquids, solids, or gases which, either alone or by interaction, may cause a fire or an explosion or injure the sewer system or wastestreams;
3. Have a closed cup flashpoint of less than 140 degrees Fahrenheit (60 degrees Celsius) using test methods prescribed at 40 CFR 261.21 or could cause the atmosphere in any portion of the sewer system to reach a concentration of 10 percent or more of the Lower Explosive Limit (LEL);
4. Contain solids or viscous substances which may solidify or become discernibly viscous at temperatures above 0 degrees Celsius (32 degrees Fahrenheit) or are capable of obstructing the flow of wastewater or cause other interference with the operation of the sewer system;
5. Contain noxious, malodorous or toxic liquids, gases, vapors, fumes, or solids, in amounts that may violate the general prohibitions of Subsection 17.34.030 B.;
6. Contains hazardous or toxic substances, either alone or in combination with other substances may adversely affect receiving waters or in amounts that may violate the general prohibitions of Subsection 17.34.030 B.;
7. Have a pH of less than 5.0 or more than 11.5 without prior approval by the Director;
8. Are hotter than 65 degrees Celsius (149 degrees Fahrenheit) or are hot enough to inhibit biological activity or cause the temperature of the treatment plant influent to exceed 27 degrees Celsius (80 degrees Fahrenheit);
9. Contain material trucked or hauled from a cesspool, holding or septic tank or any other nondomestic source, except such material received at designated locations under City contract or permit;
10. Contain any material other than domestic waste larger than 0.65 centimeters (1/4 inch) in any dimension;
11. Contain dissolved solids may violate the general prohibition of Subsection 17.34.030 B.;
12. Contain excessive color which is not removed in the treatment process;

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13. Contain radioactive material, except in compliance with a current permit issued by the Oregon State Health Division or other state or federal agency having jurisdiction;
 14. Contain petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that may cause interference or pass through;
 15. Contain non-contact cooling water without prior approval by the Director;
 16. May cause sewer system effluent or treatment residues, sludges, or scums to be unsuitable for reclamation and reuse;
 17. Constitute a slugload per administrative rule;
 18. Constitute a batch discharges without written permission from the Director;
 19. Exceeds discharge limits adopted in permits or administrative rules;
 20. May cause the City to violate the terms of its NPDES permit; or
 21. May cause the City to violate sludge use or disposal criteria, treatment guidelines, or other applicable regulations developed under the Clean Water Act (33 USC 1251-1387), the Solid Waste Disposal Act (42 USC 6901-6992k), the Clean Air Act (42 USC 7401 -7671q), the Toxic Substances Control Act (15 USC 2601-2692), or any other federal or state statutes.
- C. A discharge or flow resulting from an emergency situation such as a water line break or fire fighting by the Fire Department shall not be prohibited from discharging to the sewer during the period of the emergency. Any repairs made after the period of emergency has ceased will comply with all regulations of this Code.

17.34.040 Discharge Limitations.

(Amended by Ordinance No. 185397, effective July 6, 2012.)

- A. It is unlawful for a discharger to discharge wastes or wastewater to the City sewer system in excess of limitations established in an industrial wastewater discharge permit or in violation of the prohibited discharges in Section 17.34.030. The Director of Environmental Services shall establish specific discharge limitations under separate rules to meet the objectives of this Chapter.
- B. It is unlawful for a discharger to use dilution as a partial or complete substitute for adequate treatment to achieve compliance with the standards and limitations set forth in this Chapter, administrative rules, or in an industrial wastewater discharge permit issued pursuant to the Chapter. The Director may impose mass limitations on dischargers who are using dilution to meet the applicable pretreatment standards

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or requirements of this Chapter, administrative rules or in other cases where the Director determines that the imposition of mass limitations is appropriate.

- C. The Director may authorize the use of equivalent concentration limits in lieu of mass limits for certain industrial categories, and allow the conditional use of equivalent mass limit in lieu of concentration-based limits where appropriate.
- D. Termination or limitation. Notwithstanding prior acceptance into the City sewer system of industrial wastewater, if the Director finds that industrial wastewater from a particular commercial or industrial occupancy or a class of similar occupancies cause or may cause damage, interference, hazard or nuisance to the City sewer system, City personnel or the receiving waters, the Director may limit the characteristics or volume of the industrial wastewater accepted or may terminate acceptance. Notice of the limitation or termination shall be given in writing to the occupant of the property or posted on the property involved, and shall specify the date when the limitation or termination is to be effective. It is unlawful for any person to discharge or permit the discharge of industrial wastewater in violation of this notice.

17.34.050 Pretreatment and Pollution Control Required.

(Amended by Ordinance Nos. 185397 and 186902, effective December 26, 2014.)

- A. The Director may require dischargers to install treatment facilities or make structural modifications to their facilities or equipment, or make operation changes, process modifications, or take other measures to protect the City sewer system, to comply with requirements of this Chapter or any applicable state or federal requirements. The Director may require that such actions be taken within the shortest reasonable time. Compliance deadlines will be based on construction time and the confirmed or potential impact of the untreated industrial wastewater on the City sewer system. Such structures and site modifications must be reviewed and approved by the Director to determine sufficiency.
- B. Any requirement of this Chapter may be incorporated as a part of an industrial wastewater discharge permit issued under Section 17.34.070 or any other enforcement document and made a condition of issuance of such permit or discharge authorization for the industrial wastewater from such facility.
- C. Plans, specifications and other information relating to the construction or installation of required pretreatment facilities and source control measures must be submitted to the Director. A permit or permit review may be required. No construction or installation may commence until written approval of plans and specifications by the Director is obtained. No person, by virtue of such approval, will be relieved of compliance with other local, state or federal laws relating to construction and permits. Every facility must be constructed in accordance with the approved plans and specifications and installed and maintained at the expense of the discharger.

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- D.** Any person constructing or implementing pretreatment facilities or source control measures may be required to install and maintain at the discharger's own expense a sampling manhole or other suitable monitoring access for checking and investigating the discharge to the City sewer. The sampling manhole or monitoring access must be placed in a location designated by the Director and in accordance with specifications approved by the Director.

17.34.060 Accidental Spill Prevention and Control.

(Replaced by Ordinance No. 185397, effective July 6, 2012.)

- A.** Notification. Any person becoming aware of spills or uncontrolled discharges of hazardous or toxic substances or of substances prohibited under Section 17.34.030 directly or indirectly into the City sewer system must immediately report such discharge by telephone to the Director and to any other authorities required under other local, state, or federal laws or regulations.
- B.** Written notice. Within 5 days following an accidental discharge as described in Subsection A. above, the discharger shall submit to the Director a detailed written report describing the cause of the discharge and the measures to be taken to prevent similar future occurrences. Such notification will not relieve the discharger from any fines, civil penalties, or other liability which may be imposed under the authority of this Chapter or rules adopted hereunder or other applicable law.
- C.** Posted notice. A notice informing employees of an industrial wastewater discharger of the notification requirement above which contains information regarding reporting in the event of such a discharge shall be posted in a conspicuous place and shall be visible to all employees who may reasonably be expected to observe such a discharge.
- D.** Preventive measures. Direct or indirect connections or entry points which could allow spills or uncontrolled discharges of hazardous or toxic substances or of substances prohibited under Section 17.34.030 to enter the City sewer system must be eliminated or labeled and controlled so as to prevent the entry of wastes in violation of this Chapter. The Director may require the discharger to install or modify equipment or make other changes necessary to prevent such discharges as a condition of issuance of an industrial wastewater discharge permit or as a condition of discharge authorization to the City sewer system. A schedule of compliance shall be established by the Director for completion of required actions within the shortest reasonable period of time. Inability to comply with this schedule without an extension of time by the Director is a violation of this Chapter.
- E.** Accidental Spill Prevention Plans.
 - 1.** Dischargers that handle, store or use hazardous or toxic substances or substances prohibited under Section 17.34.030 on their sites shall prepare and submit to the Director an Accidental Spill Prevention Plan, according

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to the requirements set out in administrative rule, within 60 days after notification by the Director or as required by an industrial wastewater discharge permit.

17.34.070 Industrial Wastewater Discharge Permits.

(Amended by Ordinance Nos. 165068, 172879 and 185397, effective July 6, 2012.)

- A.** Requirement for a permit. Except as provided in Subsection 17.34.070 B. an industrial wastewater discharger must have an industrial wastewater discharge permit prior to discharging into the City sewer system if:
- 1.** The discharge is required to be permitted under procedures contained in the City's approved pretreatment program; or
 - 2.** The discharger is a Significant Industrial User, which includes:
 - a.** All industrial users subject to Categorical Pretreatment standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N; and
 - b.** Any other industrial user that:
 - (1)** Discharges an average of at least 25,000 gallons per day or more of process wastewater to the POTW (excluding domestic, noncontact cooling and boiler blowdown wastewater);
 - (2)** Contributes a process wastestream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
 - (3)** Is designated as such by the Director on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement in accordance with 40 CFR 403.8(f)(6),
 - 3.** The Director may determine that an industrial user meeting the criteria above is not a "Significant Industrial User" if the discharge has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement in accordance with 40 CFR 403.8(f)(6).
- B.** Existing discharges.
- 1.** If discharges occur prior to the date that an industrial wastewater discharge permit is required, the discharger shall be notified in writing by the Director that such a permit is required. Such existing dischargers shall be allowed

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to continue discharging into the City sewer system without an industrial wastewater discharge permit until a permit is issued or denied, provided the discharger files a completed environmental survey and application for an industrial wastewater discharge permit within 90 days of receipt of the notice.

2. Discharges that require an industrial wastewater discharge permit and are allowed to continue discharging without such a permit under Subsection 17.34.070 B.1. shall comply with the requirements of this Chapter and rules adopted hereunder.

C. Application for industrial wastewater discharge permit.

1. Existing Significant Industrial Users, shall submit application for a permit on a form provided by the Director within 180 days after the effective date of a categorical pretreatment standard issued by the U.S. EPA or within 90 days after receiving notification from the Director that such a standard has been issued, whichever is sooner.
2. New Source Dischargers. Any new source discharger determined by the Director to be a Significant Industrial User shall submit an application for a permit on a form provided by the Director within 90 days of notification by the Director. However, a new source discharger may not discharge to the sewer system without a permit.
3. Submission of the application for permit required by this Section will satisfy the requirements of 40 CFR 403.12(b).
4. The application for permit shall not be considered complete until all information required by the application form, requirements of this Chapter, or by administrative is provided. All fees must be paid and the certification statement required by 40 CFR 403.12(b)(6) signed by the authorized representative. The Director may grant specific exemptions for these items.

D. Issuance of industrial wastewater discharge permits.

1. Industrial wastewater discharge permits shall be issued or denied by the Director within 90 days after a completed application is received, unless that period is extended in writing by the Director for good and valid cause.
2. Industrial wastewater discharge permits shall contain conditions which meet the requirements of this Chapter, administrative rules and applicable state and federal laws and regulations.
3. If pretreatment facilities are needed to meet the applicable pretreatment standards or requirements in an industrial wastewater discharge permit, the

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permit shall require the installation of such facilities on a compliance schedule.

4. Whenever an industrial wastewater discharge permit requires installation or modification of pretreatment facilities or a process change necessary to meet discharge standards or spill control requirements, a compliance schedule shall be included which establishes the date for installation of the pretreatment facilities or process changes. The compliance schedule may contain appropriate interim dates for completion of specified tasks. Compliance dates established in a permit cannot exceed federal categorical deadline dates.
5. Industrial wastewater discharge permits shall expire no later than 5 years after the effective date of the permit and shall not be transferable except with prior notification and approval from the Director.
6. The Director may deny the issuance of an industrial wastewater discharge permit if the discharge could result in violations of local, state or federal laws or regulations; cause interference or damage to any portion of the City sewer system; or create an imminent or potential hazard to human health or the environment.

E. Modification of permits.

1. An industrial wastewater discharge permit may be modified for good and valid cause at the written request of the permittee or at the discretion of the Director.
2. Permittee modification requests shall be submitted to the Director and shall contain a detailed description of all proposed changes in the discharge. The Director may request any additional information needed to adequately review the application or assess its impact.
3. The Director may deny a request for modification if he or she determines that the change will result in violations of local, State or federal laws or regulations, will cause interference or damage to any portion of the City sewer system, or will create an imminent or potential hazard to human health or the environment.
4. If a permit modification is made at the direction of the Director, the permittee shall be notified in writing of the proposed modification at least 30 days prior to its effective date and informed of the reasons for the changes. Any request for reconsideration shall be made before the effective date of the changes.

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- F.** Change in a permitted discharge. A modification to the permittee's discharge permit must be issued by the Director before any significant increase is made in the volume or level of pollutants in an existing permitted discharge to the City sewer system. Changes in the discharge involving the introduction of a wastewater not previously included in the industrial wastewater discharge permit application or involving the addition of new pollutants shall be considered new discharges, requiring application under Section 17.34.070.
- G.** Renewal of Permits. A permittee shall apply for renewal of its industrial wastewater discharge permit within 90 days of the expiration date of the existing permit. Upon timely application for renewal, an existing permit will remain effective until the renewal application is acted upon.
- H.** Appeal of permit. Upon receipt of a final industrial wastewater discharge permit, a permittee may appeal any of its terms or conditions to the Code Hearings Officer in accordance with procedures set out at Chapter 22.10 of the Portland City Code; provided that such an appeal shall include a copy of the permit that is the subject of the appeal, shall state the basis for the appeal, and shall be filed with the Code Hearings Officer and the Bureau of Environmental Services.

17.34.075 Other Sanitary Discharge Permits or Authorizations.

(Added by Ordinance No. 180037, effective April 28, 2006.) The City may require authorization for any discharge to the sanitary or combined sewer of materials that violate the discharge prohibitions listed in 17.34.030.

- A.** Authorization may take the form of a written authorization for an intermittent or ongoing discharge. Authorization may also require the adherence to management practices to reduce pollutant releases associated with the authorized discharge
- B.** Dischargers may be required to provide:
 - 1.** Evaluation of the proposed discharge, including: sampling, prior to being granted authorization to discharge.
 - 2.** Adequate information and access to the location or process creating the discharge, to allow the City to fully evaluate any pretreatment needs for authorizing the discharge.
- C.** The City may require pretreatment for any discharge to the City's sewer system, including but not limited to requirements specified in 17.34.050.
- D.** Non-compliance with these requirements is subject to the enforcement steps specified in 17.34.110 and in the associated Sanitary System Discharge administrative rules.

17.34.080 Inspection and Sampling.

(Amended by Ordinance No. 185397 and 186192, effective September 6, 2013.)

A. Inspection.

- 1.** Right of Entry. To the extent permitted by law, BES may enter all private and public premises at any time for the purpose of inspecting for potential violations, connections or for any other lawful purpose. This authorization includes but is not limited to inspection, sampling, testing, photographic documentation, record examination, copying, and installation of devices. Entry may not be conditioned upon BES representatives signing any type of confirmation, release, consent, acknowledgement, or other type of agreement. The City may install on the discharger's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and metering operations.
- 2.** Entry Protocols.
 - a.** The BES representative will present a City photo identification card at the time of entry;
 - b.** The BES representative will comply with reasonable, routine safety and sanitary requirements of the facility or site as provided by the facility operator at the time of entry. The facility operator must provide the BES representative with any facility-specific safety protective equipment necessary for entry.

B. Sampling.

- 1.** Samples of wastewater being discharged into the sewer system must be representative of the discharge. Other sampling locations may be required by permit. All sampling and analyses shall be performed in accordance with the procedures set forth in 40 CFR Part 136 and any amendments thereto or with any other test procedures approved by EPA. If there are no approved test procedures the Director may approve other analytical procedures. The results of all samples taken shall be reported.
- 2.** Samples taken by City personnel for the purpose of determining compliance with the requirements of this Chapter or administrative rule may be split with the discharger, or a duplicate sample provided in the instance of fats, oils and grease, if requested by the discharger before or at the time of sampling.

C. Sampling manhole or access. The Director may require an industrial wastewater discharger to install and maintain at the discharger's expense a suitable monitoring access such as a manhole in the discharger's branch sewer to allow observation, sampling and measurement of all industrial wastewaters being discharged into the City sewer system. Any monitoring access must be constructed in accordance with plans approved by the Director and must be designed so that flow measuring and

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sampling equipment can be conveniently installed. Access to the monitoring access must be available to City representatives at all times.

17.34.090 Reporting Requirements.

(Replaced by Ordinance No. 185397, effective July 6, 2012.)

A. Periodic compliance reports.

1. The Director may require reporting by industrial wastewater dischargers that are not required to have an industrial wastewater discharge permit if information or data is needed to establish a sewer charge, determine the treatability of the effluent or determine any other factor which is related to the operation and maintenance of the sewer system.
2. The Discharger must submit reports to the Director during the months of June and December, unless required on other dates or more frequently by the Director based on the nature of the effluent over the previous reporting period.
3. The report must include a record of the mass and concentrations of the permit-limited pollutants that were measured. Reports shall include a record of all flow measurements taken at designated sampling locations. The Director may accept reports of average and maximum flows estimated by verifiable techniques if the Director determines that actual measurement is not feasible. Additional information shall be included as required by this Chapter or administrative rules.
4. The Director may require self-monitoring by the discharger or, if requested by the discharger, may agree to have BES staff perform the periodic compliance monitoring needed to prepare the periodic compliance report required under this Section.

B. Final Compliance Report. Any discharger subject to Subsection 17.34.090 A. must submit to the Director a report indicating the nature and concentration of all prohibited or regulated substances contained in its discharge and the average and maximum daily flow in gallons. The report must state whether the applicable pretreatment standards or requirements are being met on a consistent basis and, if not, what additional operation and maintenance and pretreatment is necessary to bring the discharger into compliance. The discharger must submit reports.

1. Within 90 days following the date for final compliance with applicable pretreatment standards and requirements set forth in this Chapter, administrative rule, or an industrial wastewater discharge permit; or
2. If the discharger is a new source discharger, within 30 days following commencement of the introduction of wastewater into the City sewer system by the discharger.

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- C.** The discharger shall certify and sign all applications, reports, and reporting information in accordance with 40 CFR 403.12.L and 403.6(a)2(ii);
- D.** Confidential information.
- 1.** Any records, reports or information obtained under this Chapter or administrative rule will be available to the public or any governmental agency without restriction, unless classified by the Director as confidential. In order to obtain a confidential classification on all or part of any records, reports or information submitted, the discharger must:
 - a.** Submit a written request to the Director identifying the material that is desired to be classified as confidential and;
 - b.** Demonstrate to the satisfaction of the Director that records, reports or information or particular parts thereof, are exempt from disclosure pursuant to the Oregon Public Records Law.
 - 2.** Effluent data, as defined in 40 CFR 2.302, submitted pursuant to this Chapter shall not be classified as confidential.
 - 3.** Records, reports or information or parts thereof classified as confidential by the Director will not be released or made part of any public record or hearing unless such release is ordered by the District Attorney or a court of competent jurisdiction; provided, however, such confidential information will, when required by law or governmental regulation, and upon written request, be made available to state or federal agencies having jurisdiction, duties or responsibilities relating to this Chapter, the National Pollutant Discharge Elimination System or applicable Oregon laws and regulations.
- F.** Notification of Hazardous or Toxic Substance Discharge. An industrial user shall notify the Director in writing of any discharge into the sewer system of a substance which, if otherwise disposed of, would be a hazardous waste or toxic substance. Such notification shall be in accordance with the requirements of rules adopted pursuant to this Chapter.
- G.** Notification of Violation. An industrial user shall report noncompliance with permit limits within 24 hours of becoming aware of the noncompliance. The industrial user shall repeat the sampling and analysis and submit results to the Director within 30 days of becoming aware of the violation.
- H.** Notification of Changed Discharge. All industrial users shall promptly notify the Director in advance of any substantial change in the volume or character of pollutants in their discharge.

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17.34.110 Enforcement.

(Replaced by Ordinance Nos. 186192, effective September 6, 2013.)

- A.** Violations. It is a violation for any person to fail to comply with the requirements of this Chapter or associated rules. Each day a violation occurs or continues may be considered a separate violation. BES will hold the person or persons solely responsible for complying with BES enforcement actions. Violations of this Chapter or associated rules include, but are not limited to:
- 1.** Failure to obtain a permit when required for discharge, including failure to supply correct application materials;
 - 2.** Failure to comply with the conditions of a permit;
 - a.** Exceedances of discharge limits. Each pollutant discharge that exceeds a discharge limit is considered a separate violation;
 - 3.** Discharges prohibited by PCC Section 17.34.030;
 - 4.** Failure to comply with a written directive or timeline of the Director made under authority of this Chapter;
 - 5.** Failure to comply with enforcement actions as identified in the BES Enforcement Program administrative rules (PPD item ENB-4.15); and
 - 6.** Where a discharge causes interference or pass through, the discharger may have a valid affirmative defense if it is demonstrated that:
 - a.** The discharger 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 pass through or interference; and
 - b.** The discharge was in compliance with properly developed local limits prior to and during the pass through or interference; or
 - c.** If a local limit designed to prevent pass through or interference has not been developed for the pollutants that caused the pass through or interference, the discharge:
 - (1)** Occurred prior to and during the pass through or interference; and
 - (2)** 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.

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- B.** Significant Non-compliance. Any significant industrial user or any other discharger who violates the criteria described in 3, 4, 5 or 9 of this Subsection will be considered to be in significant non-compliance with this Chapter for one or more of the following:
1. Chronic violations of wastewater discharge limits. Chronic violations occur when at least 66 percent of all of the measurements taken during a 6-month period exceed any pretreatment standard for the same pollutant parameter.
 2. Technical Review Criteria (TRC) violations. TRC violations occur when at least 33 percent of all of the measurements taken for the same pollutant parameter during a 6-month period equal or exceed the product of the pretreatment standard multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease; and 1.2 for all other pollutants except pH).
 3. Any other violation of any pretreatment standard that the Director determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public).
 4. Any discharge of a pollutant that has caused imminent danger to human health, welfare or to the environment.
 5. Any discharge that requires the Director to use emergency authority to halt or prevent discharge.
 6. Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in an industrial wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance.
 7. Failure to provide, within 30 days after the due date, required reports such as applications, baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules.
 8. Failure to accurately report noncompliance.
 9. Any other violation or group of violations that the Director determines will adversely affect the operation or implementation of the local pretreatment program.
- C.** Enforcement Tools. BES may use any or all of the following tools to enforce this Chapter or associated administrative rules: notice of investigation, warning notice, notice of violation, compliance order, requirement to obtain a permit, notice of termination, withholding of permits, violation abatement, legal action, criminal

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case referral, or referral to other regulatory agencies. BES enforcement actions are described in program-specific administrative rules and the BES Enforcement Program administrative rules (PPD item ENB-4.15).

- D.** Civil Penalties. Dischargers violating this Chapter or associated rules may be assessed civil penalties of up to \$10,000 per day per violation according to program-specific administrative rules and the BES Enforcement Program administrative rules (PPD item ENB-4.15). Failure to pay a civil penalty within 30 days following a final determination regarding the penalty is grounds for permit revocation or termination of the permittee's discharge. Penalties and other charges will accrue interest from the date of initial City notice assessing the penalty until the penalty is paid in full.
- E.** Cost Recovery. The Director may recover all reasonable costs incurred by the City that are attributable to or associated with violations of this Chapter or associated administrative rules per PPD item ENB-4.15. Failure to pay costs related to a civil penalty or summary abatement within 30 days following a final determination is grounds for permit revocation or termination of the permittee's discharge.
- F.** City Summary Abatement. To the extent permitted by law, the Director may recover from the person causing the violation all costs incurred by the City to summarily abate the following:

 - 1. A violation that is not remedied through required corrective actions;
 - 2. A situation that poses an imminent danger to human health, public safety, or the environment; or
 - 3. Continued noncompliance with PCC or associated rules.
- G.** Nothing in this Chapter is intended to impose liability on the City for any injury or damage resulting from the failure of any person to comply with the provisions of this Chapter.
- H.** Termination or prevention of a discharge or permit revocation.

 - 1. The Director may terminate or prevent a discharge into the City sewer system or revoke an industrial wastewater discharge permit if:

 - a.** The discharge or threatened discharge presents or may present:

 - (1) A danger to human health or welfare or the environment; or
 - (2) Potential interference with the operation of the City sewer system;

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- b.** The permit to discharge into the City sewer system was obtained by misrepresentation of any material fact or by lack of full disclosure;
 - c.** The discharger violates any requirement of this Chapter or an industrial wastewater discharge permit; or
 - d.** Such action is directed by a court of competent jurisdiction.
- 2.** Notice of termination of discharge or permit revocation will be provided to the discharger or posted on the subject property prior to terminating the discharge or revoking a permit.
 - a.** In situations that do not present an imminent danger to health or the environment or an imminent threat of interference with the sewer system, the notice will:
 - (1)** Be provided in writing;
 - (2)** Contain the reasons for the termination of the discharge or permit revocation;
 - (3)** Contain the effective date of City action;
 - (4)** Contain the duration of the termination;
 - (5)** Provide contact information of a City contact;
 - (6)** Be signed by the Director; and
 - (7)** Will be received or refused at the business address of the discharger no less than 30 days prior to the effective date of termination.
 - b.** In situations where there is an imminent danger to human health or welfare or the environment or an imminent threat of interference with the operation of the sewer system, the Director may immediately terminate an existing discharge, prevent a new discharge, or revoke a permit after providing informal notice to the discharger or after posting such notice on the subject property. Informal notice may be verbal or written and will include the effective date and time and a brief description of the reason. Within 3 working days following the informal notice, a written formal notice as described in Subsection 17.34.110 H.2.a. will be provided to the discharger.
- 3.** The Director may reinstate an industrial wastewater discharge permit that has been revoked or may reinstate industrial wastewater treatment service

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upon clear and convincing proof by the discharger of the elimination of the noncompliant discharge or conditions creating the threat of endangerment or interference.

- I.** Annual Publication. A list of Significant Industrial Users that BES considers to be in significant non-compliance with this Chapter shall be published annually in the newspaper of general circulation in Portland, summarizing the enforcement actions taken against industrial users during a prior twelve month period.

17.34.115 Requests for Reconsideration.

(Replaced by Ordinance No. 186192; Amended by Ordinance No. 186902, effective December 26, 2014.)

- A.** Reviews and Appeals. A person may request a modification to a BES decision related to this Chapter via an administrative review with BES staff. After the requestor has exhausted all BES program and enforcement program reviews, the requestor may file for an appeal with the Code Hearings Officer per PCC Title 22.
 - 1.** Reviews and appeals of the following may be requested:
 - a.** The determination of a violation of this Chapter or associated rules.
 - b.** The type and level of enforcement action taken by BES.
 - c.** The type and amount of penalty imposed by BES.
 - d.** Compliance due dates.
 - e.** A requirement to obtain a permit.
 - f.** A denial of a permit.
 - g.** Required remediation actions.
 - 2.** Reviews and appeals may not be requested for:
 - a.** The amount of cost recovery assessment against the person by BES.
 - b.** A requirement to meet a technical standard.
 - c.** Other issues identified in individual program-specific administrative rules.
 - 3.** Appeals to the City Code Hearings Officer. An appellant must pay a filing fee in the amount of the Code Hearing fee as part of the appeal request. If the Code Hearings Officer finds in favor or in partial favor of the appellant,

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BES will reimburse the appellant for the full amount of the fee, and send a check to the appellant via certified mail.

- B.** BES Code Compliance Cases. BES may file a case before the Code Hearings Officer under PCC Title 22 to compel compliance with City regulations. The person committing the violation will be offered the opportunity to present evidence.

17.34.120 Records Retention.

(Amended by Ordinance Nos. 172879 and 185397, effective July 6, 2012.) All dischargers subject to this Chapter shall retain and preserve for no less than 3 years all records, books, documents, memoranda, reports, correspondence and summaries relating to monitoring, sampling and chemical analyses made by or in behalf of the discharger in connection with its discharge. This period of retention may be extended per 40 CFR 493.12(o)(2) when requested by the Director, DEQ, or EPA during the course of any unresolved litigation regarding the discharger. The discharger shall retain and preserve all records which pertain to matters which are the subject of any enforcement or litigation activities brought by the City until all enforcement activities have concluded and all appeals deadlines have expired.

17.34.130 Conflict.

(Amended by Ordinance No. 186192, effective September 6, 2013.) This Chapter supersedes all other ordinances or elements thereof to the extent that they are inconsistent with or conflict with any part of this Chapter.

17.34.140 Severability.

(Amended by Ordinance No. 186192, effective September 6, 2013.) If any provision, paragraph, word, or Section of this Chapter or associated rules is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, Sections and Chapters shall not be affected and shall continue in full force and effect.

17.34.150 Fees.

(Amended by Ordinance Nos. 173138, 173414, 181846 and 185397, effective July 6, 2012.)

- A.** The Director shall set annual fees by ordinance for all industrial wastewater discharge permits. The Director shall consider: process wastewater discharge flow; industrial user classification; permit status (new or renewed); self monitoring frequency; city monitoring frequency; regulatory history and any regulatory permits or special requirements.
- B.** Permit fees. Fees for each fiscal year are set July 1 and billed as soon after the following January 1 as is practical.
- C.** The Director shall also have authority to set fees for all non-routine, non-domestic batch discharges to the sewer system. Service fees for such discharges not otherwise addressed in an industrial wastewater discharge permit shall be

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calculated at a rate per occurrence, in addition to other applicable charges. The rate shall be established, annually, by general ordinance.

17.34.160 Requests for Reconsideration.

(Repealed by Ordinance No. 185397, effective July 6, 2012.)

CHAPTER 17.35 - SEPTAGE DISCHARGE

(Chapter added by Ordinance No. 143978, effective
July 1, 1977.)

Sections:

17.35.010	Definitions.
17.35.020	Permit Required.
17.35.030	Septage Discharge Limitations.
17.35.040	Reserved.
17.35.050	Reserved.
17.35.060	Performance Guaranty.
17.35.070	Fee Schedule.
17.35.080	Collection and Billing.
17.35.085	Inspections.
17.35.110	Enforcement.
17.35.120	Revocation or Amendment of Permit.
17.35.130	Compliance Cases and Appeals.
17.35.140	Conflict.
17.35.150	Severability.

17.35.010 Definitions.

(Replaced by Ordinance No. 185397, effective July 6, 2012.) As used in this Chapter the following definitions apply:

- A. “Columbia Boulevard Wastewater Treatment Plant (CBWTP)”** means the City of Portland’s wastewater treatment plant located at 5001 N. Columbia Boulevard, Portland, Oregon.
- B. “Director”** means the Director of the Bureau of Environmental Services or the Director’s designee.
- C. “Holding tank”** means a tanks with no drain field which is required to be pumped out on a regular basis.
- D. “Operator in charge”** means the operator in charge, hereafter referred to as “operator,” is the designated operator on duty at the Columbia Boulevard Wastewater Treatment Plant or other designated location who supervises and directs any discharge of septage.
- E. “Septage”** means domestic wastes in a tank or container such as chemical toilets.
- F. “Tri-County Area”** means the area within Multnomah, Clackamas and Washington Counties.

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17.35.020 Permits Required.

(Amended by Ordinance Nos. 166674, 182760 and 185397, effective July 6, 2012.) Only those persons possessing a valid septage discharge permit issued from the City of Portland will be allowed to discharge septage at the Columbia Boulevard Wastewater Treatment Plant (CBWTP).

- A.** Permits shall authorize discharges for one year, unless a shorter time frame is authorized by the Director.
- B.** The City shall issue permits for the discharge of septage at CBWTP after receipt of the following:
 - 1.** A Septage Discharge Permit Application form;
 - 2.** A copy of a valid sewage disposal service license issued by the DEQ;
 - 3.** A current DEQ Sewage Pumping Equipment Description/Inspection form for each vehicle identified on the permit;
 - 4.** A performance guaranty as described in 17.35.060 of this Chapter;
 - 5.** A copy of insurance coverage at or above those levels required by the Oregon Public Utility Commission;
 - 6.** Effective July 1, 1994, a certificate of completion, or the ability to receive such certification within 30 days of permit approval, by applicant personnel at the City of Portland's "Septage Hauler Training Class." Personnel of an approved septage hauler shall attend the City's Septage Hauler Training Class. The class will inform haulers about the City's Septage Receiving Program and the operational process at CBWTP. Certification renewals may be requested on an annual basis and shall be required upon request of the Director or when permittee personnel changes occur.
 - 7.** The City shall impose appropriate conditions in permits to ensure compliance with requirements of this Chapter.
- C.** No provision of this Section shall be construed to create any right to the disposition of septage at a City facility inconsistent with the public interest of the City.

17.35.030 Septage Discharge Limitations.

(Amended by Ordinance Nos. 166674 and 185397, effective July 6, 2012.) The City will accept discharge of septage at the CBWTP that originates within the Tri-County area and is subject to the provisions of this Chapter.

- A.** Discharge of process waste from commercial and industrial locations is prohibited.

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- B.** Unauthorized discharge of septage into the sewer system within the jurisdiction of the City or the Tri-County area is prohibited.
- C.** The City will have full authority to refuse a load, limit the amount of discharge and/or establish necessary restrictions on discharge under the following conditions:
 - 1.** Unacceptable acidic or alkaline strength or corrosive properties;
 - 2.** Septage is from a non-approved source;
 - 3.** Failure to supply complete, accurate and verifiable septage information;
 - 4.** Operator observed inconsistencies between certified contents and actual contents;
 - 5.** Operational or capacity limitations at CBWTP. Loads will be rejected during wet weather events.

17.35.040 Reserved.

17.35.050 Reserved.

17.35.060 Performance Guaranty.

(Amended by Ordinance No. 166674, effective June 23, 1993.) Each applicant, except governmental agencies shall post a performance guaranty in a form including but not limited to a surety bond, penal bond, performance bond, irrevocable letter of credit, pledge of assets, or other form which shall be approved by the City Attorney. The amount will be determined by the conditions of the permit and the number and capacity of the applicant's vehicles. Minimum coverage shall be \$10,000. All changes in personnel and equipment shall be reported to the City within 30 days. The value of the performance guaranty shall be forfeited to the City under any of the following conditions:

- A.** The discharge of septage in violation of 17.35.030;
- B.** The discharge of septage at unauthorized locations in the Tri-County area (or the City of Portland);
- C.** Effective July 1, 1994, failure to make timely payment, pursuant to 17.35.090 B, of charges billed under this Chapter. (Forfeiture of guaranty up to amount of overdue charges only, after notice of intent to demand payment from guarantor.)

17.35.070 Fee Schedule.

(Amended by Ordinance Nos. 156500, 160886, 162109, 165136, 166674, 167692, 168857, 170190, 171224, 172288, 173414, 175620, 176524, 177530, 178449, 179274, 180189, 181006 and 181846, effective July 1, 2008.)

- A.** Discharge permit holders are subject to the following septage discharge fees:

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1. Annual Discharge Permit Fee. Fees are to be paid on an annual basis at time of permit application.
 2. Discharge Rates. Each delivery received at the plant is subject to discharge rates, which will be applied to full tank capacity of the delivery vehicle. The plant may accept partial loads on a pre-approved basis. Measurement disputes between septage haulers and City personnel will be resolved by a process established by the Director.
 3. After-Hours Fee. Deliveries received at the plant outside of normal business hours are subject to an after-hours fee.
- B.** Septage discharge fees and rates are adopted, annually, by general ordinance to establish sewer and drainage rates and charges.

17.35.080 Collection and Billing.

(Amended by Ordinance Nos. 166674 and 181483, effective January 18, 2008.) The operator is directed to provide one copy of the load certificate to the permittee, retain two copies of each load certificate executed by permittee, and to convey one copy of each load certificate to the office of the City as may be required by the Office of Management and Finance.

The City shall mail a monthly statement of account to each permittee. Failure to pay the amount shown within 30 days of the date of billing shall result in imposition of interest fees, as named in Title 5, Section 5.48.040, on the amount past due.

17.35.085 Inspections.

(Added by Ordinance No. 186192, effective September 6, 2013.)

- A.** Right of Entry. To the extent permitted by law, BES may enter all private and public premises at any time for the purpose of inspecting for potential violations, connections or for any other lawful purpose. This authorization includes but is not limited to inspection, sampling, testing, photographic documentation, record examination, copying, and installation of devices. Entry may not be conditioned upon BES representatives signing any type of confirmation, release, consent, acknowledgement, or agreement.
- B.** Entry Protocols.
1. The BES representative will present a City photo identification card at the time of entry.
 2. The BES representative will comply with reasonable, routine safety and sanitary requirements of the facility or site as provided by the facility operator at the time of entry. The facility operator must provide the BES representative with any facility-specific safety protective equipment necessary for entry.

17.35.090 Revocation/Amendment of Permit.

(Repealed by Ordinance No. 186192, effective September 6, 2013.)

17.35.100 Protection of the Public Interest.

(Repealed by Ordinance No. 185397, effective July 6, 2012.)

17.35.110 Enforcement.

(Replaced by Ordinance No. 186192, effective September 6, 2013.)

- A.** Violations. It is a violation for any person to fail to comply with the requirements of this Chapter or associated rules. Each day a violation occurs or continues may be considered a separate violation. BES will hold the person or persons solely responsible for complying with BES enforcement actions. Violations of this Chapter or associated rules include, but are not limited to:

 - 1. Failure to obtain a septage hauler permit;
 - 2. Failure to comply with training requirements;
 - 3. Discharge of wastes violating Section 17.35.050;
 - 4. Failure to pay discharge fees or provide a performance guarantee; or
 - 5. Failure to comply with enforcement actions as identified in the BES Enforcement Program administrative rules (PPD item ENB-4.15)
- B.** Enforcement Tools. BES may use any or all of the following tools to enforce this Chapter or associated administrative rules: notice of investigation, warning notice, notice of violation, compliance order, requirement to obtain a permit, notice of termination, withholding of permits, violation abatement, legal action, criminal case referral, or referral to other regulatory agencies. BES enforcement actions are described in program-specific administrative rules and the BES Enforcement Program administrative rules (PPD item ENB-4.15).
- C.** Civil Penalties. Persons violating this Chapter or associated rules may be assessed civil penalties of up to \$10,000 per day per violation according to program-specific administrative rules and the BES Enforcement Program administrative rules (PPD item ENB-4.15). Penalties and other charges will accrue interest from the date of initial City notice assessing the penalty until the penalty is paid in full.
- D.** Cost Recovery. The Director may recover all reasonable costs incurred by the City that are attributable to or associated with violations of this Chapter or associated administrative rules per PPD item ENB-4.15.
- E.** City Summary Abatement. To the extent permitted by law, the Director may recover from the person causing the violation all costs incurred by the City to summarily abate the following:

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1. A violation that is not remedied through required corrective actions;
 2. A situation that poses an imminent danger to human health, public safety, or the environment; or
 3. Continued noncompliance with PCC or associated rules.
- F.** Nothing in this Chapter is intended to impose liability on the City for any injury or damage resulting from the failure of any person to comply with the provisions of this Chapter.

17.35.120 Revocation or Amendment of Permit.

(Added by Ordinance No. 186192, effective September 6, 2013.) All septage discharge permits issued to an applicant by the City may be revoked for any of the following reasons:

- A.** Failure to accurately certify the source of a load of septage prior to discharge.
- B.** Failure to pay all charges for discharge within 60 days of billing by the City.
- C.** Any act that is named as a cause for forfeiture of the performance guaranty, as outlined in Section 17.35.060.
- D.** Septage permits may be amended for the following reasons:
 1. A change occurs in a permittee's operations that affect the applicability of this Chapter's provisions.
 2. The amendment is required by the applicable State or Federal laws or regulations.

17.35.130 Compliance Cases and Appeals.

(Added by Ordinance No. 186192; Amended by Ordinance No. 186902, effective December 26, 2014.)

- A.** Reviews and Appeals. A person may request a modification to a BES decision related to this Chapter via an administrative review with BES staff. After the requestor has exhausted all BES program and enforcement program reviews, the requestor may file for an appeal with the Code Hearings Officer per PCC Title 22.
 1. Reviews and appeals of the following may be requested:
 - a.** The determination of a violation of this Chapter or associated rules.
 - b.** The type and level of enforcement action taken by BES.
 - c.** The type and amount of penalty imposed by BES.
 - d.** Compliance due dates.

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- e. A requirement to obtain a permit.
 - f. A denial of a permit.
 - g. Required remediation actions.
 - 2. Reviews and appeals may not be requested for:
 - a. The amount of cost recovery assessment against the person by BES.
 - b. A requirement to meet a technical standard.
 - c. Other issues identified in program-specific administrative rules.
 - 3. Appeals to the City Code Hearings Officer. An appellant must pay a filing fee in the amount of the Code Hearing fee as part of the appeal request. If the Code Hearings Officer finds in favor or in partial favor of the appellant, BES will reimburse the appellant for the full amount of the fee, and send a check to the appellant via certified mail.
- B. BES Code Compliance Cases. BES may file a case before the Code Hearings Officer under PCC Title 22 to compel compliance with City regulations. The person committing the violation will be offered the opportunity to present evidence.

17.35.140 Conflict.

(Added by Ordinance No. 186192, effective September 6, 2013.) This Chapter supersedes all ordinances or elements thereof to the extent that they are inconsistent with or conflict with any part of this Chapter.

17.35.150 Severability.

(Added by Ordinance No. 186192, effective September 6, 2013.) If any provision, paragraph, word, or Section of this Chapter or associated administrative rules is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, and sections shall not be affected and shall continue in full force and effect.

CHAPTER 17.36 - SEWER USER CHARGES

(Chapter replaced by Ordinance No. 185870,
effective February 22, 2013.)

Sections:

17.36.010	Intent.
17.36.020	Definitions.
17.36.030	Annual Rate Ordinance.
17.36.040	Sewer System Connection Charges.
17.36.050	User Charges.
17.36.060	Special User Charges.
17.36.070	Service Outside the City.
17.36.080	Collection of Charges.
17.36.090	Adjustment of Bills.
17.36.100	Inspection and Enforcement.
17.36.110	Appeal.

17.36.010 Intent.

This Chapter governs the collection of sewer user charges by the Bureau of Environmental Services (BES) as authorized by the City Charter. It also includes collection processes applicable to other charges assessed by BES.

17.36.020 Definitions.

(Amended by Ordinance Nos. 186902 and 187926, effective September 2, 2016.) The following definitions apply to this Chapter:

- A. "Biochemical Oxygen Demand (BOD)"** means the quantity of oxygen utilized in the biochemical oxidation of organic matter per Guidelines Establishing Test Procedures for the Analysis of Pollutants, contained in 40 CFR 136.
- B. "Branch"** means the public portion of the horizontal piping system connecting from the plumbing system of a building or buildings to a public or private sewer.
- C. "Branch Charge"** means a connection charge that reimburses the City for the costs of designing and constructing a public sewer extension and providing individual service laterals.
- D. "Connection Charge"** means a charge assessed by the City for providing public sewer and stormwater management services to a property. A connection charge may include a line charge, branch charge, sanitary sewer system development charge, and a stormwater system development charge. Connection charges are for use or expansion of use of City sanitary or stormwater management services.
- E. "Director"** means the Director of the Bureau of Environmental Services or the Director's designee.

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- F. **"Equivalent Dwelling Unit (EDU)"** means the estimated average sanitary flow from a single-family dwelling charged to a sewer account.
- G. **"Extra Strength Charge"** means the additional charge to wastewater dischargers who have constituent discharges at concentrations above levels normally expected in domestic wastewater, as determined by this Chapter and general ordinance.
- H. **"Groundwater"** means subsurface water that occurs in soils and geological formations that are fully saturated. Groundwater fluctuates seasonally and includes perched groundwater.
- I. **"Groundwater Discharge"** means a discharge of water pumped or directed from the ground. Groundwater discharges include but are not limited to subsurface water from site remediation and investigations, well development, Brownfield development, discharges from footing and foundation drains, and subsurface water associated with construction or property management dewatering activities.
- J. **"Impervious Area"** means the area of a property that does not allow rainwater to percolate naturally into the ground.
- K. **"ITE Manual"** means the manual used per Section 17.15.020 to determine transportation system development charges.
- L. **"Line Charge"** means a connection charge that reimburses the City for the costs of designing and constructing sanitary sewer lines that serve multiple connecting properties.
- M. **"Net New Impervious Area"** means the difference between existing impervious area on a property, and any increase in impervious area that results from a proposed use(s) of the property.
- N. **"Net New Vehicular Trips"** means the difference between the vehicular trips generated by the existing use of a property, and any increased number of the vehicular trips generated from a proposed use(s) of the property.
- O. **"Non-Routine Discharge"** means a definable/explainable uncontrolled release or spill to the sanitary sewer system that is not representative of the normal or expected characteristics of a facility's wastewater discharge and that may include discharges defined as slugloads under Chapter 17.34.
- P. **"Rate"** means the multiplication factor used to generate a connection or user charge based on cost-per-unit proxies such as gallons of discharge, square feet, or feet of road frontage. Rates can be multiplied by other factors
- Q. **"Ratepayer"** means a person who has the right to possession of a property and:

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1. Who causes or permits the discharge of sanitary sewage into the public sewer system, or
 2. Whose use of the property directly or indirectly benefits from stormwater management services provided by the City.
- R. "Rolling Average"** means the average of the 10 most recent monthly averages of representative City- and/or self-monitoring events for the purpose of calculating an extra-strength sewage charge rate, unless another period is approved by the Director.
- S. "Sanitary Sewage"** means wastewater discharged to the public sewer system by permit or other approval of the Director and includes, but is not limited to, domestic wastewater, industrial and commercial process wastewater and contaminated stormwater.
- T. "Sanitary Sewer Conversion Charge"** means the charge to convert a nonconforming sewer, as that term is defined in Chapter 17.33. This charge is assessed in lieu of line and branch connection charges.
- U. "Sanitary System Development Charge (SDC)"** means a connection charge for new or increased demand of the public sewer system. This charge reimburses the City for an equitable portion of the costs of major sewer facilities such as wastewater treatment facilities, pump stations and interceptor sewers.
- V. "Seed"** means a population of microorganisms capable of oxidizing biodegradable organic matter that is added to a wastewater sample as part of the analysis of biochemical oxygen demand (BOD). Only seed prepared using primary effluent from the City's Columbia Boulevard Waste Water Treatment Plant may be used for this analysis.
- W. "Stormwater Management Facility"** means a facility or other technique used to reduce volume, flow rate, or pollutants from stormwater runoff. Stormwater facilities may reuse, collect, convey, detain, retain, or provide a discharge point for stormwater runoff.
- X. "Stormwater Management Services"** means services and actions used to collect, convey, detain, retain, treat or dispose of stormwater. These services include managing stormwater runoff from public streets, mitigating flooding, preventing erosion, improving water quality of stormwater runoff, collecting and conveying stormwater runoff from private properties when runoff exceeds the capacity of private facilities to manage stormwater onsite, mitigating impacts to natural habitats caused by stormwater runoff, and protecting properties and natural habitats from hazardous soils and materials that are discharged from private properties and public rights-of-way.

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- Y. "Stormwater System Development Charge (SDC)"** means a connection charge for new or increased demand of the public stormwater and drainage system. This charge reimburses the City for an equitable portion of the costs of public stormwater management facilities such as collection and conveyance facilities, detention and disposal facilities, and water pollution reduction facilities.
- Z. "Temporary Connection"** means a connection to the sanitary sewer system where the duration of the connection is less than three years and connection and disconnection occur only once. Connections made to the public sewer, stormwater or drainage system made for the purpose of environmental remediation will not be considered a temporary connection unless approved by the Director.
- AA. "Temporary Structure"** means a structure that is separate and distinct from all other structures and is created and removed in its entirety within 3 years, including all impervious area associated with the structure.
- BB. "Total Suspended Solids (TSS)"** means the total suspended matter that either floats on the surface or is suspended in water or wastewater and that is removable by laboratory filtering in accordance with 40 CFR 136 Table B.
- CC. "Transportation SDC Study"** means the transportation system development methodology established by Chapter 17.15.
- DD. "User Charge"** means a charge paid by a ratepayer for the use of public sanitary or stormwater management services. User charges are calculated on a routine basis such as monthly or annually.

17.36.030 Annual Rate Ordinance.

Charges authorized by this Chapter pay for the City to provide sewer and stormwater management services. Charges are calculated based on true costs of service or may be based on rates per unit volume or usage or area served. Charges and rates are established via a BES rate ordinance adopted annually by the City Council. Charges are effective on a fiscal-year basis (July 1 to June 30 of the following year).

17.36.040 Sewer System Connection Charges.

(Amended by Ordinance No. 186403, effective February 1, 2014.) Connection charges are for establishing a new connection, new use or expanding existing uses of the public sewer and City stormwater facilities. A property may be subject to one or more of these charges depending on the connections made.

- A.** The methodology for calculating connection charges is set forth in the Sanitary and Stormwater System Development Charge Methodology administrative rules (PPD item ENB – 4.05).
- B.** Payment is required upon issuance of a building or connection permit or, for connections related to City sewer extension projects, prior to or at the time a property physically connects to the public system.

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1. Prepayment. A person may pre-pay connection charges by providing a letter of intent that includes the parcel description and address, if applicable, and the estimated number of EDUs or impervious area. The Director may grant a refund at any time for excess charges at the rate in effect at the time of building permit or connection. Prepayment of connection charges does not guarantee reserved system capacity or usage of City sewer or drainage services. The Director may accept a cash or surety bond posted by the owner of the occupancy in lieu of immediate payment of the charge if:
 - a. The appropriate number of EDUs for the occupancy cannot be determined before the permit is issued; or
 - b. The Director has determined the number of equivalent dwelling units for the occupancy but the applicant does not agree with the Director's determination.
2. True-up. Within 2-1/2 years after connection, the Director will determine the number of EDUs and the amount of the SDCs due, using water consumption records or other evidence. Upon notice, the applicant must pay the SDCs within 60 days or the bond will be forfeited upon approval by the Director and the Commissioner-in-Charge.
3. Deferral of connection charges. Users who qualify to defer SDC or other sewer connection charges but who want to connect to the system can defer payment of connection charges until such date as the Director may specify as authorized by ordinance. The charge in effect at the time of connection is applied at time of payment. Deferred connection charges are delinquent when not paid after a period of 90 days from the date due and bear interest and penalties as set forth in this Chapter. Users may convert the deferral to an installment payment loan. The Director will establish rules, procedures and forms to govern the administration of the deferral program.

C. Sanitary System Development Charge (SDC).

1. A person must pay sanitary SDCs for:
 - a. Connecting a building property to a sanitary or combined sewer;
 - b. Increasing sewer usage by alteration, expansion, improvement, or conversion of a building already connected to the sewer; or
 - c. Increasing flow to a sanitary or combined sewer by causing contaminated stormwater or groundwater to enter the sewer.
2. Sanitary SDCs are calculated based on the number of EDUs.

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- a. EDUs for nonresidential uses will be calculated from Plumbing Fixture Units (PFUs), as defined by the Oregon Plumbing Specialty Code in effect at the time of the permit application.
 - b. Industrial wastewater. Industrial wastewater dischargers are subject to review of sewer usage within two years of occupancy. EDUs are calculated from the highest 6-month average of metered usage over that period. The user of record is responsible for EDUs in excess of those paid at the issuance of the permit.
 - c. EDUs for groundwater or other permitted discharges to sanitary or combined sewer are calculated based on estimated discharge volume.
 3. Temporary use. Temporary structures and connections are not subject to sanitary SDCs. However, sanitary SDCs, including penalties and interest charges, become due and payable for structures or connections that are not removed within three years. Temporary structures and temporary connections are not exempt from paying user charges, including extra strength charges.
 4. Credits. Sanitary SDC credits may be rewarded for:
 - a. Prior sewer connections. Full credit may be awarded for each EDU purchased and in existence prior to its demolition or disconnection.
 - b. Prior sewer user charge payments. A credit of \$21 per EDU for each year of sanitary sewer user charge payments from 1949 to 1991 may be awarded for buildings not demolished or disconnected prior to July 1, 1971.
- D. Sanitary Line Charge.
 1. Residential Property. The line charge is based on the square footage of that portion of the property receiving service that lies within 100 feet of the public right-of-way or easement where a sewer has been constructed or is planned. Such street or easement line is considered as continuing 100 feet beyond the end of the main line sewer or beyond where the sewer turns away from the property. The minimum line charge is based on a minimum assumed lot size of 1,200 square feet.
 2. Non-Residential Property. The line charge is based on the square footage of the portion of the property receiving service that lies within 300 feet of the public right-of-way or easement where a sewer has been constructed or is planned. Such street or easement line is considered as continuing 300 feet beyond the end of the main line sewer or beyond where the sewer turns

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away from the property. The minimum line charge is based on a minimum lot size of 3,600 square feet.

3. When an adjacent, developed lot, as defined in Title 33 of this Code, is under the same ownership and used in conjunction with a neighboring, developed lot that is connected to the sewer, the adjacent lot is charged a line charge for its frontage as described above. This condition includes but is not limited to improved parking lots, and lots with garages or landscaping.
4. Lack of gravity service. When a sewer is constructed that can not provide full gravity service, the line charge is reduced by:
 - a. 50 percent if the property has gravity service to the first floor only and must install a pump for the basement; and
 - b. 75 percent if no gravity service is available for the first floor and the property must install a pump.

The adjustment may not exceed the costs associated with the installation of a pump system. The ratepayer may appeal this determination to the Director.

- E.** Branch charge. BES collects a branch charge for providing a branch sewer to the property, but only if the property was not assessed for the branch or its equivalent previously.
1. Additional charges may be assessed to cover the City's design and construction costs for branches that were requested by the user but not ultimately used. These charges must be paid before the property may be connected to the public system.
 2. BES collects a branch charge for City adoption of private nonconforming sewer lines located within the public right-of-way as provided under Subsection 17.32.055 B.2.
 3. Sampling manhole charge. When a property is subject to an extra strength charge as described in Subsection 17.36.060 A., the user may request that the City install a sampling manhole on the branch. The user must pay all direct and indirect costs of installing the manhole.
- F.** Sewer Conversion Charges. A property owner must pay sanitary sewer conversion charges according to the following two categories and as determined by administrative rule at the time the City provides a new sewer connection or when the property owner requests a permit for a new conforming sewer connection.
1. Residential Conversion Charges. Single-family, duplex, three-plex, or four-plex properties are assessed the residential sewer conversion charge, which is the branch charge in place at the time of connection.

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2. **Commercial Conversion Charges.** All multifamily, commercial, mixed-use, industrial, and institutional properties are assessed according to administrative rule and are calculated to recover costs for City sewer extension projects that serve the property. The commercial conversion charge replaces line, branch, system development and connection charges in this context.
- G. Stormwater System Development Charge.** The stormwater SDC consists of two parts: an onsite charge, reflecting use of public facilities handling stormwater flows from individual properties; and an off-site charge, reflecting use of system facilities handling stormwater flows from rights-of-way.
1. The onsite charge is calculated by multiplying the net new impervious area by a rate per thousand square feet of impervious area. In the case of groundwater flows directed into stormwater facilities, the charge is calculated based on the amount of impervious area necessary to produce an equivalent flow given average rainfall.
 2. The offsite charge is calculated in two parts: local access, and use of arterial streets.
 - a. The local access portion of the offsite charge is calculated by multiplying the length of the property's frontage by a per lineal foot rate. For properties on which there is existing development and for which a stormwater SDC has previously been paid, the local access portion will be waived.
 - b. The arterials portion of the offsite charge is calculated by multiplying net new vehicular trips by a rate per vehicular trip. Vehicular trips for a particular development are determined by the Transportation SDC Study, the ITE Manual, or an alternative study acceptable to the Bureau of Transportation.
 3. **Credits.** Credits may be granted for the onsite portion of the stormwater SDC in one of the following two cases:
 - a. Credits of up to 100 percent of the onsite portion of the stormwater SDC may be granted for areas draining, either in whole or in part, directly to the Willamette or Columbia Rivers or to the Columbia Slough. Only discharges that do not pass through City-financed stormwater facilities and meet all applicable water quality standards are eligible for credits. Credit applications must adequately demonstrate the satisfaction of these conditions. Development using stormwater facilities built under a public works permit that convey stormwater runoff directly to the Willamette or Columbia Rivers or the Columbia Slough without passing through other City

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stormwater facilities is eligible for up to 100 percent credit for the onsite charge.

- b.** A 100 percent credit may be granted for areas draining to facilities providing effective on-site retention for a 100 year storm event with a safety factor of two, defined as a rainfall intensity of 8.28" per hour per square foot of impervious area. Those applying for this credit must provide adequate documentation to demonstrate this additional retention capacity, including testing of infiltration facilities, and that on-site flows are directed to these facilities.
- c.** No credits may be granted for the offsite portion of the stormwater SDC.

- H.** Partial and Full Exemptions for Affordable Housing Developments. Permanent affordable housing developments may be eligible for a waiver of sanitary and stormwater SDCs pursuant to Section 30.01.095.

17.36.050 User Charges.

(Amended by Ordinance No. 187926, effective September 2, 2016.) Sewer user charges are established and made effective as follows:

- A.** Timing. User charges are calculated on a routine basis, such as monthly, quarterly or annually.
- B.** Sanitary Sewer Services. The City calculates and collects user charges for sanitary sewer services from ratepayers who cause or permit the discharge of sanitary sewage from a property in their possession into the public sewer system. Charges for sanitary sewer services may include sanitary sewer volume charges, account service charges and penalties for non-payment or late-payment of sewer charges and other charges:

 - 1.** Residential dwellings. Residential dwelling units are assessed based on the volume of sewage discharged to the sanitary sewer system. The Director may elect to use water consumption as the basis of this calculation. To avoid including irrigation water usage in this calculation, the Director will establish a procedure that allows for irrigation credit. When a water meter reading is not available, a sanitary sewer discharge estimate will be made based on the ratepayer class of characteristics per administrative rule.
 - 2.** Non-residential occupancies. The City calculates charges for commercial, industrial, and all occupancies based on the amount of incoming water volume as measured by the City water meter, information from the water district serving the property, or by an approved meter that measures actual sanitary discharge volume.

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3. Combined dwelling units and other. Where dwelling units and other occupancies use the same water supply, the City calculates charges for sanitary sewer service in the same manner as those for commercial, industrial, and all occupancies other than residential.
 4. Estimating wastewater discharges for mobile dischargers. User charges are applicable to all wastewater discharges to the City sewer system regardless of the source. In unusual circumstances where the wastewater is not from a fixed location, such as ships, barges, houseboats and other movable facilities or dwelling units, a method of determining the volume provided by the user may be used if approved by the Director. Otherwise, the Director estimates the volume of water to which user charges apply and this determination is final.
 5. In areas served by separated storm and sanitary sewer systems, the City may accept the discharge of contaminated stormwater into the sanitary sewer. The discharge volumes will be determined by the amount of impervious area producing the contaminated stormwater plus the average rainfall or a discharge meter. The discharge will be charged based on sanitary sewer volume rates.
- C.** In cases where water is supplied solely from a private source or sources such as wells, springs, rivers or creeks, or from a partial supply in addition to that furnished by the City, residential ratepayers are assigned the class average volume for their alternative source water use. Commercial ratepayers must meter the private supply either as an inflow or a discharge in conformance to the provisions of this Chapter.
- D.** Meters required. Any meter or method used for calculation of a adjusted charge or credit is subject to the administrative or special meter charge for each such meter or method. The property owner is responsible for purchasing, installing, maintaining, and calibrating the private meter and must comply with all provisions in this Title. Meters must be approved by the Director as to type, maintenance, calibration schedule, size and location before installation.
1. All meters must register in cubic feet.
 2. Meters installed on water systems supplied from private or public sources and used to measure cooling, irrigation, evaporation or product water for the purpose of obtaining reduced sewer charges must be connected in such a manner as to register only that portion of the water supply used for that purpose.
 3. Meters placed below the ground or pavement surface must have the top of the meter not more than 8 inches below the surface and must be enclosed in a standard water meter box and cover as used by the Portland Water Bureau.

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Meters located above the ground or floor level must not be more than 3-1/2 feet above the ground or floor level.

4. All meters must be located in an area that is freely accessible at all times and that, in determination of the Director, does not present a danger to City employees.
 5. The owner of a meter must implement a program to ensure meter accuracy. The program should consider the manufacturer's periodic maintenance and calibration requirements. All maintenance and calibration records must be retained and available for review by City personnel.
 6. Failure of the owner, the owner's lessee, or others acting under the owner to maintain the meter in good working order constitutes a violation of this Chapter. During the period of the meter's non-operation and pending the proper repair and reinstallation of the meter, the account may be billed on the basis of three times the normal water usage or in such an amount as deemed proper by the Director.
- E. Credits.** A ratepayer must submit a written request for establishing reduced charges or credit for water not subject to sewer user charges. Requests must be received prior to any use of water that may be subject to reduced or special charges, and prior to installation of any meter. A request for credit must include a meter maintenance plan and a mechanical plan showing the proposed meter location, access route to the meter, the water supply or source, the cooling or other water-using equipment, and the discharge point. Reduced charges or credits will not be given for any period prior to the date of approval. No reduced sewer charge may be given until the Director has approved the request.
1. Water not subject to sewer user charges. The Director may exempt from sewer user charges water that is used in a manufactured product such as ice, canned goods or beverages; or for water lost by evaporation or used in irrigation. To calculate the quantity of exempt water, a meter must be installed to the satisfaction of the Director.
 2. Clean water discharges. When a non-residential ratepayer requests approval for a temporary or permanent discharge of clean water to a public sewer system, the discharger must install meters or provide other verifiable and quantifiable information using a method approved by the Director to determine the volume of water to be discharged. Water such as that used for refrigerating or cooling purposes or condensed from steam and that has been put to no other use may be discharged into the sanitary system as clean water.
 - a. Clean water to storm sewer or other public drainage systems. Charges are calculated based on the clean water discharge-to-storm

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rate multiplied by the measured or estimated volume of water discharged to a public storm sewer or other public drainage system.

- b.** Clean water to sanitary or combined sewer systems. Charges are the same for other sewer uses and are calculated based on the non-residential sewer services rate multiplied by the measured or estimated volume of water discharged to a public sanitary or combined sewer.
- 3.** Conditions for revoking reduced charges or credits. The following conditions will nullify discounts and reinstate full user charges until such time as the owner or person in charge of the premises formally notifies the Director that the situation has been rectified.
 - a.** Defective discharge meters. During the period of the meter's non-operation and pending the proper repair and reinstallation of the meter, the account may be billed for the full amount of water passing through the supply meter and up to three times the supply flow provided by non-City resources. At no time may a reduced charge or credit be allowed retroactively, or for a period in which the meter is defective.
 - b.** Failure to report. Failure to report on quantities of water subject to reduced charge or credit for 2 consecutive months is a violation of this Chapter. User charges must be paid on the full amount of water passing through the supply meter and up to three times the supply flow provided by non-City resources during these 60 days. At no time may a reduced charge or credit be allowed retroactively, or for a period in which no reports were submitted.
- F.** Stormwater Management Services. Ratepayers who receive a direct or indirect benefit from City stormwater management services are subject to the user charge. The ratepayer identified on the City utility billing account is assumed to be the user of stormwater management services and responsible for the user charge. If the property is not subject to other City utility charges, the Director will determine the ratepayer responsible for the user charge.
 - 1.** Billing Components. The user charge consists of the following components:
 - a.** Stormwater On-Site. The user rate for the on-site component is 35 percent of the stormwater management services rate.
 - b.** Stormwater Off-Site. The user rate for the off-site component is 65 percent of the stormwater management services rate.

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2. Basis for charge. User charges are calculated based on the user's proportionate share of City stormwater management services as estimated by the amount of impervious area on the user's property. Unless the property has been measured to the satisfaction of the Director, the property's impervious area is assumed to be equal to the average impervious area for the user's class. The following areas are included in a property's impervious area calculation for billing purposes: roofs; paved areas such as, but not limited to, driveways, parking lots, and walkways; and areas of the property that are covered by porous pavement. The following areas are not included in a property's impervious area calculation for billing purposes: rights-of-way that have been dedicated to the public and over which the City exercises regulatory jurisdiction and management; outdoor recreation areas owned by governmental bodies that are available to the general public, excluding parking lots and buildings; and areas covered by compacted soils and compacted gravels
 3. Dwelling units. The City uses the following class averages of impervious areas for calculating user charges for dwelling units located on a single property or tax lot:
 - a. One and Two Dwelling Units - 2,400 square feet
 - b. Three Dwelling Units - 3,000 square feet
 - c. Four Dwelling Units - 4,000 square feet
 4. Properties other than dwelling units or with five or more dwelling units. The City calculates the ratepayer's use of stormwater drainage system services based on the amount of impervious area on the site.
 5. Clean River Rewards. Clean River Rewards discounts are offered to increase ratepayer control over stormwater management charges and to advance City environmental goals. The program provides economic incentives, technical assistance, and environmental education to ratepayers who control and manage the quality and quantity of stormwater runoff on their private property.
- G.** Portland Harbor Superfund Charge. The City calculates and collects user charges for the Portland Harbor Superfund Program. If the property is not subject to other City utility charges, the Director determines the ratepayer responsible for the Portland Harbor Superfund charge. This user charge appears as a line item on the City utility bill, and is the sum of the following two rate calculations:
1. Sanitary Volume. This portion of the charge is the sanitary sewer service user charge multiplied by the Portland Harbor Superfund Sanitary Volume rate.

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2. Impervious Area. This portion of the charge is the stormwater management services charge multiplied by the Portland Harbor Superfund Impervious Area rate.

17.36.060 Special User Charges.

(Amended by Ordinance No. 186902, effective December 26, 2014.) The following charges are applicable to only certain user groups and are assessed in addition to other user charges. Users may be subject to one of more of these charges. The current charge rates are provided on the BES annual rate ordinance.

- A. Extra-Strength Charge. Wastewater discharged to a City sewer, either directly or indirectly, is subject to an extra-strength charge if the discharge has a BOD or TSS in excess of concentration thresholds determined by the Director. The Director may establish concentration thresholds for other pollutants that are subject to extra-strength charges. Payment of an extra-strength charge does not excuse the discharger from complying with all other applicable provisions of Chapter 17.34 of this Code.

1. Calculation of Charges. Extra-strength charges are based on the following:

- a. The concentration of pollutants in excess of thresholds established by the Director and adopted by Council.
- b. The total metered water supplied to the premises. The extra-strength charge may be reduced where commercial or industrial wastewater is discharged separately from domestic sanitary wastes or cooling waters and the user provides a meter or other measurement method acceptable to the Director. For multiple tenant buildings with shared water service, extra-strength charges will be apportioned by class of individual tenant with an estimated volume as a portion of the total sewer bill.

2. Methodologies for calculating extra-strength charges.

- a. Measured Rolling Average. This method bases a user's rate on the average concentration of the ten most recent monthly concentration averages. Rolling averages are initiated with samples taken over a 5-day period unless otherwise specified by the Director. Samples must be taken daily at an approved sampling manhole or other location as determined by the Director.

- (1) Self-monitoring. A user may be authorized to submit monitoring data as a basis for rate calculations. Wastewater samples must be representative of the discharge.

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- (a) Reports. Self-monitoring reports must include sufficient information to calculate the extra-strength rolling average.
 - (b) All analytical data submitted for rate calculations must be in accordance with procedures approved in Guidelines Establishing Test Procedures for the Analysis of Pollutants, contained in 40 CFR 136 and amendments thereto as published in the Federal Register.
 - (c) Laboratories analyzing for BOD must use approved seed in their analysis. Laboratory reports must indicate the use of approved City seed in order for the data to be used in extra-strength charge calculation. The Director may require a split of any independent sample collected by the user for the purpose of extra-strength charge calculation.
 - (2) Additional sample requests. Any user subject to the measured rolling average method may request that BES collect additional samples. Requests must be submitted in writing. Full payment of re-sampling charges must be received prior to BES incorporating sampling results into the rolling average.
 - (a) Split samples. The Director may allow samples collected by the City for the purpose of determining an extra-strength sewage charge to be split with the user, as provided for in administrative rule.
 - (3) Non-routine Discharges. The Director may allow the exclusion of monitoring data from samples collected during a non-routine discharge from use in calculating a ratepayer's rolling average, using criteria defined in administrative rules.
- b. Extra-strength class averages. The Director may establish a rate structure for users to be billed extra-strength charges based on the average discharge concentration of their business class. Businesses subject to class-average extra-strength charges will be eligible for rate reductions based on the verifiable implementation of approved best management practices, using criteria established by administrative rule.

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- c. Other charge computations. If unusual effluent conditions make calculation by the measured rolling average or the extra-strength class-average method difficult or impossible, the Director may implement another method of sampling and computation. The Director may establish custom rates based on site-specific conditions per the criteria in administrative rule.
 3. Billing. Extra-strength charges are either included with the City utility bill or are billed separately by the City Auditor. These charges are enforceable and collectable in the same manner as water and sewer user charges. Failure to pay pursuant to Title 21 of this Code may be cause for termination of water and sewer services.
 4. Minimal charges; suspension. The Director may establish a minimum revenue threshold for periodic extra-strength charges using the rolling average method. The billing for all accounts with periodic extra-strength sewage charges below this minimum revenue threshold will be suspended or changed to the class average method until they increase beyond the revenue threshold again.
 5. Adjustments. The Director may adjust a user's charges where applicable at any time in accordance with the most recent monitoring analysis.
- B.** Building plan review charges. Charges are collected by the Bureau of Development Services on behalf of BES for the review of building plans and land use proposals to ensure compliance with requirements for sewage disposal, stormwater management, pollution prevention and source controls, and for determining routes of service.
- C.** Charges for Adoption of Nonconforming Sewer Lines. An owner of a property connected to the public sewer by a nonconforming sewer line in a public right-of-way may request that the City adopt the nonconforming line under Subsection 17.32.055 B.2. and associated administrative rules. Adoption charges will be assessed as provided by Subsection 17.36.040 A.3.d. unless the nonconforming line meets City standards as described in administrative rule.
- D.** Industrial Wastewater Permit Charges. Permitted users as identified in Chapter 17.34 must pay industrial wastewater permit charges based on the level of permit complexity, regulatory history, and amount of BES administrative oversight. Charge components are scaled based on whether an industrial discharger is a categorical industrial user, significant industrial user, or neither. Charges are calculated from the actual costs of BES staff to provide such services as data entry, permit administration, inspection, and permit processing for industrial users.
- E.** Batch Discharge Charges. Users desiring City authorization for one-time discharges from their site must pay the batch discharge review charge. This charge

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reimburses the City for site research, system capacity, and pretreatment evaluation for requested discharges.

- F.** Discharge Authorization (DA) Charges. A user seeking City authorization for on-going discharges from their site or typical business activity must pay a discharge authorization review charge. This charge reimburses the City for site research, system capacity, and pretreatment evaluation for requested discharges. DA charges will be assessed on a sliding scale depending on the level of review necessary for submittals provided or required to approve the DA request.
- G.** Sampling Charges. A discharger requesting City sampling and analysis assistance to support discharge authorization, permit, or other compliance activities will receive a specific cost estimate from BES.
- H.** Sub-Meter Program Fees, Charges and Credits. A commercial ratepayer may elect or be directed to participate in the Sub-Meter Program to accurately assess sewer and stormwater management service user fees. A program participant is required to pay both the Water and the BES special meter charges for each meter in use, which are assessed on each billing cycle. Meter results will provide either credits or additional charges against the user's bill as described in the Sub-Meter Program administrative rules PPD item ENB-4.32.

17.36.070 Service Outside the City.

- A.** The City charges for the use of sanitary sewer and stormwater management services from properties outside the City based on annually established rates.
- B.** Determination of whether a property is outside the City. The Director determines whether any residential or business, industrial, commercial, institutional or other property is inside or outside of the City limits. For purposes of this Section, the property is outside of the City limits where 66.7 percent or more of the assessed valuation of the property is recorded in the records of the County Assessor as lying beyond the City limits.
- C.** The Director may require and enter into agreements for and on behalf of the City permitting connection and providing sanitary sewer or stormwater management services to commercial and industrial properties outside the City when the Director finds such service feasible and appropriate.

17.36.080 Collection of Charges.

- A.** All charges for services provided to a property are the responsibility of the ratepayer benefiting from or using City services at that property. This responsibility will attach to the ratepayer's subsequent City utility accounts and applies whether the ratepayer is the sole user of the services or furnishes them in turn to third parties.

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- B.** Billing due dates. User charges are computed monthly, bimonthly, or quarterly, coincident with user charges for water service .

 - 1.** When billed with the utility bill, user charges are due and payable on the date provided on the water service bill. The City may prorate user charges for a portion of a utility billing period based on the effective date of the sanitary sewer or stormwater management service.
 - 2.** For ratepayers who do not receive water service from the City, user charges will be computed and billed monthly, bimonthly, or quarterly.
- C.** Collections. Upon determination by the Director that a charge is past due or otherwise delinquent, the City may avail itself of the full range of actions authorized by City Code.
- D.** Discontinuation of services. Charges not paid in accordance with the due date in the bill or invoice may be subject to water shutoff pursuant to Title 21 of this Code. The Director, with approval of the Commissioner-in-Charge, may also discontinue sanitary sewer service by disconnecting and plugging the sewer service line to properties whose delinquent user charges exceed \$10,000 for a period of 90 days or more. Ratepayers and property owners must be notified in writing of the City's intent to disconnect the sewer not less than 30 days prior to disconnection. Payment of the delinquent amount, including outstanding user charges or charges, accrued interest and collection costs, and all costs associated with disconnecting and reconnecting the sewer line, must be received by the City before the property may be reconnected to the sewer. The delinquent amount remains the responsibility of the ratepayer. In the event a ratepayer who is not the owner terminates their lease and moves from a disconnected property before reconnection has occurred, the City will reconnect the property and collect the cost as well as all delinquent amounts from the ratepayer who originally incurred the charges.

17.36.090 Adjustment of Bills.

(Amended by Ordinance No. 187926, effective September 2, 2016.)

- A.** The Director may make an adjustment of up to \$500 to a ratepayer's utility account when it is deemed necessary for the proper conduct of the business of the Bureau to do so.
- B.** When the Director determines that a billing error has occurred, the Director may authorize an adjustment of the ratepayer's utility account for the period of the error, not to exceed 3 years from the date the error is identified.
- C.** Except as set forth in this Subsection, a ratepayer's eligibility for an adjustment will end 6 months after the date a final bill was issued for the subject account. The Director may authorize an adjustment to the outstanding balance of a closed utility account more than 6 months after the issuance of the account's final bill if:

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1. The ratepayer was billed for sanitary sewer services for a property that was not connected to the City's sewer system;
 2. The error is discovered after the 6 month deadline for adjustments to a final bill;
 3. The request is made in writing by the ratepayer of record at the time the billing error occurred; and
 4. The adjustment is limited to the sanitary sewer user charge.
- D.** Adjustments will be in the form of credits or additional charges to active utility accounts. The City may not issue refunds for billing adjustments unless approved by the Director. Refunds are chargeable to the Sewer System Operating Fund.
- E.** Ratepayers who receive a back billing or a delayed billing will be offered the opportunity to pay the balance due over a set period based on current City collection policies.

17.36.100 Inspection and Enforcement.

- A.** Right of Entry. To the full extent permitted by the law, the City has authority to enter all private and public premises at any time for the purpose of inspecting sources of potential or actual discharges to the City's sewers and drainage systems and to perform any other lawful act required by or authorized under this Code or ordinances of the City, the Charter, or state or federal law. This authorization includes but is not limited to inspection, sampling, testing, photographic documentation, record examination, copying, and installation of devices as necessary to conduct sampling, inspection, testing, monitoring and metering operations to determine compliance with the requirements of this Chapter. City representatives shall not be required to sign any type of confirmation, release, consent, acknowledgement or other type of agreement as a condition of entry.
- B.** Conditions for Entry.
1. The City representative shall present appropriate credentials at the time of entry.
 2. The City representative shall comply with routine safety and sanitary requirements of the facility or site to be inspected as provided by the facility operator at the time of entry. The facility operator shall provide the City representative with any facility-specific safety protective equipment necessary for entry.
- C.** Meter Tampering Unlawful. It is unlawful to install, change, bypass, adjust, or alter any metering device or any piping arrangement connected therewith as to show the

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quantity of water reaching the public sewer under City control to be less than actual quantity.

- D.** Sampling Tampering Unlawful. It is unlawful to tamper in any manner with City-owned or City-installed sampling equipment or samples therefrom.
- E.** Falsifying applications or records. Ratepayers shown to have falsified applications and records may be subject to enforcement action.
- F.** Enforcement Actions may include:
 - 1.** Withholding of City services;
 - 2.** Withholding of City permits;
 - 3.** Reversal of credits. Any credits awarded based on falsified data may be reimbursed to the City via additional charges on the City water and sewer bill.
- G.** Civil Remedies.
 - 1.** In addition to the remedies provided by any other provision of this Chapter, the City may obtain, in any court of competent jurisdiction, a judgment against a person or property failing to comply with the provision of this Chapter. In any such action, the measure of damages shall be the costs for abatement by the City, administrative costs, permit charges, overhead costs, penalties, and other charges as determined by the Director.
 - 2.** In addition to any other remedy provided in this Chapter, the City Attorney, acting in the name of the City, may commence and maintain an action or proceeding in any court of competent jurisdiction to compel compliance with, or prevent by injunction, the violation of any provision of this Chapter.

17.36.110 Appeal.

(Replaced by Ordinance No. 186403; amended by Ordinance No. 186902, effective December 26, 2014.) A ratepayer, property owner or owner's agent may request modification of a BES assessment of a charge as described in this Chapter via administrative review with BES staff. After the requestor has exhausted all BES program reviews, the requestor may file for an appeal with the Code Hearings Officer per PCC Title 22. An appellant must pay a filing fee in the amount of the Code Hearing fee as part of the appeal request. If the Code Hearings Officer finds in favor or in partial favor of the appellant, BES will reimburse the appellant for the full amount of the fee; and send a check to the appellant via certified mail.

**CHAPTER 17.37 - DOWNSPOUT
DISCONNECTION**

(Chapter replaced by Ordinance No. 182467,
effective February 6, 2009.)

Sections:

- 17.37.010 Purpose.
- 17.37.020 Definitions.
- 17.37.030 Establishment of Downspout Disconnection Program.
- 17.37.080 Program Enforcement.
- 17.37.110 Interference with Disconnection Activities Unlawful.
- 17.37.120 Liability.
- 17.37.130 Civil Remedies.
- 17.37.150 Bureau Actions.
- 17.37.140 Notice Sufficiency.
- 17.37.160 Severability.

17.37.010 Purpose.

(Amended by Ordinance No. 185397, effective July 6, 2012.) The purpose of downspout disconnection is to remove stormwater from the combined sewer system to reduce the cost of large conveyance, storage, and treatment facilities needed to capture and treat stormwater or combined sewage.

17.37.015 Rule Making.

(Repealed by Ordinance No. 185397, effective July 6, 2012.)

17.37.020 Definitions.

(Replaced by Ordinance No. 185397; Amended by Ordinance No. 186403, effective February 1, 2014.) For the purpose of this Chapter, the following definitions shall apply:

- A. **“Combined Sewer”** means a sewer designed to convey both sanitary sewage and stormwater.
- B. **“Director”** means the Director of the Bureau of Environmental Services or the Director’s designee.
- C. **“Disconnection”** means physically plugging or capping the direct stormwater connection to a sewer and redirecting the stormwater either onto the surface of the property or under ground. This may require alterations to gutters, downspouts and landscaping.
 - 1. For properties that have a branch constructed to the edge of the property line from a public separated storm system, disconnection from the combined sewer may be accomplished by direct stormwater connection through a lateral to the public storm system. New storm connections to the

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City sewer or storm system are subject to the Stormwater Management Manual requirements for new connections to public systems.

2. For properties where surface or underground disposal of roof water is not feasible, disconnection may include a curb cut which discharges roof water to a curbed street. New storm connections to the city sewer or storm system are subject to the Stormwater Management Manual requirements for new connections to public systems.
 3. New stormwater facilities are required to meet the requirements of the Stormwater Management Manual.
- D. “Downspout”** means the conductor that conveys storm water from the gutter on the exterior of a building or other structure to another place of disposal.
- E. “Program area”** means the boundaries of the Downspout Disconnection Program area as shown on the map in administrative rules.
- F. “Workers Authorized By the Director”** means, but is not limited to, City employees and contractors hired by the City.

17.37.030 Establishment of Downspout Disconnection Program.

(Replaced by Ordinance No. 185397, effective July 6, 2012.)

- A. Eligibility.** Properties located within the boundaries of the disconnection area as shown on the map within the program administrative rules. A property is eligible for participation if the property:
1. Meets the "residential use" criteria in PCC Chapter 33.920; or
 2. Meets the "commercial use" criteria in PCC Chapter 33.920, and has site conditions that would allow for safe and effective disconnection as identified in Section 17.32.040.
- B. Deadlines.** The Downspout Disconnection Program shall pursue the objective of managing stormwater directly connected to the combined sewer on eligible properties in the program area and removing necessary amounts of stormwater from the combined sewer no later than the deadlines in the Downspout Disconnection Program Administrative Rules. Deadlines may be met sooner based upon the schedule for the projects in specific sewer basins.
- C. Procedures.** Disconnection procedures and policies are described in the Downspout Disconnection Program Administrative Rules. All downspouts that are disconnected from the combined sewer through this program must conform to the disconnection methods or systems approved by the Director. Technical assistance will be provided to property owners, upon request, to determine the most appropriate method of stormwater management.

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- D. Access to Eligible Property.** For the purpose of administering this code chapter, the Director or other workers authorized by the Director may, with consent from the property owner or occupant and upon production of proper identification, enter upon the land or premises of eligible property. The purpose of such entry is to survey a downspout to determine whether it is connected, to provide technical assistance regarding proper disconnection, to disconnect downspouts, to correct or otherwise fix disconnected downspouts, to reconnect downspouts that do not meet program standards, or to inspect downspouts which have been disconnected.
- E. Ownership of private stormwater systems.** The property owner shall own the new private stormwater management system and be responsible for ensuring that the new private system is properly maintained and operated.
- F. Reconnection of disconnected downspouts at participating properties.**
1. Property owners in mandatory program areas are prohibited from reconnecting to the combined sewer unless the City determines that the disconnection poses a threat to health, safety or property and approves the reconnection. Homeowners must contact the Downspout Disconnection Program if they believe reconnection is necessary.
 2. Property owners in the voluntary area must contact the Downspout Disconnection Program if they plan to reconnect their downspout(s).

17.37.040 Disconnection Procedures.

(Repealed by Ordinance No. 185397, effective July 6, 2012.)

17.37.050 Disconnection Reimbursement.

(Repealed by Ordinance No. 185397, effective July 6, 2012.)

17.37.080 Program Enforcement.

Any property whose downspouts have not been granted an exception and remain connected to the combined sewer system in violation of Subsection 17.37.030 B.3. is hereby declared a nuisance and subject to abatement or correction. Whenever the Director believes such a nuisance exists, a notice shall be posted on the property directing that the nuisance be abated or corrected. The City retains the right to take any or all of the following enforcement actions if the property owner or their agent fails to abate this nuisance:

- A. Summary abatement.** If the property owner or their agent continues to ignore or refuses to abate the declared nuisance, the City reserves the right to obtain an order from the City Code hearings officer to summarily abate the nuisance on subject property. The City shall attempt to bill the property owner for the costs of disconnection from the combined sewer.
- B. Civil Remedy.** The City shall have the right to obtain, in any court of competent jurisdiction, a judgment against the person or property failing to disconnect from

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the combined sewer in accordance with the provisions of Section 17.37.030. In any such action, the measure of damages shall be the costs for abatement by the City, administrative costs, permit fees, overhead costs, penalties, and other charges as determined by the Director.

- C. **Court Action.** In addition to any other remedy provided in this Chapter, the City Attorney, acting in the name of the City, may maintain an action or proceeding in any court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any provision of this Chapter.
- D. **Withholding of BES Services.** Except as provided elsewhere in this Title or when the public welfare is endangered; the Bureau of Environmental Services may at its discretion withhold from the owner(s) (or the owner's agent) of disconnection delinquent property as defined in Section 17.37.030, any service that is provided by the Bureau. This may include, but is not limited to:
 - 1. Refusal of acceptance of application for permits relating to development on any property of the said owner(s).

This withholding may continue until the disconnection delinquency no longer exists

- E. **Appeal.** Property owners or their agents may request an administrative review as described in the Downspout Disconnection Administrative Rules to contest the city's declaration of a nuisance or to request an extension in the abatement time frame. If the appellant is unsatisfied with the BES staff response they may appeal the request to the City Code Hearings Officer as specified in Title 22 and in the Downspout Disconnection Program Administrative Rules.
 - 1. In the event that the City needs to enforce the terms of the Code Hearings Officer's order referred to in Section 17.37.080, an administration fee of \$300 for each occurrence and associated costs for each occurrence for enforcing the terms of the order shall be billed to the property owner of the property in accordance with the provisions of Chapter 22.06. If the administrative fee remains unpaid after 90 days, the administrative fee shall be made a lien on the property in accordance with the provisions of Chapter 22.06.

17.37.110 Interference with Disconnection Activities Unlawful.

It shall be unlawful for any person to attempt to obstruct, impede, or interfere with any officer, employee, contractor, agent, or authorized representative of the City whenever such officer, employee, contractor, agent, or authorized representative of the City is engaged in the work of disconnecting downspouts from the combined sewer under the authority of an order of the Code Hearings Officer issued pursuant to Subsection 17.37.080 C. above.

17.37.120 Liability.

Neither the City nor any of its officers, employees, contractors, agents, or authorized representatives shall be liable for any damage to or loss of the real property of any improvements, emblements, or personal property thereon due to the enforcement or administration of this Chapter.

17.37.130 Civil Remedies.

- A.** In addition to the remedies provided by any other provision of this Chapter, the City shall have the right to obtain, in any court of competent jurisdiction, a judgment against the person or property failing to disconnect from the combined sewer in accordance with the provisions of Section 17.37.030. In any such action, the measure of damages shall be the costs for abatement by the City, administrative costs, permit fees, overhead costs, penalties, and other charges as determined by the Director.
- B.** In addition to any other remedy provided in this Chapter, the City Attorney, acting in the name of the City, may maintain an action or proceeding in any court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any provision of this Chapter.

17.37.140 Notice Sufficiency.

For the purposes of any noticing procedure as set forth by this Chapter, notice shall be deemed to have been received upon mailing of that notice. An error in the name of the owner or agent of the owner or the use of a name other than that of the true owner or agent for the property shall not render the notice void.

17.37.150 Bureau Actions.

All City Bureaus shall, to the fullest extent consistent with their authority, carry out their programs in such a manner as to further the provisions of this Title, and shall cooperate to the fullest extent in enforcing the provisions of this Chapter.

17.37.160 Severability.

If any provisions of this Chapter, or its application to any person or circumstances, is held to be invalid, the remainder of this Chapter, or the application of the provision to other persons or circumstances, shall not be affected.

**CHAPTER 17.38 - DRAINAGE AND WATER
QUALITY**

(Chapter replaced by Ordinance No. 173330,
effective June 4, 1999.)

Sections:

- 17.38.010 Authority.
- 17.38.015 Intent.
- 17.38.020 Definitions.
- 17.38.030 Protection of Drainageway Areas.
- 17.38.035 Drainage Management Policies and Standards.
- 17.38.040 Stormwater Management Facilities Required.
- 17.38.041 Parking Lot Stormwater Requirements.
- 17.38.043 Inspections.
- 17.38.045 Enforcement.
- 17.38.050 Erosion Control Required.
- 17.38.055 River Restoration Program.
- 17.38.060 Compliance Cases, Administrative Reviews and Appeals.
- 17.38.070 Conflict.
- 17.38.080 Severability.

17.38.010 Authority.

(Amended by Ordinance Nos. 174745 and 187904, effective August 19, 2016.) The Director of Environmental Services is responsible for administering the requirements of this Chapter. The Director has the authority and responsibility to adopt rules, procedures, and forms to implement the provisions of this Chapter.

17.38.015 Intent.

(Amended by Ordinance Nos. 182144 and 185397, effective July 6, 2012.) The intent of this Chapter is to provide for the effective management of stormwater, groundwater, and drainage, and to protect and improve water quality in the City of Portland.

17.38.020 Definitions.

(Replaced by Ordinance No. 185397; Amended by Ordinance Nos. 186902 and 187904, effective August 19, 2016.) For the purposes of this Chapter, the following definitions apply:

- A. "Approved Drainage System"** means a system approved by BES which adequately collects, conveys, treats or disposes of stormwater runoff or other site discharge. Approved systems must meet all requirements and specifications laid out in this code, BES design manuals and documents, and any applicable plumbing code provisions relating to the piped portions of any system.
- B. "Capacity"** means the flow volume or rate for which a specific facility is designed to safely contain, receive, convey, infiltrate, or reduce pollutants from sanitary

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sewage, stormwater, wastewater, or other discharge in order to meet a specific performance standard.

- C. **"Combination Facilities"** means stormwater management systems that are designed to meet two or more of the objectives detailed in the Stormwater Management Manual
- D. **"Conveyance"** means the transport of sanitary sewage, stormwater, wastewater or other discharge from one point to another point.
- E. **"Director"** means the Director of the Bureau of Environmental Services, or the Director's designee.
- F. **"Discharge"** means any disposal, injection, dumping, spilling, pumping, emitting, emptying, leaching, leaking or placing of any material so that such material enters or is likely to enter a waterbody, groundwater, or a public sewer and drainage system.
- G. **"Discharge Point"** means the connection point to a public sewer or drainage system or destination for a discharge leaving a site.
- H. **"Discharge Rate"** means the rate of flow expressed in cubic feet per second (cfs).
- I. **"Drainageway"** means an open linear depression, whether constructed or natural, which functions for the collection and drainage of surface water. It may be permanently or temporarily inundated.
- J. **"Green Street"** means a vegetated stormwater management facility located within a public or private right-of-way.
- K. **"Groundwater"** means subsurface water that occurs in soils and geological formations that are fully saturated. Groundwater fluctuates seasonally and includes perched groundwater.
- L. **"Groundwater Discharge"** means a discharge of water pumped or directed from the ground. Groundwater discharges include but are not limited to subsurface water from site remediation and investigations, well development, Brownfield development, discharges from footing and foundation drains, and subsurface water associated with construction or property management dewatering activities.
- M. **"Impervious Surface"** means any surface that has a runoff coefficient greater than 0.8 (as defined in the City's Sewer and Drainage Facilities Design Manual). Types of impervious surfaces include rooftops, traditional asphalt and concrete parking lots, driveways, roads, sidewalks and pedestrian plazas. Slatted decks and gravel surfaces are considered pervious unless they cover impervious surfaces or gravels are compacted to a degree that causes their runoff coefficient to exceed 0.8.

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- N. "Infiltration"** means the percolation of water into the ground. Infiltration is often expressed as a rate (inches per hour) which is determined through an infiltration test.
- O. "Pollutants of Concern"** means constituents identified by DEQ or BES as having the potential to have a negative impact on the receiving system, including surface waters, groundwater, the wastewater collection system or the wastewater treatment plant. Pollutants of concern can include suspended solids, metals, nutrients, bacteria and viruses, organics, volatiles, semi-volatiles, floatable debris and increased temperature.
- P. "Practicable"** means available and capable of being done as determined by the Director, after taking into consideration cost, resources, existing technology, and logistics in light of overall project purpose.
- Q. "Public Right-of-Way"** means the area within the confines of a dedicated public street, an easement owned by the City, or other area dedicated for public use for streets or public utilities.
- R. "Redevelopment"** means any development that requires demolition or complete removal of existing structures or impervious surfaces at a site and replacement with new impervious surfaces. Maintenance activities such as top-layer grinding, repaving (where the entire pavement is not removed) and re-roofing are not considered redevelopment. Interior remodeling projects and tenant improvements are also not considered to be redevelopment.
- S. "Site Map"** means a map showing the stormwater management facility location in relation to buildings, structures or permanent survey monuments on the site. A site map shall depict location of sources of runoff entering the stormwater management facility and the discharge point and type of receiving system for discharge leaving the facility.
- T. "Source Control"** means a structural or operational measure to prevent or control the release or potential release of pollutants generated by certain site characteristics and uses.
- U. "Stormwater"** means water that originates as precipitation on a particular site, basin, or watershed.
- V. "Stormwater Management"** means techniques used to reduce pollutants from, detain, retain, or provide a discharge point for stormwater runoff. Stormwater management reduces combined sewer overflows and basement sewer backups, and helps meet the capacity needs of the existing infrastructure.
- W. "Stormwater Management Facility"** means a facility or other technique used to reduce volume, flow rate or pollutants from stormwater runoff. Stormwater

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facilities may reuse, collect, convey, detain, retain, or provide a discharge point for stormwater runoff.

- X. "Temporary Structure"** means a structure that is separate and distinct from all other structures and is created and removed in its entirety within three years, including all impervious area associated with the structure.
- Y. "Tract"** means a parcel of land designated as part of a land division per Title 33 that is not a lot, lot of record, or a public right-of-way.
- Z. "Wetland"** means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include swamps, marshes, bogs, and similar areas except those constructed as pollution reduction or flow control facilities.

17.38.025 Rule Making.

(Repealed by Ordinance No. 185397, effective July 6, 2012.)

17.38.030 Protection of Drainageway Areas.

(Added by Ordinance No. 176561; amended by Ordinance Nos. 176783, 182144, 185397 and 186659, effective July 18, 2014.)

- A. Authority.** The Director may require drainage reserves or tracts over seeps, springs, wetlands and drainageways as necessary to preserve the functioning of these areas and to limit flooding impacts from natural and man-made channels, ditches, seeps, spring, intermittent flow channels and other open linear depressions. Standards and criteria for imposing drainage reserves or tract requirements are adopted by administrative rule. Placement or sizing of drainage reserves does not relieve property owners of their responsibility to manage stormwater in a manner that complies with the duties of property owners under applicable law. Drainage reserve or tract requirements may be imposed during land use reviews, building permit review or other development process that require Bureau of Environmental Services (BES) review.
- B. Required Management of the Drainage Reserve.** Storm drainage reserves or tracts shall remain in natural topographic condition. No private structures, culverts, excavations, or fills shall be constructed within drainage reserves or tracts unless authorized by the BES Chief Engineer by administrative rules found in the Stormwater Management Manual. All changes must also comply with other zoning regulations as described in Title 33. Encroachment agreements can be made between the property owner and the City.
- C. Implementation.** BES has authority to identify and implement protections for drainageways during multiple development review processes, including land use

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reviews and building permit reviews. The early identification efforts will consider the ability of developers to design around drainage reserve areas.

17.38.035 Drainage Management Policies and Standards.

(Amended by Ordinance Nos. 174745, 176561, 176783, 176955, 180037, 182144, 185397, 186902 and 187904, effective August 19, 2016.)

- A.** Stormwater shall be managed in as close proximity to the development site as is practicable, and stormwater management shall avoid a net negative impact on nearby streams, wetlands, groundwater, and other water bodies. All local, state, and federal permit requirements related to implementation of stormwater management facilities must be met by the owner/operator prior to facility use. Surface water discharges from onsite facilities shall be discharged to an approved drainage facility.
 - 1.** The City may initiate individual agreements with property owners to manage stormwater flows through alternative methods to onsite controls:
 - a.** In joint facilities where public and private property flows co-mingle.
 - b.** In offsite areas that are “traded” for required onsite management areas related to new and redevelopment. The City may require more than a 1:1 exchange on the amount of required management area.
 - 2.** All discharges must be routed to a discharge point approved by the Director. Approval of discharge points must meet the following standards:
 - a.** The discharge must be conveyed along a route of service approved by the Director.
 - b.** The discharge point must comply with the following:
 - (1)** Sanitary, wastewater or other discharges to the sanitary or combined system must comply with the Sewer and Drainage Facilities Design Manual and the Source Control Manual.
 - (2)** Stormwater or other discharges to the City’s storm and drainage system must comply with the Stormwater Management Manual and the Source Control Manual.
- B.** The quality of stormwater leaving the site after development shall be equal to or better than the quality of stormwater leaving the site before development, as much as is practicable, based on the following criteria:
 - 1.** Stormwater management facilities required for development shall be designed, installed and maintained in accordance with the Stormwater Management Manual, which is based on achieving at least 70% removal of

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the Total Suspended Solids (TSS) from the flow entering the facility for the design storm specified in the Stormwater Management Manual.

2. Land use activities of particular concern as pollution sources may be required to implement additional pollution controls and source controls including but not limited to those management practices specified in the Stormwater Management Manual and the Source Control Manual.
3. Development in a watershed that drains to streams with established Total Maximum Daily Load limitations, as provided under the Federal Clean Water Act, Oregon Law, Administrative Rules and other legal mechanisms shall assure that stormwater management facilities meet the requirements for pollutants of concern, as stated in the Stormwater Management Manual.
4. Stormwater discharge which is not practicable to fully treat to the standards of this Section and the Stormwater Management Manual, shall be either:
 - a. Managed in an offsite facility or
 - b. Given the option of paying a stormwater offsite management fee. The Bureau will employ a methodology for calculating the fee that is based upon an average unit cost of onsite facilities where such facilities would be effective and establish the calculation method and fee by rule. The stormwater offsite management fee collected shall be placed in a mitigation account to be used to mitigate the impacts that arise from offsite discharge of stormwater runoff.
5. Notwithstanding Subsection 17.38.035 B.4., for any parcel created after the effective date of this Chapter, the development shall fully treat all stormwater:
 - a. Onsite, or
 - b. Within the original parcel from which the new parcel was created, or
 - c. In a privately developed offsite facility with sufficient capacity, as determined by the Bureau.
6. The Director is authorized to exempt land uses, discharge locations or other areas of the city from the requirements of this Subsection if onsite pollution reduction or pollution control is not needed or desirable due to limited pollutant loads or offsite methods of pollution control are available. All exemptions are specified in the Stormwater Management Manual and the Source Control Manual.

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- C.** The quantity and flow rate of stormwater leaving the site after development shall be equal to or less than the quantity and flow rate of stormwater leaving the site before development, as much as is practicable, based on the following criteria:
- 1.** Development shall mitigate all project impervious surfaces through retention and on-site infiltration to the maximum extent practicable. Where on-site retention is not possible, development shall detain stormwater through a combination of provisions that prevent an increased rate of flow leaving a site during a range of storm frequencies as specified in the Stormwater Management Manual.
 - 2.** The Director is authorized to exempt areas of the city from the quantity control requirements if flow control is not needed or desirable because there is sufficient capacity and limited impacts to the receiving drainage system. All exemptions shall be specified in the Stormwater Management Manual.
 - 3.** Any development that discharges to a tributary of the Willamette River, other than the Columbia Slough, shall design stormwater management facilities such that the rate of flow discharging from such facilities for up to a two-year design storm event does not lengthen the period of time the tributary channel receiving the discharge sustains erosion causing flows, as determined by the Bureau.
 - 4.** Site drainage facilities shall be designed to safely convey the less frequent, higher flows through or around stormwater management facilities and to an approved drainage system with adequate capacity without damage to the receiving drainage system, whether natural or manmade.
 - 5.** Stormwater discharge which cannot be practicably managed for quantity or flow rate control as defined in this Subsection and the Stormwater Management Manual shall either be:
 - a.** Managed in an offsite facility designed for the pollutant load, volume and rate of flows from subject property and managed by the site developer/site owner or another legal agent, or
 - b.** Managed in an offsite stormwater management facility operated by the City subject to paying a stormwater offsite management fee. The Bureau will employ a methodology for calculating the fee that is based upon an average unit cost of onsite facilities where such facilities would be effective and establish the calculation method and fee by rule. The stormwater offsite management fee collected will be placed in a mitigation account to be used to mitigate the impacts that arise from offsite discharge of stormwater runoff.

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6. Notwithstanding Subsection 17.38.035 C.5., for any parcel created after the effective date of this Chapter, stormwater shall be fully managed:
 - a. Onsite, or
 - b. Within the original parcel from which the new parcel was created, or
 - c. In a privately developed offsite facility with sufficient capacity, as determined by the Bureau.
- D.** The Director is authorized to establish requirements for the pumping and discharge of groundwater as a waste (discharge to waste). The Source Control Manual regulations govern both quality and quantity impacts of pumping and discharging groundwater to City receiving systems. The regulations may exempt, establish discharges as de minimis, or provide for and limit the permanent or temporary discharge of groundwater. Temporary groundwater discharges may be authorized through the batch discharge processes described in Title 17.34 and 17.39. In establishing rules to regulate the pumping and discharge of groundwater as a waste, the Director shall, at a minimum, incorporate and implement the following standards.
1. Authorizations for discharge. Unless the Director's rules establish exceptions or determines discharges are de minimis, any pumping and discharge to waste of groundwater may proceed only after a groundwater specific discharge authorization by the Director. This authorization shall establish volume, flow rate and pollutant load limits for the discharge.
 2. Limiting flow volume and flow rate. Pumping and discharge of groundwater as a waste will only be allowed where the proposed discharger has first reduced the rate and volume of groundwater requiring discharge to a City system to the greatest extent practicable. Examples include:
 - a. Limiting the pumping and discharge of groundwater to rates not exceeding those rates that would be required for a building designed and engineered to minimize ground water intrusion and necessary ground water pumping; and
 - b. Requiring management techniques implemented by the property developer and operator to assure continued effective use of structures in the presence of groundwater infiltration; and
 - c. When there is sufficient capacity in the City receiving system. Capacity shall be defined by rule and will consider providing capacity for other and future anticipated and primary uses of the systems.

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3. Onsite management a priority. Pumped ground water shall be managed first by onsite methods, such as infiltration, to the greatest extent practical. Thereafter private conveyance facilities shall discharge through infiltration offsite or to surface water bodies. Offsite discharge to City systems shall be approved only after onsite alternatives are evaluated.
4. Prohibited discharges. Offsite discharges meeting the following criteria are prohibited:
 - a. Discharge to City-owned underground injection controls (UICs).
 - b. Discharges meeting the tests for prohibited discharges in Chapters 17.34 and 17.39. Notwithstanding this limitation, the City may allow discharge of contaminated ground water that has been treated to meet standards set by the Director to ensure that any groundwater discharges do not cause or threaten to cause a public nuisance, groundwater or surface water pollution, cause or threaten to cause the City to violate its own discharge permits granted by the Department of Environmental Quality.
 - (1) The Director may establish rules to limit or prevent the pumping and discharge of contaminated groundwater and may require one-time or on-going testing or monitoring of water quality by the applicant for discharge authorization approval.
- E. All conveyance systems shall be analyzed, designed and constructed for existing tributary offsite runoff and developed onsite runoff from the proposed project in compliance with the City's Sewer and Drainage Facilities Design Manual. The general goal of these standards is to convey both onsite and offsite waters in a way that meets the capacity needs of the City conveyance system, is protective of public health and safety, and that minimizes environmental impacts in the downstream receiving system. The Director reserves the right to determine the appropriateness of combination facilities in meeting these standards.
- F. All stormwater management facilities, source controls, and drainage systems must comply with the standards set forth in the Stormwater Management Manual and the Source Control Manual and may require permit review and approval before commencement of work. Public systems must be reviewed and approved by BES in compliance with the sizing and location standards in the Stormwater Management Manual. Private onsite systems must be reviewed and approved by BES for compliance with the stormwater hierarchy and other guidance specified in the Stormwater Management Manual and the Source Control Manual, and may be reviewed by Bureau of Development Services for compliance with the plumbing code regulations in Section 25.01.020. Installation or modification of any stormwater system or source control, whether it involves structural changes,

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changes to planting schemes, or the management of drainage area in addition to what was previously approved, may require a permit from or review by the BES Chief Engineer.

17.38.040 Stormwater Management Facilities Required.

(Amended by Ordinance Nos. 174745, 176783, 180037, 182144, 183397, 185397, 186659, 186902 and 187904, effective August 19, 2016.) No plat, site plan, building permit, tenant improvement, public works project, or any improvement requiring a City permit will be approved unless the conditions of the plat, permit or plan approval requires installation of permanent stormwater management facilities and source controls designed according to standards or guidelines established by the Director and as specified in the Stormwater Management Manual and the Source Control Manual.

- A.** Applicability. All development and redevelopment sites with any of the following triggers must comply with the standards of the Stormwater Management Manual and the Source Control Manual to the extent each applies under its respective terms:
 - 1.** Creation of any new impervious area. Sites with 500 square feet or more of impervious area must be managed for pollution reduction, quantity or flow control requirements as spelled out in this Section; or
 - 2.** Modification to or construction of new areas with pollution generating activities of concern as identified by rule. These areas must be constructed with applicable onsite controls; or
 - 3.** New connections or new drainage areas routed into the City's sewer or drainage system under a City permit. These connections most often are generated from decommissioning of private, onsite drainage or groundwater related systems; or
 - 4.** Temporary structures are exempt from pollution reduction and flow control requirements, except for in specific instances identified by rule.
- B.** Exemptions. The requirements of this Chapter for stormwater management do not apply to:
 - 1.** Development for which an application for development approval is accepted by the permitting agency prior July 1, 1999 shall be subject to the requirements in place at the time of application.
 - 2.** Public or private development that does not result in impervious surface coverage or results in coverage that is de minimis in relation to discharge, such as fences, environmental enhancement projects, buried pipelines or cables, and utility lines.
 - 3.** Impervious surface created by a stormwater management facility such as but not limited to headwalls, manhole or vault covers. Paved or compacted

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gravel facility access and maintenance roads that extend beyond the facility itself, are not exempted from the management requirements of this Title.

- C.** Appeals. Any applicant for a permit or authorization aggrieved by a decision, interpretation, or determination made pursuant to this Chapter or rules adopted thereunder, including the Stormwater Management Manual and the Source Control Manual, may appeal such action in accordance with appeals processes specified in the Stormwater Management Manual and the Source Control Manual.
- D.** Maintenance of Stormwater and Groundwater Management Facilities.

 - 1.** All applicants for new development, redevelopment, plats, site plans, building permits or public works projects, as a condition of approval, shall be required to submit an operation and maintenance plan and the required plan cover sheet for the required stormwater management facilities for review and approval by the Director, unless otherwise exempted in the Stormwater Management Manual. A stormwater management facility that receives stormwater runoff from a public right-of-way shall be a public facility, and maintained by the City, unless the right-of-way is not part of the City road maintenance system.

 - a.** The information required in an operation and maintenance plan shall satisfy the requirements in the Stormwater Management Manual. Applicants are required to submit the O & M recording form with the plan and are encouraged to use the O & M Plan template provided in the Stormwater Management Manual. The Plan shall include and not be limited to:

 - (1)** Design plans of the specific facility and related parts, including design assumptions; and
 - (2)** A schedule for routine inspection, including post storm related inspections; and
 - (3)** A description of the various facility components, the observable trigger for maintenance, and the method of maintenance, including appropriate method of disposal of materials; and
 - (4)** The intended method of providing financing to cover future operations and maintenance; and
 - (5)** The party or parties responsible for maintenance of the facility including means of effecting contact, including contact means for emergency situations. The party may be an individual or an organization.

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- b. A maintenance log is required. The log shall provide a record of all site maintenance related activities. The log shall include the time and dates of facility inspections and specific maintenance activities. This log shall be available to City inspection staff upon request.
 2. Failure to properly operate or maintain the water quality or quantity control facility according to the operation and maintenance plan may result in an enforcement action, including a civil penalty, as specified in Section 17.38.045, Enforcement.
 3. A copy of the operation and maintenance plan shall be filed with the Bureau of Environmental Services. Staff may require a site map to be recorded and filed with the appropriate county Department of Assessment and Taxation.
 4. Removal of a permanently installed stormwater management facility without prior approval from BES is a violation of this Chapter.
- E. The Director may file instruments in county deed records to inform future property owners of regulations and conditions of approval related to the property as provided in this Chapter and associated rules, including the Stormwater Management Manual.

17.38.041 Parking Lot Stormwater Requirements.

(Added by Ordinance No. 174745; amended by Ordinance Nos. 180037 and 187904, effective August 19, 2016.) Stormwater runoff from parking lots must be managed in parking lot interior or perimeter landscaping to the extent required by the Stormwater Management Manual and the Source Control Manual. The Director is authorized to exempt activities, land uses, or identified sites from these requirements if use of parking landscape areas is not needed or desirable because of non-conforming or existing landscape areas. All exemptions are described in the Stormwater Management Manual and the Source Control Manual.

17.38.043 Inspections.

(Replaced by Ordinance No. 186192, effective September 6, 2013.)

- A.** Right of Entry. To the extent permitted by law, BES may enter all private and public premises at any time for the purpose of inspecting for potential violations, connections or for any other lawful purpose required by or authorized under this Code or ordinances of the City, the Charter, or state or federal law. This authorization includes but is not limited to inspection, sampling, testing, photographic documentation, record examination, copying, and installation of devices. Entry may not be conditioned upon BES representatives signing any type of confirmation, release, consent, acknowledgement, or other type of agreement.
- B.** Entry Protocols.

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1. The BES representative will present a City photo identification card at the time of entry.
2. The BES representative will comply with reasonable, routine safety and sanitary requirements of the facility or site as provided by the facility operator at the time of entry. The facility operator must provide the BES representative with any facility-specific safety protective equipment necessary for entry.

17.38.045 Enforcement.

(Replaced by Ordinance No. 186192; amended by Ordinance No. 187904, effective August 19, 2016.)

- A.** Violations. It is a violation for any persons to fail to comply with the requirements of this Chapter and associated rules. Each day a violation occurs or continues may be considered a separate violation. BES will hold the person or persons solely responsible for complying with BES enforcement actions. Violations of this Chapter or associated rules include, but are not limited to:
1. Failure to construct stormwater management facilities to the standards of the City's Stormwater Management Manual, Source Control Manual and Section 17.38.035;
 2. Failure to comply with a written order of the Director, made under authority of this Chapter, that is not met within the specified time;
 3. Failure to comply with any condition of an operations and maintenance plan or agreement issued under the authority of this Chapter or rules that is not met within a specified time;
 4. Failure to maintain a stormwater management or source control facility leading to a potential or actual operating deficiency of the facility;
 5. Failure to have a properly recorded, or accurate O & M plan on file with BES; and
 6. Failure to comply with enforcement actions as identified in the BES Enforcement Program administrative rules (PPD item ENB-4.15).
- B.** Enforcement Tools. BES may use any or all of the following tools to enforce this Chapter or associated administrative rules: notice of investigation, warning notice, notice of violation, compliance order, requirement to obtain a permit, notice of termination, withholding of permits, violation abatement, legal action, criminal case referral, or referral to other regulatory agencies. BES enforcement actions are described in program-specific administrative rules and the BES Enforcement Program administrative rules (PPD item ENB-4.15).

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- C.** Civil Penalties. Persons violating this Chapter or associated rules may be assessed civil penalties of up to \$10,000 per day per violation according to program-specific administrative rules and the BES Enforcement Program administrative rules (PPD item ENB-4.15). Penalties and other charges will accrue interest from the date of initial City notice assessing the penalty until the penalty is paid in full.
- D.** City Summary Abatement. To the extent permitted by law, the Director may recover from the person causing the violation all costs incurred by the City to summarily abate the following:
 - 1.** A violation that is not remedied through required corrective actions;
 - 2.** A situation that poses an imminent danger to human health, public safety, or the environment; or
 - 3.** Continued noncompliance with PCC or associated rules.
- E.** Cost Recovery. The Director may recover all reasonable costs incurred by the City that are attributable to or associated with the violations of this Chapter or associated rules.
- F.** Nothing in this Chapter is intended to impose liability on the City for any injury or damage resulting from the failure of any person to comply with the provisions of this Chapter.

17.38.050 Erosion Control Required.

(Amended by Ordinance No. 173979, effective March 1, 2000.) All public works projects constructed within the City of Portland must comply with Title 10, Erosion and Sediment Control Regulations.

17.38.055 River Restoration Program.

(Replaced by Ordinance No. 185397, effective July 6, 2012.) BES and the Office of Healthy Working Rivers are authorized to develop administrative rules for implementation of a River Restoration Program including, but not limited to, a mitigation bank and in-lieu fee program for implementation of the Title 33 River Plan/North Reach Code provisions. BES and the Office of Healthy Working Rivers may also accept funds from in-lieu fees, mitigation bank credits, donations, program administrative fees, and other sources and may expend such funds for environmental restoration, enhancement and improvement activities.

17.38.060 Compliance Cases, Administrative Reviews and Appeals.

(Added by Ordinance No. 186192; amended by Ordinance Nos. 186902 and 187904, effective August 19, 2016.)

- A.** Reviews and Appeals. A person may request a modification to a BES decision related to this Chapter via an administrative review with BES staff, unless review is limited by administrative rule. After the requestor has exhausted all BES program

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and enforcement program reviews, the requestor may file for an appeal with the Code Hearings Officer per PCC Title 22.

1. Reviews and appeals of the following may be requested:
 - a. The determination of a violation of this Chapter or associated rules.
 - b. The type and level of enforcement action taken by BES.
 - c. The type and amount of penalty imposed by BES.
 - d. Compliance due dates.
 - e. A requirement to obtain a permit.
 - f. A denial of a permit.
 - g. Required remediation actions.
 - h. Other items made reviewable by administrative rule.
2. Reviews and appeals may not be requested for:
 - a. The amount of cost recovery assessment against the person by BES.
 - b. A requirement to meet a technical standard.
 - c. Other issues identified in individual program-specific administrative rules.

- B.** BES Code Compliance Cases. BES may file a case before the Code Hearings Officer under PCC Title 22 to compel compliance with City regulations. The person committing the violation will be offered the opportunity to present evidence.

17.38.070 Conflict.

(Added by Ordinance No. 186192, effective September 6, 2013.) This Chapter supersedes all ordinances or elements thereof to the extent that they are inconsistent with or conflict with any part of this Chapter.

17.38.080 Severability.

(Added by Ordinance No. 186192, effective September 6, 2013.) If any provision, paragraph, word, or Section of this Chapter or associated administrative rules is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, and sections shall not be affected and shall continue in full force and effect.

**CHAPTER 17.39 - STORM SYSTEM
DISCHARGES**

(Chapter replaced by Ordinance No. 184898;
effective October 28, 2011.)

Sections:

17.39.010	Intent.
17.39.020	Definitions.
17.39.030	Allowable Discharges.
17.39.040	Prohibited Discharges.
17.39.050	Notification and Control of Illicit Connections and Discharges.
17.39.060	Discharge Permits and Other Authorizations.
17.39.070	Inspections.
17.39.080	Sampling.
17.39.090	Reporting Requirements.
17.39.100	Records Retention.
17.39.110	Enforcement.
17.39.120	Compliance Cases and Appeals.
17.39.130	Conflict.
17.39.140	Severability.

17.39.010 Intent.

The Bureau of Environmental Services (BES) is authorized to facilitate the development and management of the City's storm sewer and drainage system facilities to adequately convey, manage and protect the water quality of discharges of stormwater runoff. This Chapter applies to the City storm sewer and drainage systems as defined in this Chapter. This Chapter provides BES the authority to ensure these systems are operated in a manner that protects public health and the environment.

17.39.020 Definitions.

(Replaced by Ordinance No. 185397; Amended by Ordinance Nos. 186403 and 186902, effective December 26, 2014.) As used in Chapter 17.39:

- A. "Capacity"** means the flow volume or rate for which a specific facility is designed to safely contain, receive, convey, infiltrate, or reduce pollutants from sanitary sewage, stormwater, wastewater, or other discharge in order to meet a specific performance standard.
- B. "City Storm Sewer and Drainage System"** means a City conveyance or system of conveyances, including but not limited to pipes, pumps, drainage ditches, constructed channels, groundwater-related disposal systems, underground injection control devices, stormwater management facilities, and storm drains, that are designed or used to collect and transport stormwater. "City Storm sewer and drainage system" does not include natural streams, creeks, ponds, lakes, a combined sewer, or part of a Publicly Owned Treatment Works, as defined in 40 CFR 122.2.

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- C. “Clean Water Act (CWA)”** is the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et seq.).
- D. “Code of Federal Regulations (CFR)”** means the codification of the general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government.
- E. “Director”** means the Director of the Bureau of Environmental Services or the Director's designee.
- F. “Discharge”** means is any disposal, injection, dumping, spilling, pumping, emitting, emptying, leaching, leaking or placing of any material so that such material enters or is likely to enter a waterbody, groundwater or a public sewer and drainage system.
- G. “Discharge Authorization (DA)”** means a written approval by the Director which prescribes certain requirements or restrictions for a discharge to the City sewer and drainage system.
- H. “Discharger”** means any person who causes or permits a direct or indirect discharge to the City sewer and drainage system.
- I. “Groundwater”** means subsurface water that occurs in soils and geological formations that are fully saturated. Groundwater fluctuates seasonally and includes perched groundwater.
- J. “Groundwater Discharge”** means a discharge of water pumped or directed from the ground. Groundwater discharges include but are not limited to subsurface water from site remediation and investigations, well development, Brownfield development, discharges from footing and foundation drains, and subsurface water associated with construction or property management dewatering activities.
- K. “Illicit Connection”** means any connection to the City’s storm sewer and drainage system not approved by the City or not in compliance with a valid City permit.
- L. “Illicit Discharge”** means any discharge to the storm sewer and drainage system that is not composed entirely of stormwater and is not authorized under Sections 17.39.030 or 17.39.050.
- M. “Interference”** means a discharge that, alone or in conjunction with other discharges, inhibits or disrupts the normal operation of the City’s storm sewer and drainage system or contributes to a violation of any requirement of the City’s NPDES Municipal Separate Storm Sewer System Discharge Permit. This includes any increase in the magnitude or duration of a violation, any increase in cost due to damage to the system, and any requirement for specialized treatment of stormwater caused by such a discharge.

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- N.** “**National Pollutant Discharge Elimination System (NPDES)**” means the Clean Water Act (40 CFR Part 122) regulations that require dischargers to control and reduce pollutants in discharges to waters of the United States.
- O.** “**Pollutant**” means an elemental or physical material that can be mobilized or dissolved by water or air and that could create a negative impact to human health, safety, or the environment.
- P.** “**Process Wastewater**” means any water used during manufacturing or processing that comes into direct contact with or results from the production, or handling of a raw material, intermediate product, or finished product, including any by-product or waste product.
- Q.** “**Representative Sample**” means a sample that is collected by grab, composite or other technique that adequately reflects the quality of sediments or discharge for a specific area or entire site. Sampling shall be conducted in accordance with 40 CFR Part 136 or a method approved by EPA or BES.
- R.** “**Sampling Manhole**” means a monitoring access point, such as a manhole in a sewer lateral, that is acceptable to BES and that allows for observation, sampling, or measurement of all discharges to the City’s sewer or drainage system.
- S.** “**Stormwater**” means water that originates as precipitation on a particular site, basin, or watershed.
- T.** “**Toxic Substance**” means any chemical listed in Oregon’s water quality standards for toxic pollutant tables in OAR, Division 340-041-033; the CWA effluent guidelines list of toxic pollutants at CFR 401.15; or the toxic chemical release reporting specific toxic chemical listings at 40 CFR 372.65 at concentrations specified in those lists or, if no concentration is specified, at concentrations determined pursuant to BES Storm and Drainage Discharge Rules.
- U.** “**Underground Injection Control (UIC) System**” is defined by DEQ as any system, structure, or activity that is intended to discharge fluids below the ground surface, such as sumps, drywells, and soakage trenches.
- V.** “**UIC Water Pollution Control Facility (WPCF) Permit**” means the Safe Drinking Water Act (40 CFR Part 144) and Oregon Administrative Rules (OAR 340-44) regulating the construction and operation of Class V UICs for stormwater discharges.

17.39.030 Allowable Discharges.

(Amended by Ordinance No. 186902, effective December 26, 2014.) The following discharges are allowed to enter the City storm sewer and drainage system without notice to or authorization from the City unless required under administrative rules:

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- A.** Stormwater that does not contain toxic substances and is not otherwise prohibited.
- B.** Non-stormwater discharges authorized by the City's Water Pollution Control Facility (WPCF) Class V Underground Injection Control (UIC) or NPDES Municipal Storm Sewer System (MS4) Discharge permit, except for those discharges subject to the use of BMPs by administrative rule.

17.39.040 Prohibited Discharges.

(Amended by Ordinance No. 186403, effective February 1, 2014.) The following discharges to the City's storm sewer and drainage system are prohibited:

- A.** Any discharge in violation of the conditions of the discharger's NPDES or other permit or authorization.
- B.** Any discharge that is intentionally routed to City UIC systems.
- C.** Any discharge with any of the following characteristics or materials:
 - 1.** A pH outside the range of applicable water quality standards in OAR Division 340-041;
 - 2.** A visible sheen;
 - 3.** A visible discoloration including, but not limited to, those attributable to dyes and inks, except for non-toxic dyes used or approved by the City to investigate the potential source of an illicit connection;
 - 4.** Heat that could damage or interfere with any element of the City's storm sewer and drainage system or that causes or contributes to a violation of the receiving-water temperature standards;
 - 5.** Toxic substances at concentrations that cause or contribute to violations of in-stream water quality standards set by DEQ or that exceed remedial action goals defined in a DEQ or EPA Record of Decision for the protection of surface water or sediment;
 - 6.** Refuse, rubbish, garbage, discarded or abandoned objects, articles, or accumulations of discharges that contain visible floating solids;
 - 7.** A process wastewater, unless authorized to discharge under a DEQ permit;
 - 8.** A volume that causes or contributes to an exceedance of the planned capacity of the storm sewer and drainage system, as established by the Director;
 - 9.** Liquids, solids, or gases which, either alone or by interaction, could cause a fire or an explosion including: waste streams with a closed-cup flashpoint

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of less than 140 degrees Fahrenheit or 60 degrees Celsius (using test methods described by 40 CFR 261.21); or discharges which cause the atmosphere in any portion of the City's storm sewer and drainage system to reach a concentration of 10 percent or more of the Lower Explosive Limit per National Institute for Occupational Safety and Health standards;

10. A substance that causes or may cause a nuisance, hazard, interference, obstruction or damage to the City's storm sewer and drainage system, City personnel, the general public, receiving waters, or associated sediments; or
11. Any substance that causes or contributes to a violation of the terms of the City's NPDES MS4 Discharge Permit or Water Pollution Control Facility (WPCF) for Class V UIC Permit or in-stream water quality standards set by the State of Oregon.

- D. Existing Discharges. Dischargers found to violate Section 17.39.040 may be required to obtain a BES discharge permit or authorization or the discharge may be terminated regardless of past acceptance by the City.

17.39.050 Notification and Control of Illicit Connections and Discharges.

(Amended by Ordinance Nos. 186403 and 186902, effective December 26, 2014.)

- A. Notification by telephone must be provided to BES and other authorities as applicable for the following conditions:
1. Illicit Connections. Notice must be provided within twenty-four hours after discovery of an illicit connection to the City's storm sewer and drainage system.
 2. Illicit Discharges. Notice must be provided immediately after discovery of the illicit discharge. Written reports must also be submitted to BES within five days of discovery of an illicit discharge or as otherwise specified by a BES discharge permit or authorization.
- B. Control and Abatement. Dischargers shall immediately take all reasonable steps to minimize the effects of an illicit discharge to the City storm sewer and drainage system or any waters of the state. These actions may include cleaning the impacted public and private system components under City direction or performing additional monitoring to determine the nature and extent of the discharge.
- C. Protection of City Systems. Dischargers must eliminate or control direct or indirect spills or discharges into the City's storm sewer and drainage system. The Director may require dischargers to make structural or operational modifications to their facilities, equipment, or drainage systems or to take other measures to protect the City's storm sewer and drainage system. Such structures and site modifications

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must be reviewed and approved by the Director to determine sufficiency. A permit or permit review may be required.

17.39.060 Discharge Permits and Other Authorizations.

(Amended by Ordinance No. 186403, effective February 1, 2014.)

- A.** BES discharge permit or authorization may be required for discharges not subject to NPDES or UIC WPCF permit requirements for discharges that would:
 - 1.** Interfer with or harm the City storm sewer and drainage system;
 - 2.** Contribute to a violation of the City's NPDES stormwater discharge permit;
 - 3.** Contribute to a violation of the City's UIC WPCF stormwater permit;
 - 4.** Degrade the receiving surface water or groundwater; or
 - 5.** Have a negative effect on human health, safety or the environment.
- B.** A BES discharge permit or authorization request must be submitted and approved before non-routine or one-time discharges of materials except for those discharges that are allowed under Section 17.39.030.
- C.** A discharge request must be submitted and BES must approve or deny the permit before continuous or routine discharge occurs of materials other than stormwater that are not allowed under Section 17.39.030. A discharger must apply for a BES discharge permit or authorization when required by BES either at the time of development application or at the time of discovery of a discharge meeting the criteria of Subsection 17.39.060 A.
- D.** The discharger must allow site inspections by BES to verify site conditions or submit additional information, reports and plans as part of the DA or BES discharge permit request, such as:
 - 1.** A Stormwater Pollution Control Plan (SWPCP), which describes measures to eliminate, reduce and control the level of pollutants in discharges;
 - 2.** An Accidental Spill Prevention Plan (ASPP), which documents facility or discharger-specific spill response procedures and describes measures to prevent the release of prohibited or deleterious materials to the City storm sewer and drainage system;
 - 3.** A Best Management Practices (BMP) Plan which describes actions to reduce or eliminates pollutants and hydrologic impacts associated with a discharge; or

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- 4. Monitoring data to characterize the types and loads of pollutants in the discharges.
- E. The Director shall provide the discharger written notice of approval or denial of the request to discharge and information on how to request further administrative review of the decision.
- F. Any new or potential discharger identified through the City's development review process shall undergo a source control review. Such review shall identify any site controls, City permit, or DA submittals needed to approve and accept any new discharge.

17.39.070 Inspections.

(Amended by Ordinance No. 186192, effective September 6, 2013.)

- A. Right of Entry. To the full extent permitted by the law, BES may enter all private and public premises at any time for the purpose of inspecting for potential violations, connections or for any other lawful purpose required by or authorized under this Code or ordinances of the City, the Charter, or state or federal law. This authorization includes but is not limited to inspection, sampling, testing, photographic documentation, record examination, copying, and installation of devices. Entry may not be conditioned upon BES representatives signing any type of confirmation, release, consent, acknowledgement or other type of agreement.
- B. Entry Protocols.
 - 1. The BES representative will present a City photo identification card at the time of entry.
 - 2. The BES representative will comply with reasonable, routine safety and sanitary requirements of the facility or site to be inspected as provided by the facility operator at the time of entry. The facility operator must provide the BES representative with any facility-specific safety protective equipment necessary for entry.

17.39.080 Sampling.

(Amended by Ordinance Nos. 186403 and 186902, effective December 26, 2014.) BES may sample or require a discharger to provide a representative sample of any discharge, or any material intended to be discharged, for the purposes of characterization or to determine compliance with Section 17.39.040, applicable permit conditions, DEQ or EPA requirements, or BES discharge permit or authorization.

- A. Dischargers may submit monitoring data gathered for other purposes that also satisfies these requirements. Dischargers shall conduct sampling and analysis in accordance with 40 CFR Part 136 or other EPA- or BES-approved methods.

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- B.** All dischargers with continuous or routine discharges must provide a sampling manhole or other City-approved sampling location upstream of the physical connection or discharge point into the City system. City access to the sampling location must be provided.

17.39.090 Reporting Requirements.

- A.** Reports. Dischargers may be required to submit reports or other technical information needed to determine compliance with this Chapter. Such reports may include evaluations of site conditions, visual observations of discharges, discharge sampling results, summaries of operational and maintenance activities, compliance schedules for implementing remediation activities, or other information as requested by the Director to characterize discharges and site conditions. The City may accept reports required by NPDES or other discharge permits. Reports shall be submitted in a timely manner as required by the Director.
- B.** Fraud and False Statements. Dischargers making false statements in any submittal, report or other document required by this Chapter or associated rules shall be subject to the enforcement provisions of this Chapter and any other applicable local and state laws and regulations.

17.39.100 Records Retention.

Dischargers subject to this Chapter shall maintain and preserve for no fewer than five years any records, books, documents, memoranda, reports, correspondence and document summaries relating to observation, sample collection and analysis conducted in order to comply with this Chapter or associated rules. All records that are the subject of any enforcement or litigation activities brought by the City shall be retained and preserved by the discharger until all enforcement activities have concluded and all periods of limitation with respect to any and all appeals have expired.

17.39.110 Enforcement.

(Replaced by Ordinance No. 186192; Amended by Ordinance No. 186403, effective February 1, 2014.)

- A.** Violations. It is a violation for any person to fail to comply with the requirements of this Chapter or associated rules. Each day a violation occurs or continues may be considered a separate violation. BES will hold the person or persons solely responsible for complying with BES enforcement actions. Violations of this Chapter or associated rules include, but are not limited to:
 - 1.** Discharges with any of the attributes of the prohibited discharge list of Section 17.39.040;
 - 2.** Failure to meet any requirement or condition of a BES discharge permit or authorization, including exceedances of a discharge limit, issued under the authority of this Chapter or associated rules;

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3. Failure to comply with a BES discharge permit or authorization-related submittal schedule or a violation remediation schedule;
 4. Failure to pay review fees or assigned penalties for violations; or
 5. Failure to comply with enforcement actions as identified in the BES Enforcement Program administrative rules (PPD item ENB-4.15).
- B.** Enforcement Tools. BES may use any or all of the following tools to enforce this Chapter or associated administrative rules: notice of investigation, warning notice, notice of violation, compliance order, requirement to obtain a permit, notice of termination, withholding of permits, violation abatement, legal action, criminal case referral, or referral to other regulatory agencies. BES enforcement actions are described in program-specific administrative rules and the BES Enforcement Program administrative rules (PPD item ENB-4.15).
- C.** Civil Penalties. Dischargers violating this Chapter or associated rules may be assessed civil penalties of up to \$10,000 per day per violation according to program-specific administrative rules and the BES Enforcement Program administrative rules (PPD item ENB-4.15). Penalties and other charges will accrue interest from the date of initial City notice assessing the penalty until the penalty is paid in full. Dischargers violating this Chapter will be solely responsible for reimbursing the City's abatement expenses.
- D.** Cost Recovery. The Director may recover all reasonable costs incurred by the City that are attributable to or associated with violations of this Chapter or associated administrative rules per PPD item ENB-4.15. Failure to pay costs related to a civil penalty or summary abatement within 30 days following a final determination is grounds for permit revocation or termination of the permittee's discharge
- E.** City Summary Abatement. To the extent permitted by law, the Director may recover from the person causing the violation all costs incurred by the City to summarily abate the following:
1. A violation that is not remedied through required corrective actions;
 2. A situation that poses an imminent danger to human health, public safety, or the environment; or
 3. Continued noncompliance with the PCC or associated rules.
- F.** Nothing in this Chapter is intended to impose liability on the City for any injury or damage resulting from the failure of any person to comply with the provisions of this Chapter.

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17.39.120 Compliance Cases and Appeals.

(Replaced by Ordinance No. 186192; Amended by Ordinance No. 186902 effective December 26, 2014.)

- A.** Reviews and Appeals. A person may request a modification to a BES decision related to this Chapter via an administrative review with BES staff. After the requestor has exhausted all BES program and enforcement program reviews, the requestor may file for an appeal with the Code Hearings Officer per PCC Title 22.
- 1.** Reviews and appeals of the following may be requested:
 - a.** The determination of a violation of this Chapter or associated rules.
 - b.** The type and level of enforcement action taken by BES.
 - c.** The type and amount of penalty imposed by BES.
 - d.** Compliance due dates.
 - e.** A requirement to obtain a permit.
 - f.** A denial of a permit.
 - g.** Required remediation actions.
 - 2.** Reviews and appeals may not be requested for:
 - a.** The amount of cost recovery assessment against the person by BES.
 - b.** A requirement to meet a technical standard.
 - c.** Other issues identified in individual program-specific administrative rules.
 - 3.** Appeals to the City Code Hearings Officer. An appellant must pay a filing fee in the amount of the Code Hearing fee as part of the appeal request. If the Code Hearings Officer finds in favor or in partial favor of the appellant, BES will reimburse the appellant for the full amount of the fee, and send a check to the appellant via certified mail.
- B.** BES Code Compliance Cases. BES may file a case before the Code Hearings Officer under PCC Title 22 to compel compliance with City regulations. The person committing the violation will be offered the opportunity to present evidence in the case.

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17.39.130 Conflict.

(Amended by Ordinance No. 186192, effective September 6, 2013.) This Chapter supersedes all other ordinances or elements thereof to the extent that they are inconsistent with or conflict with any part of this Chapter are hereby repealed to the extent of such inconsistency or conflict.

17.39.140 Severability.

(Amended by Ordinance No. 186192, effective September 6, 2013.) If any provision, paragraph, word or Section of this Chapter or associated rules is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, and sections shall not be affected and shall continue in full force and effect.

**CHAPTER 17.40 - PROTECTION OF PUBLIC
RIGHT-OF-WAY**

(Chapter amended by Ordinance No. 184957,
effective November 25, 2011.)

Sections:

- 17.40.010 Injuries to Pavement.
- 17.40.020 Endangering Pavement.
- 17.40.030 Charges for City Patching of Roadway Areas.
- 17.40.040 Damages to Public Right-of-Way.
- 17.40.050 Disposition of Asphalt, Concrete, Rock and Dirt.
- 17.40.060 Disposition of Leaves.

17.40.010 Injuries to Pavement.

(Amended by Ordinance No. 184957, effective November 25, 2011.)

- A.** It is unlawful for any person to cause or permit to come in contact with any paved roadway, curb or sidewalk, any corrosive or other substance which may tend to disintegrate or injure such pavement. This shall not apply to salt or salt mixtures placed thereon to melt snow or ice.
- B.** It is unlawful for any person to cause or permit any object to fall upon or be placed upon any paved roadway, curb or sidewalk of such weight or other characteristic as to crack, break or disturb the pavement surface. This shall not apply to ordinary wear and tear from vehicular traffic.
- C.** It is unlawful for any person to cause or permit to be placed upon any pavement without immediately removing the same, any concrete, plaster or other material likely to adhere to the pavement. However, during the course of construction upon adjacent property, the Director of the Bureau of Transportation may issue a permit for such activity if he or she determines that sufficient protection will be provided to prevent injury to the pavement.
- D.** It is unlawful for any person to cause or permit any fire to be kindled or made upon any paved roadway, curb or sidewalk or to heat any material in close proximity to such paved surface.

17.40.020 Endangering Pavement.

(Amended by Ordinance No. 184957, effective November 25, 2011.) In the course of construction under a permit issued by the City, it is unlawful for any person to cause or permit any undermining of any pavement not cut or to be replaced as a part of the work; to tunnel under street area without providing complete support of the pavement above such tunnel; to cause or permit to be washed away the ground or fill material supporting pavement; to make any excavation within street area pursuant to permit without securely and safely bracing such excavation so as to prevent the sides or walls of the excavation

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from falling or caving in; to cause or permit any excavation to be made on private property adjacent to street area without securely and safely bracing the wall or side of the excavation near the paved area so as to prevent falling or caving in and to protect the support of the pavement; or to cause or permit any other act to be done which would tend to endanger the direct or lateral support of the pavement.

17.40.030 Charges for City Patching of Roadway Areas.

(Amended by Ordinance Nos. 145974 and 173369, effective May 12, 1999.) Any person who has dug up or cut into the roadway surface of a street paved with bituminous paving may request the City to replace the roadway area by patching the pavement. This shall not apply to local improvements, public improvements under permit, or general maintenance of roadway areas by the City. The applicant shall first prepare the area, if the base has been disturbed, by removing any excavated material from below the pavement and filling and compacting the same to sub base level with gravel, all at his own expense. The applicant shall pay for the repair on a cost basis. The cost basis will include the actual costs of all labor, equipment, materials and supervision required to do the work along with appropriate overhead costs as determined in accordance with provisions of the finance regulations.

17.40.040 Damages to Public Right-of-way.

(Added by Ordinance No. 184957, effective November 25, 2011.)

- A.** If in the Director of the Bureau of Transportation's opinion the public right-of way has been negligently or intentionally damaged, the Director of the Bureau of Transportation may act to identify the person responsible for such damage. The Director of the Bureau of Transportation may then issue a notice requiring the responsible person to repair and restore the public right of way to the Director of the Bureau of Transportation's satisfaction.
- B.** Once the responsible person has been notified to repair the public right-of-way to the Director of the Bureau of Transportation's satisfaction, the responsible person shall undertake to make and complete the repairs within 20 days.
- C.** If the responsible person fails, neglects or refuses to make repairs within the specified time, the Director of the Bureau of Transportation may;
 - 1.** Institute an action before the Code Hearings Officer as set out in Title 22 of this Code, or
 - 2.** Cause appropriate action to be instituted in a court of competent jurisdiction, or
 - 3.** Taking such other actions as the Director of the Bureau of Transportation in the exercise of his or her discretion deems appropriate including, but not limited to, summary abatement.

17.40.050 Disposition of Asphalt, Concrete, Rock and Dirt.

(Added by Ordinance No. 185351, effective June 22, 2012.)

- A.** All asphalt, concrete, rock and dirt removed from existing infrastructure in the public right-of-way shall be disposed of at the direction of the Director of the Bureau of Transportation who has the authority for the disposal of such materials.
- B.** The asphalt, concrete, rock and dirt from existing infrastructure in the right-of-way are often recycled by the City into an aggregate and back fill products which the City uses as road base on residential streets, trench fill and back fill. If the City generates more of these recycled products then it can use, the Director of the Bureau of Transportation may sell or donate the materials.

 - 1.** Pricing of the materials to be sold shall be based on current market price and reviewed at least biannually by the Bureau of Transportation.
- C.** The Bureau of Transportation, at the discretion of its Director, may levy a fee for accepting and processing asphalt, concrete, rock and dirt from third parties asphalt, concrete, rock and dirt for the purposes of recycling.

 - 1.** Pricing of this service (tipping fee) shall be based on current market price and reviewed at least biannually by the Bureau of Transportation.
- D.** Revenue generated by selling these materials and services shall be returned to the Bureau of Transportation.

17.40.060 Disposition of Leaves.

(Added by Ordinance No. 185351, effective June 22, 2012.)

- A.** All leaves collected from the public right-of-way shall be disposed of at the direction of the Director of the Bureau of Transportation who has the authority for the disposal of such materials.
- B.** The leaves collected from the existing right-of-way are often processed into compost which the City uses as erosion control and soil amendment. If the City generates more of these recycled products then it can use, the Director of the Bureau of Transportation may sell or donate the materials.

 - 1.** Pricing of the materials to be sold shall be based on current market price and reviewed at least biannually by the Bureau of Transportation.
- C.** The Bureau of Transportation, at the discretion of its Director, may levy a fee for accepting and processing leaves or other matter consistent with composting from third parties for the purposes of recycling.

 - 1.** Pricing of this service (tipping fee) shall be based on current market price and reviewed at least biannually by the Bureau of Transportation.

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- D.** Revenue generated by selling these materials and services shall be returned to the Bureau of Transportation.

CHAPTER 17.41 - LANDSLIDE ABATEMENT

(Chapter added by Ordinance No. 165864, effective
September 30, 1992.)

Sections:

- 17.41.010 Purpose.
- 17.41.020 Definitions.
- 17.41.030 Applicability.
- 17.41.040 Landslide As a Nuisance; Costs.
- 17.41.050 Abatement.
- 17.41.060 Administrative Review.

17.41.010 Purpose.

(Amended by Ordinance No. 173369, effective May 12, 1999.) The purpose of this Section is to protect the public from hazards created by landslides that deposit material on the public right-of-way, remove material from the public right-of-way or threaten the stability of the right-of-way. The intent of this Section is to provide for the immediate abatement of a landslide by the responsible property owner or, if necessary, by the City.

17.41.020 Definitions.

(Amended by Ordinance Nos. 173369 and 182760, effective June 5, 2009.) For purposes of this Chapter 17.41:

- A. “Costs”** means any costs, direct or indirect, incurred by the City in the abatement of a landslide. Costs may include, but are not limited to, those associated with the removal of debris, traffic control and barricading, engineering, construction, erosion control, reforestation, restoration and repair of existing public facilities, City overhead as provided in 5.48.030, and City Auditor’s charges established in 17.12.020 B.
- B. “Landslide”** means any detached mass of soil, rock, or debris that is of sufficient size to cause damage and moves down a slope or stream channel.
- C. “Owner”** means the person or persons shown on the most recent property tax records.
- D. “Responsible property”** means the property or properties abutting that portion of the public right-of-way on which materials have been deposited by a landslide, or property or properties which has caused the instability of the public right-of-way.

17.41.030 Applicability.

(Amended by Ordinance Nos. 173369 and 182760, effective June 5, 2009.) This Chapter applies to:

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- A.** Landslides that originate on private property and deposit material on the public right-of-way; and
- B.** Landslides in unimproved public right-of-way as defined by Chapter 17.42 of this code.
- C.** Landslides in public right-of-way caused by actions on property abutting such public right-of-way.
- D.** Landslides that threaten the stability of the public right-of-way.

17.41.040 Landslide As a Nuisance; Costs.

(Amended by Ordinance No. 173369, effective May 12, 1999.)

- A.** A landslide is a public nuisance. The nuisance is subject to abatement as provided by Title 29, except as provided in this Chapter. Abatement by the City shall be conducted at the direction of the City Engineer. The City Engineer may direct summary abatement where there is an immediate threat to the public safety.
- B.** Recovery of costs incurred by the City in the abatement of a landslide shall be as provided in Title 29, and such costs shall be assessed to the responsible property.

17.41.050 Abatement.

(Amended by Ordinance No. 176955, effective October 9, 2002.)

- A.** The owner of the responsible property is required to abate the landslide.
- B.** Abatement of a landslide includes:
 - 1.** Immediate work necessary to remove the debris from any areas where it would constitute or create a hazard to the public and to temporarily stabilize the slope; and
 - 2.** Permanent stabilization of the slope, as necessary, through engineered solutions such as retaining walls or riprap. Plans and specifications for permanent stabilization shall be prepared by a professional engineer registered in the State of Oregon and shall be approved by the City Engineer.
- C.** If summary abatement is not directed, the City Engineer may post notice on the responsible property of the requirement for immediate abatement, including dates by which the abatement must be commenced and completed. Such notice shall also be mailed to the owner and/or occupant of the responsible property. If the abatement is not commenced or completed within the time provided in the notice, the City Engineer may cause the landslide to be abated and the costs assessed against the responsible property.

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- D.** Where necessary, the City Engineer may also post and mail notice regarding the requirement for permanent stabilization of the slope. Such notice shall include the date by which plans for such permanent stabilization shall be submitted to the City Engineer. If such plans are not submitted by the stated date, the City Engineer may cause the permanent stabilization portion of the abatement to be accomplished and the cost assessed against the responsible property.
- E.** Before beginning any work in the right-of-way, the owner of the responsible property shall obtain the permits required by Chapter 17.24 of this Code.
- F.** A building permit shall be required for permanent stabilization work performed on private property. Such permits shall be approved by the Bureau of Development Services and the City Engineer.
- G.** If at any stage of the abatement, the owner of the responsible property fails to comply with the requirements imposed by the City Engineer, the City Engineer may cause the abatement to be completed by the City and the cost assessed against the responsible property.
- H.** If there is more than one responsible property, the City Engineer shall apportion all costs incurred by the City in abatement based on the front footage of the slide area in the right-of-way.
- I.** Nothing in this Code shall be deemed to prevent a party required by this Chapter to pay for abatement of a landslide from exercising any rights her or she may have against the party or parties who may have caused the landslide.

17.41.060 Administrative Review.

(Amended by Ordinance No. 173369, effective May 12, 1999.) Administrative review shall be conducted as provided in Title 29, except that the review shall be conducted by the City Engineer. Appeal shall be to the Code Hearings Officer as provided in Chapter 22.10 of this Code.

**CHAPTER 17.42 - PROPERTY OWNER
RESPONSIBILITY FOR STREETS**

(Chapter added by Ordinance No. 172051, effective
March 11, 1998.)

Sections:

- 17.42.010 Policy.
- 17.42.020 Maintenance and Construction Responsibility.
- 17.42.025 Maintenance Restrictions.
- 17.42.030 Liability.
- 17.42.040 Definition.

17.42.010 Policy.

(Amended by Ordinance No. 177124, effective January 10, 2003.)

- A.** It has been and remains the policy of the City of Portland that streets are constructed at the expense of abutting property owners and are maintained by abutting property owners until street improvements are constructed to the standards of, and accepted for maintenance by, the City. Until a street improvement has been constructed to City standards and the City has expressly assumed responsibility for street maintenance, it is the exclusive duty of the abutting property owners to construct, reconstruct, repair and maintain the unimproved street in a condition reasonably safe for the uses that are made of the street and adjoining properties. Streets that have not been improved to City standards are not and will not be maintained or improved at City expense, except at the discretion of the City and as provided in this Code and the City Charter.
- B.** Disputes regarding the condition of the unimproved street are private actions among affected property owners.

17.42.020 Maintenance and Construction Responsibility.

(Amended by Ordinance No. 177124, effective January 10, 2003.) The City assumes no responsibility for maintenance, construction or reconstruction of any street until and unless:

- A.** The street has been constructed to City standards and specifications; and
- B.** The City has expressly accepted maintenance responsibility for the street.

17.42.025 Maintenance Restrictions.

(Added by Ordinance No. 177124; amended by 177750, 184522, 185448 and 186053, effective January 1, 2015.)

- A.** Notwithstanding anything to the contrary in this Title 17, residents and property owners are not required to obtain a permit to maintain public streets abutting their

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properties if those streets have not been accepted for maintenance by the City or any other jurisdictions, provided the following conditions are met:

1. The travel lane width of the unimproved portion of the street remains the same;
 2. There is no resulting change in existing drainage patterns outside the public right-of-way;
 3. Drainageways located within public rights-of-way are not filled in or otherwise altered in any manner that could impact the flow of water;
 4. The materials used for maintaining the street are equivalent to the existing street materials, except that gravel may be used to resurface a dirt road;
 5. Asphalt, concrete or other man-made materials may not be applied to existing dirt or gravel surfaces, nor may existing dirt or gravel surfaces be converted to a paved surface;
 6. The maintenance activities and resulting condition of the street do not adversely affect surrounding properties;
 7. Trees in the public right-of-way are not removed or pruned unless a tree permit has been obtained as provided in Title 11, Trees; and
 8. Speed bumps or other types of devices intended to slow traffic are not constructed.
- B.** The City Engineer retains final authority to regulate all maintenance and construction activities in the public right-of-way, regardless of whether a permit is required or obtained.
- C.** The City Traffic Engineer retains exclusive authority to establish traffic control devices as provided in Section 16.10.080 and in Section 16.10.200. This includes, but is not limited to, all regulatory, warning, and guide signs, and all types of pavement markings.

17.42.030 Liability.

The owner(s) of land abutting any street that has not been improved to City standards and accepted for maintenance shall be liable for any and all damages to any person who is injured or otherwise suffers damages resulting from the defective condition of the street, or by reason of the property owner's failure to keep the street in safe condition and good repair. Said property owner(s) shall be liable to the City of Portland for any amounts which may be paid or incurred by the City by reason of all claims, judgments or settlements, and for all reasonable costs of defense, including investigation costs and attorney fees, by reason of said property owners' failure to satisfy the obligations imposed by the Charter and Code of the City of Portland to maintain, construct and repair such streets.

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17.42.040 Definition.

(Amended by Ordinance No. 173369, effective May 12, 1999.) As used in this chapter, the term “street” is defined as provided in Section 17.04.050 of the City Code and includes any drainage facilities associated with the street, and any structures in the dedicated street area. It also includes the run-off from any street where no drainage facilities have been constructed.

CHAPTER 17.44 - STREET OBSTRUCTIONS

(Chapter replaced by Ordinance No. 184957,
effective November 25, 2011.)

Section:

17.44.010 Unlawful Acts Enumerated.

17.44.010 Unlawful Acts Enumerated.

- A.** It is unlawful for any person to obstruct or cause to be obstructed any roadway, curb or sidewalk by leaving or placing, any object, material or article which may prevent free passage over any part of such street or sidewalk area. This Section does not authorize any action in violation of any other Title or regulation.
- B.** It is unlawful for any person to erect or cause to be erected any structure in, over or upon any dedicated street area, except that Director of the Bureau of Transportation may, based on findings of necessity, grant permission for walls, fences and steps, that otherwise comply with the Code of the City. Also, on buildings whose front is located on the property line, the Director of the Bureau of Transportation may allow decorative facings, certain types of utility meters, utility valves, and other utility appurtenances, to extend into the street area an amount that does not interfere with the public use of said street. The Director of the Bureau of Transportation, upon determining a public need for areas occupied by such walls, fences, steps, facings, or utility meter valves and other appurtenances, may revoke said permission and the property owner or utility will be required to remove them from the street area.
- C.** It is unlawful for any person to erect or cause to be erected any sign in, over, or upon any public right of way. For the purposes of this section, sign shall be defined as provided in Title 32.
- D.** This Section shall not apply to:

 - 1.** Any use, sign, or structure for which a permit has been issued or which is erected under authority of any Title;
 - 2.** Motor vehicles lawfully parked pursuant to City Regulations;
 - 3.** Barricades placed by or with the approval of the Director of the Bureau of Transportation or the Traffic Engineer; nor
 - 4.** Temporary closures and occupancies pursuant to this Chapter.
 - 5.** Merchandise in the course of delivery may be placed on the sidewalk while actively loading and unloading for not longer than two hours provided that the provisions of City Code Section 14.50.030 Sidewalk Use are complied with.

**CHAPTER 17.45 - ADVERTISING ON BUS
BENCHES**

(Chapter replaced by Ordinance No. 184957,
effective November 25, 2011.)

Sections:

- 17.45.030 Advertising Bench Allowed.
- 17.45.040 Fee.
- 17.45.050 Revocation.
- 17.45.060 Authority.

17.45.030 Advertising Bench Allowed.

(Amended by Ordinance No. 185397, effective July 6, 2012.) For the free use and accommodation of persons waiting for public transportation, benches may be placed on the street area between the property line and the back of the through pedestrian zone and between the curb closest to the street center line and front of the through pedestrian zone in the public right of way of the City, and such benches may bear advertising messages. Permits for benches bearing advertisements shall be granted only to the Tri-County Metropolitan Transit District (TriMet). For purposes of this Chapter, the term bench shall also apply to transit shelters owned, operated and maintained by TriMet.

17.45.040 Fee.

An annual fee as prescribed in Section 17.24.010 shall be collected for every permit issued to install an advertising bench. This fee is due July 1 and shall be paid by July 15. Permits may be issued without payment of any fee for benches where no advertising or other message will be displayed.

17.45.050 Revocation.

The Director of the Bureau of Transportation may revoke any permit issued under Sections 17.45.030 - 17.45.040 at any time in the event the public's need requires it, the permittee fails to comply with the conditions of the permit, for any fraud or misrepresentation in the application, or for any reason which would have been grounds for denial of the initial application.

17.45.060 Authority.

The Director of the Bureau of Transportation is authorized to enter into an intergovernmental agreement with TriMet to govern procedures in the issuance of permits under this Section.

CHAPTER 17.46 - PUBLICATION BOXES

(Chapter replaced by Ordinance No. 186965,
effective February 6, 2015.)

Sections:

17.46.010	Definitions.
17.46.020	Publication Boxes within the Right-of-Way.
17.46.030	Limitations on Publication Box Placement.
17.46.040	Co-located Publication Boxes.
17.46.050	Maintenance Requirements.
17.46.060	Enforcement.
17.46.070	Liability.
17.46.080	Appeal.

17.46.010 Definitions.

- A. “Abandoned Publication Box”** means a Publication Box (including a Co-located Publication Box) that has remained empty for 30 or more days. The basis for the conclusion that the Publication Box has not been stocked with new materials for 30 days or more shall be documented in the enforcement records.
- B. “ADA Ramp”** means a combined ramp and landing to accomplish a change in level at a curb in order to provide access to pedestrians using wheelchairs.
- C. “Co-located Publication Box”** means a Publication Box designed to dispense two or more different Publications.
- D. “Crosswalk”** means any Crosswalks either “marked” or “unmarked”. A “marked crosswalk” is any portion of a roadway at an intersection or elsewhere that is distinctly indicated for pedestrian crossing by lines or other markings on the surface of the roadway. An “unmarked crosswalk” is the imagined extension of a sidewalk or shoulder across a street at an intersection. An unmarked crosswalk exists at all intersections unless specifically marked otherwise.
- E. “Distributor”** means a person responsible for placing, installing, or maintaining a Publication Box.
- F. “Publication Box”** means a free standing self-service or coin-operated box, container, or other dispenser installed, used, or maintained on the Sidewalk or public Right-of-Way for the sale or distribution of newspapers, periodicals, or other Publications to the general public.
- G. “Person”** means any natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, and/or the manager, lessee, agent, servant, officer, or employee of any of them.

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- H. “Publication”** means any printed material.
- I. “Right-of-Way”** means property subject to public use for existing or future streets, curbs, planting strips, or sidewalks. Property subject to a right-of-way may be through an express, implied, or prescriptive easement granted to or controlled by the city or other public entity or may be owned by the city or other public entity in fee simple or other freehold interest. The Portland Bureau of Transportation, as stewards of the right-of-way, administers and regulates use of the public right-of-way on behalf of the City.
- J. “Sidewalk”** means that portion of the street between the curb lines or the lateral lines of roadway and the adjacent property lines intended for use by pedestrians.
- K. “Street”** means all that area dedicated to public use for public street purposes and shall include, but not be limited to, roadways, parkways, alleys and sidewalks.
- L. “Through Pedestrian Zone”** means the area intended for pedestrian travel as defined by the Portland Pedestrian Design Guide.
- M. “Transit Platform”** means any Portland StreetCar platform or TriMet bus stop, bus layover zone or light rail station platform. This definition applies (but is not limited to) transit facilities located on public or private streets, in transit centers and on the Transit Mall.

17.46.020 Publication Boxes within the Right-of-Way.

Publication Boxes may be placed within the Right-of-Way as allowed by this Chapter.

17.46.030 Limitations on Publication Box Placement.

- A.** All Publication Boxes must be placed on a Sidewalk, parallel to the curb and face the Through Pedestrian Zone.
- B.** Publication Boxes which meet all of the requirements of this code may be chained to a sign post, street light or signal/utility pole. If the sign post, street light or signal/utility pole is painted a plastic or rubber coated steel chain/cable is required. The distance between the Publication Box and the sign post, street light, or signal/utility pole shall be no more than 6 inches. If the sign post, street light, or signal/utility pole is not owned by the City of Portland then the written permission of the owner of such property is required.
- C.** Publication Boxes may not be fastened in any way to street furniture, public art, bicycle racks or street trees.
- D.** Publication Boxes placed within the right-of-way shall be located in groupings with a combined length of no greater than 10 feet, immediately abutting one another. At least 20 feet must be left clear of Publication Boxes between groupings of Publication Boxes along the same block face.

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- E.** The maximum height of any Publication Box shall be 50 inches. The maximum width of any Publication Box shall be 24 inches. The maximum depth of any such publication box shall be 24 inches.
- F.** Publication Boxes cannot be located:
1. within a traffic island, median or traffic circle;
 2. within 5 feet of any Crosswalk;
 3. within 5 feet of a fire hydrant;
 4. within 5 feet of a drinking fountain;
 5. within 5 feet of any public art;
 6. within 5 feet of any driveway, alley, or curb cut;
 7. within 5 feet of any portion of an ADA Ramp;
 8. within 5 feet of a marked disabled parking space;
 9. within 5 feet of a marked loading or taxi zone;
 10. within a Transit Platform unless allowed by Portland StreetCar or TriMet;
 11. at any distance less than 2 feet from the street side face of the curb, measured to the side of the Publication Box closest to the curb;
 12. within the corner of two intersecting sidewalk corridors, as determined by the adjacent property lines extended;
 13. where the unobstructed Through Pedestrian Zone is less than 8 feet within Pedestrian Districts and City Walkways, or 6 feet on all other sidewalks. (Sidewalk classification for this purpose shall be determined pursuant to the City's Transportation System Plan);
 14. where the Publication Box may cause damage to any landscaping, including but not limited to lawn, flowers, shrubs or trees;
 15. where the Publication Box may cause damage to or interfere with the use of pipes, vault areas, telephone or electrical cables/wires or other utility facilities;
 16. on any grating, manhole cover or access lid;
 17. where the Publication Box obstructs access to parked vehicles;

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18. where the Publication Box obscures any fixed regulatory or informational sign.

17.46.040 Co-located Publication Boxes.

- A.** A Person may install a Co-located Publication Box, at the Person's own expense, in compliance with all of the following conditions:
1. Placement of the Co-located Publication Box complies with all sections of this Chapter and all required permits have been obtained (per TRN-8.08);
 2. The proposed Co-located Publication Box provides sufficient compartments for distribution of all Publications being distributed within 175 feet of the proposed location for the Co-located Publication Box as of the date of installation of the Co-located Publication Box; and
 3. The Co-located Publication Box permittee agrees in writing as a condition of issuance of a permit to be responsible for ensuring compliance with the maintenance requirements of this Chapter for the Co-Located Publication Box.
 4. A person who installs a Co-located Publication Box may not charge a Distributor for distribution of its Publication from the Co-located Publication Box.
- B.** Once a Co-located Publication Box has been installed, no freestanding Publication Boxes may be placed within 175 feet of the Co-located Publication Box. If the Co-located Publication Box is full, a Distributor who wishes to distribute a Publication at that location may do so by installing, at its own expense, an additional identical Co-located Publication Box immediately adjacent to the existing Co-located Publication Box. The additional Co-located Publication Box must comply with all other requirements of this chapter for placement of Co-located Publication Box. Once installed the maintenance and management will be the responsibility of the permittee of the existing Co-located Publication Box.
- C.** No permittee of a Co-located Publication Box shall accept anything of value for the display of any speech or image on the Co-located Publication Box. The Distributor may display the publication within the window to which that box is assigned in the Co-located Publication Box. The Distributor may also display any speech or image of its choice, limited to no more than 4 inches in height, on each of the following: the front, side, back and door of the Co-located Publication Box. No other speech or image may be displayed with the exception of the notice required by, Subsection 17.46.050 B.
- D.** Co-located Publication Boxes shall be black in color and the design shall be similar to existing Co-located Publication Boxes installed around Pioneer Courthouse Square. Co-located Publication Boxes within design districts may be subject to

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Design Review and through that process may be allowed to vary in standard color or other elements.

17.46.050 Maintenance Requirements.

- A.** Each Publication Box charging a fee shall be equipped with a coin return mechanism to permit the person using the machine to secure an immediate refund in the event she/he is unable to receive the Publication paid for. The coin return mechanisms shall be maintained in good working order. (Does not apply to Publication Boxes used for distributing free Publications.)
- B.** Each Publication Box shall have affixed to it in a readily visible place so as to be seen by anyone using the Publication Box a notice setting forth the name and business address of the Distributor and the telephone number of a working telephone service to call to report a violating condition, a malfunction, or to secure a refund in the event of a malfunction of the coin return mechanism. In a Co-located Publication Box the required information shall be for the permittee of the box.
- C.** Each Publication Box shall be sufficiently weighted, or attached to a sign post, street light or signal/utility pole as per, Subsection 17.46.030 B., or to another Publication Box to provide stability and safety.
- D.** Publication Boxes may not have free-flying materials attached to them, such as balloons, windsocks, papers, etc.
- E.** Each Publication Box shall be maintained in a neat and clean condition and in good repair at all times. Specifically, each Publication Box shall be serviced and maintained so that:
 - 1.** it is reasonably free of dirt and grease;
 - 2.** it is reasonably free of chipped, faded, peeling and cracked paint;
 - 3.** it is reasonably free of rust and corrosion;
 - 4.** it is reasonably free of graffiti, litter and other debris;
 - 5.** clear plastic or glass parts are unbroken and reasonably free of cracks, dents, blemishes and discoloration;
 - 6.** paper or cardboard parts or inserts are reasonably free of tears, peeling or fading;
 - 7.** structural parts are not broken or unduly misshapen.

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17.46.060 Enforcement.

- A.** If a Publication Box (including a Co-located Publication Box) is found to be in violation of any section of this Chapter, an attempt will be made to contact the permittee of a Co-located Publication Box, or the Distributor of the Publication Box to provide notification of the violation. In the event the city is unable to contact the permittee or Distributor after 15 days of noted violation, the Publication Box (including a Co-located Publication Box) will be deemed Abandoned.
- B.** Violations that are not corrected within 15 days of notification will be subject to fine per the Transportation Fee Schedule (per TRN-3.450).
- C.** Publication Boxes (including a Co-located Publication Boxes) with violations that go uncorrected for 30 days after notification, as well as Publication Boxes (including a Co-located Publication Boxes) that remain empty for a period of 30 consecutive days, shall be deemed Abandoned and may be removed by the City. The City will store all removed Publication Boxes (including a Co-located Publication Boxes) for 3 months, during which time the permittee of a Co-located Publication Box, or the Distributor of the Publication Box may redeem them after paying any outstanding fines, penalties and storage fees. After 3 months, the City may auction, sell, or dispose of any Publication Boxes (including a Co-located Publication Boxes) that is not redeemed from storage.

17.46.070 Liability.

- A.** The Distributor of any Publication Box shall be liable for any and all damages to any Person who is injured or otherwise suffers damages resulting from the placement of a Publication Box within the Right-of-Way, or by reason of the Distributor's failure to keep the Publication Box in safe condition and good repair. Said Distributor(s) shall be liable to the City of Portland for any amounts which may be paid or incurred by the City by reason of all claims, judgments or settlements, and for all reasonable costs of defense, including investigation costs and attorney fees, by reason of said Distributor(s)' failure to satisfy the obligations imposed by the Charter and Code of the City of Portland to maintain and repair such Publication Box.
- B.** The adjacent property owner shall not be liable for any damages to any Person who is injured or otherwise suffers damages resulting from the placement of a Publication Box directly adjacent to their property.

17.46.080 Appeal.

Any permittee of a Co-located Publication Box, or the Distributor of the Publication Box aggrieved by the City's determination may appeal that determination to the Code Hearings Officer as provided in Chapter 22.10 of this Code. Notwithstanding any other provisions of this Code, there shall be a non-refundable fee of \$250 for any appeal pursuant to this

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Section. Such fee must accompany any such appeal and no such appeal shall be considered filed or received until such fee is paid in full.

CHAPTER 17.48 - MOVING BUILDINGS

Sections:

- 17.48.010 Permit Required.
- 17.48.020 Application and Fee Deposit.
- 17.48.030 Moving Permit.
- 17.48.040 Regulations.
- 17.48.050 Cutting Wires in Moving Operation.

17.48.010 Permit Required.

(Amended by Ordinance No. 140207, effective Aug. 1, 1975.) It is unlawful for any person to move any building or structure through any street or to occupy any portion of any street for the removal of any building or structure, without first obtaining a permit as provided in this Chapter and paying the fees elsewhere prescribed in Section 17.24.020.

17.48.020 Application and Fee Deposit.

(Amended by Ordinance No. 140207, effective Aug. 1, 1975.) Application for a permit for moving a building or structure shall be in writing, shall state the number of the lot and block upon which the building is located, the size of the building, the number of the lot and block to which it is proposed to remove the same, the route proposed to be taken, the length of time required for moving, and the name of the owner of the building or structure. Each application shall be accompanied by a fee as prescribed in Section 17.24.020. The application fee is nonrefundable and is in addition to the permit issuance fee, which shall be collected prior to the issuance of the permit.

17.48.030 Moving Permit.

(Amended by Ordinance Nos. 140207, 173627, 180917, 182389, 182760, 184957, 184522, 185448, 186053 and 186900, effective January 1, 2015.)

- A. When a building to be moved does not exceed three stories in height, the Director of the Bureau of Transportation may issue a moving permit, fixing the route to be used for the move, with the prior approval of the Traffic Engineer of the route, and upon the terms as he or she may deem necessary. The Director of the Bureau of Transportation shall keep a copy of the permit so issued.
- B. When a building to be moved exceeds three stories in height, any permit for moving shall be issued by the Council by ordinance. The Ordinance shall set forth any conditions upon the moving which may be deemed necessary and which are not provided for in this Chapter, and shall set forth the Director of the Bureau of Transportation's estimate of the cost to the City of issuing the permit, investigating the application, and supervising the moving, to be paid by the applicant for permit as a part of the fee elsewhere prescribed in Section 17.24.020.
- C. No moving permit shall be issued until the applicant shall have filed with the Auditor an insurance policy or certificate of insurance and form of policy for public liability insurance naming as additional insured's the City, its officers, agents and

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employees, in the amounts of at least \$1,000,000 (one million dollars), or the maximum limits of the Oregon Tort Claims Act as subsequently amended, whichever is greater; the insurance shall also contain a provision that it shall not be cancelable during the term of the permit.

- D.** A moving permit shall not be issued until the applicant has deposited with the Treasurer a sum sufficient, in the judgment of the Director of the Bureau of Transportation, to cover the cost of repairing any and all damage or injury to street or streets, or the improvements therein including street trees, which may result from the moving operation, and also such sums as the Bureau of Transportation and Portland Fire & Rescue, and any other City bureau involved, may require to cover the cost of moving, repairing, restoring or replacing any wires, signals, trees or other properties or installations which may be necessary in preparation for or in consequence of any moving operation. Upon completion of the moving operation, the bureau or bureaus which may have required such deposit and the Director of the Bureau of Transportation shall submit to the Treasurer a statement of the costs of any operations, repairs or replacements occasioned by or as the result of the moving operation, and other information as the Treasurer may request, in order to reimburse the proper account from the money so deposited, and shall authorize the Treasurer in writing to refund the remaining portion of such deposit, if any, to the depositor. If the cost exceeds the amount deposited, the depositor shall promptly reimburse the affected bureau or bureaus for such additional cost.

17.48.040 Regulations.

(Amended by Ordinance Nos. 182760 and 184957, effective November 25, 2011.) The moving of a building or structure under a moving permit shall be continuous day by day during all the hours specified by the Director of the Bureau of Transportation until completed, with the least possible obstruction to the streets occupied. It is unlawful for any person moving a building or structure under a moving permit to leave said building or structure or any portion thereof stationary in the street, road or highway area for a period in excess of 2 hours during the hours of the day specified by the Director of the Bureau of Transportation, unless an emergency exists by reason of unforeseen difficulties encountered in cutting wires, trees, or removing obstructions in the course of the route selected. Removal and pruning of trees shall be conducted in accordance with the City Forester's requirements including the need to obtain tree permits. All movement in the street area must be completed within an elapsed time of 36 hours unless application is made for a longer period of time and permission specifically granted therefore by the Director of the Bureau of Transportation prior to the commencement of any movement; provided, however, that if any unforeseen difficulties are encountered and an extension of time necessitated thereby is requested from the Director of the Bureau of Transportation prior to the expiration of 36 hours from the commencement of the moving operation, the Director of the Bureau of Transportation may extend the 36 hour time by specific additional time as deemed necessary.

Red lights or other warning devices sufficient to warn and protect traffic shall be displayed in conspicuous places at or on a building or structure being moved during the hours in

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which streetlights are lighted. The Director of the Bureau of Transportation may require additional warning devices based on findings that the warning devices displayed by the mover are insufficient.

17.48.050 Cutting Wires in Moving Operation.

(Amended by Ordinance Nos. 182760 and 184957, effective November 25, 2011.) When overhead wires in any street designated in a permit for moving a building or structure will interfere with the moving operation, the permittee shall give to the owner of the wire, including the City when it is the owner, 48 hours notice of intent to have the wire temporarily removed. The permittee shall pay in advance or tender to the owner, other than the City, the amount estimated to be necessary to remove the wire and replace the same. When the City owns the wire, the cost of temporary removal and replacement shall be included in the requirement for deposit prerequisite to permit, as provided in this Chapter. If the permittee disputes the amount demanded by the owner as the advance or tender, the amount shall be determined by the Director of the Bureau of Transportation. The permittee of a moving permit shall pay the actual expense of removing and replacing the wire, and as soon as the actual expense can be determined the permittee shall immediately pay any deficit and the owner shall refund any surplus to him or her. Upon receipt or tender of the amount estimated or the amount fixed by the Director of the Bureau of Transportation in case of dispute, the owner of the wire shall remove it in time to permit the passage of the building or structure without unnecessary delay.

CHAPTER 17.52 - TREES

(Chapter replaced by Ordinance No. 186900,
effective January 1, 2015.)

Sections:

- 17.52.010 Relationship to Other City Regulations.
- 17.52.020 Tree Tubs.

17.52.010 Relationship to Other City Regulations.

Specifications and responsibilities for maintenance of trees with regard to public improvements are found in Chapter 11.60 of Title 11, Trees.

17.52.020 Tree Tubs.

Any person desiring to place a tub or receptacle for a tree or shrub on top of the paved or hard surfaced portion of street area shall first apply to the Director of the Bureau of Transportation for a permit. The permit may be issued by the Director of the Bureau of Transportation under such safeguards and conditions as the Director of the Bureau of Transportation and the City Attorney may find necessary or appropriate to protect the public safety and to protect the City against claims of liability. The permit may be revoked by the Director of the Bureau of Transportation for any violation of conditions or terms of the permit, or for neglect of the plantings or abandonment of use. After revocation, it is unlawful for the permittee or permittee's successor in Title to the abutting property to allow the tub or receptacle to remain in street area.

CHAPTER 17.56 - PUBLIC UTILITIES

Sections:

- 17.56.005 Definitions.
- 17.56.010 General Bond.
- 17.56.020 Plans for Underground Construction by Franchise Holder.
- 17.56.030 Monthly Payments by Utility Companies.
- 17.56.050 Poles or Wires in Public Area.
- 17.56.060 Relocation and Discontinuation of Facilities.
- 17.56.070 Placement of Overhead Wires.
- 17.56.080 Service Shutoff Outside Premises.
- 17.56.090 Control of Electrical Currents.

17.56.005 Definitions.

(Added by Ordinance No. 184957, effective November 25, 2011.) For the purposes of this Chapter, “public utility” includes any person that installs, constructs, reconstructs, repairs, alters or maintains facilities for the distribution, transmission or collection of sewer, water, gas, petroleum products, steam, electricity, telecommunications, or other services, together with any associated wires, cables, poles, conduits, appliances or apparatus in, on, over, through or in any manner beneath the surface of the streets and that person currently possesses a franchise or privilege granted by the City of Portland or is a City bureau charged with providing such service to the public.

17.56.010 General Bond.

(Amended by Ordinance No. 173369, effective May 12, 1999.) In cases where the City has granted or may hereafter grant revocable permits to a railway company or other public utility for the use of streets, alleys, or public places, the grantee instead of filing a bond or bonds for the faithful performance of the conditions and obligations in any permit prescribed, may file with the city Auditor its written undertaking in the penal sum of \$5,000, without sureties, duly executed by the company under its corporate seal, whereby it shall undertake generally and agree to keep and perform the duties, obligations, and conditions of all revocable permits for the use of public streets, alleys, or public places then held or that may thereafter be granted to or held by it, and particularly that it will comply with all requirements thereof for paving, repairing, or otherwise improving streets and sidewalks and for the removal of its property and restoration of the portions of the streets, pavements, or sidewalks, according to the terms and conditions of the permits respectively.

17.56.020 Plans for Underground Construction by Franchise Holder.

(Amended by Ordinance Nos. 151100, 176555 and 184957, effective November 25, 2011.) Any person conducting a business within the City under a City franchise or permit, giving to such person the right to construct underground conduits or to lay pipes underground, shall, before entering upon any street for the purpose of cutting into, digging trenches in, or opening any street preparatory to the construction of any conduit or to the laying of any pipes, wires, or cables, file with the Director of the Bureau of Transportation detailed plans and specifications of all the proposed construction work. Such plans shall be drawn to a scale prescribed by the Director of the Bureau of Transportation and such specifications

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shall state the manner of construction and the kind of materials proposed to be used. If the plans and specifications are satisfactory to the City Engineer, the Director of the Bureau of Transportation shall issue a permit to the person filing them to construct the work. If the City Engineer does not approve the plans or specifications or orders changes made therein, the person submitting them shall comply with the City Engineer's requirements and shall file new plans and specifications which are satisfactory to the City Engineer. If these are approved by him or her, the person may then obtain a permit and proceed with the construction of the work. If in the performance of the work it becomes necessary to deviate from such plans and specifications, deviation shall not be made until first approved by the City Engineer.

Upon completion of the construction for which a permit has been issued, a map showing the location at depths below the surface of the ground of all construction work done under the permit shall be filed with the Director of the Bureau of Transportation. If changes have been made after the permit is issued, these changes shall be shown in an easily distinguishable manner. The final map shall bear a statement to the effect that the work done under the permit is correctly shown, and shall be signed by an authorized representative of the company doing the work.

The provisions of this Section shall apply both to dedicated right-of-way and to proposed right-of-way in approved land divisions which will be dedicated to the public upon plat recording. Permits issued for underground construction in proposed right-of-way shall require acknowledgment that the permittee will hold the City of Portland harmless against any liability which may occur prior to dedication of the right-of-way, and further acknowledgment that the permittee assumes all risk of loss which may arise in the event the City or any other public agency subsequently requires changes in or additions to plans or refuses to approve all or any part of permittee's improvements. Permits shall be issued only after street improvement plans have been approved.

17.56.030 Monthly Payments by Utility Companies.

Public utility companies may pay once a month for permits issued under this Title, but such payments shall be made on or before the 15th day of each month following the month in which the permits were issued.

17.56.040 Permits in Certain Areas.

(Repealed by Ordinance No. 184957, effective November 25, 2011.)

17.56.050 Poles or Wires in Public Area.

It is unlawful for any person to erect any pole or to stretch wires or cables in, under or over any street, park, public way or public ground for any purpose whatsoever, unless a City permit or franchise therefor has first been granted by the Council.

17.56.060 Relocation and Discontinuation of Facilities.

(Replaced by Ordinance No. 184957, effective November 25, 2011.)

A. Relocation of Facilities

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1. The Director of the Bureau of Transportation may direct any person owning, operating, or managing any public utility in the City and using facilities located in public right of way, to temporarily or permanently remove, relocate, change or alter the position of facilities installed by that person or that person's predecessor within the public rights-of-way whenever required. Except in the case of an emergency or as otherwise agreed to by the Director of the Bureau of Transportation, the temporary or permanent removal, relocation, change or alteration of the position of facilities must be completed within 30 days following written notice from the Director of the Bureau of Transportation. A person may request additional time to complete the removal or relocation, which shall not be unreasonably denied. The City may issue such notice when the City has determined that such removal, relocation, change or alteration is reasonably necessary for:
 - a. The construction, repair, maintenance or installation of any City improvement or other public improvement in or upon the public rights-of-way, whether a public work by the City or its contractor or the construction, repair, maintenance or installation of a public improvement pursuant to the requirements of the City's development code;
 - b. The operations of the City or any governmental entity in or upon the public rights-of-way for governmental purposes; or
 - c. When required by the public interest, as determined by the Director of the Bureau of Transportation.
2. Before commencing removal or relocation, the applicant shall obtain a permit as required by Title 17.24.
3. The relocation or removal of utility facilities shall be at no expense or charge to the City.
4. Should the applicant fail to remove or relocate the facility in accordance with notice from the Director of the Bureau of Transportation, the Director of the Bureau of Transportation may declare the facility a nuisance. The Director of the Bureau of Transportation may enforce the removal or relocation by compliance order, stop work order, abatement proceedings, or civil action as authorized by law. For any removal or relocation enforced by the City, the Director of the Bureau of Transportation shall keep a complete account of all related costs and expenses incurred by the City. The Director of the Bureau of Transportation shall provide written notice to the person seeking payment of the City's costs and expenses. If the person fails neglects or refuses to pay all of the City's costs and expenses, upon written approval of the Commissioner in Charge, the Director may have the City Attorney institute legal proceedings in the name of the City to collect any

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unpaid removal or relocation costs or expenses. In the event that it is necessary for any action or proceeding is commenced or if it becomes necessary for the City to commence an action or proceeding in a court of competent jurisdiction for removal or relocation or to recover removal or relocation costs, the City shall be seek recover all available statutory costs and disbursements.

- 5.** If removal or relocation is necessary due to a public improvement under a contract entered into between the City and an independent contractor and the failure to remove or relocate within the time specified results in payment to the contractor of any claim for extra compensation for any work or delay under said contract, the applicant shall be liable for payment of the amount paid to the contractor as a direct result of the failure to comply with the time requirements of the City.

- B.** Discontinuation of Facilities. If a Person intends to discontinue using facilities of its system within all or part of a particular portion of the streets and does not intend to use said facilities again, the Person shall submit to the Director of the Bureau of Transportation for the Director of the Bureau of Transportation's approval a completed application describing the structures or other facilities and the date on, and the method by which the Person will remove such facilities.

17.56.070 Placement of Overhead Wires.

Any public utility erecting, placing, or maintaining in the City any overhead wire or cable shall affix or attach the wire or cable in compliance with State regulations, in conformity with the best engineering practice, and at a height and in a manner to protect the public safety.

17.56.080 Service Shutoff Outside Premises.

When so required by the occupant of premises, or if the premises are unoccupied, whenever requested by the owner, a public utility shall shut off or disconnect its service facilities outside and away from the building or structure previously served, unless the facilities are an integral part of the building or structure.

17.56.090 Control of Electrical Currents.

It is unlawful for any person using or employing electrical current to fail or neglect to provide and put in use such means, appliances and apparatus as will, so far as practicable, control and effectually contain the current or energy in isolated paths and on their own wires, conductors or structures, so as to prevent damage or injury through discharge to ground to City pipes and structures and the pipes or structures of others. It is unlawful for any person using or employing electrical current to fail to take such measures as are necessary and appropriate to prevent contribution to injury or damage to pipes or structures belonging to the City or others. Conviction for violation of this Section shall not take away or abridge the right of the City or any other person to damages for injury to its pipes or other structures resulting from escape of electrical current.

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17.56.100 Preservation of Cobblestone.

(Repealed by Ordinance No. 184957, effective November 25, 2011.)

CHAPTER 17.60 - UNDERGROUND WIRING
DISTRICTS

Sections:

- 17.60.010 Designated.
- 17.60.020 Overhead Wires Prohibited.
- 17.60.030 Application for Permit.
- 17.60.040 Designation of Space.
- 17.60.050 Filing Plans and Specifications.
- 17.60.060 Issuance of Permit.
- 17.60.080 Restoration of Streets and Public Use Easements.
- 17.60.090 Use of Sidewalk Space and Building Fronts.
- 17.60.100 Location Maps.
- 17.60.110 Exemptions.
- 17.60.120 Joint Use of Conduits.

17.60.010 Designated.

(Amended by Ordinance Nos. 162574 and 184957, effective November 25, 2011.) The following described districts designated as “District A,” “District B,” “District C,” “District D,” “District E” and “District F” mean and include the following streets in the City:

District A: Beginning with the intersection of the south line of SW Madison Street with the east line of SW Front Avenue, running thence westerly, along said south line of SW Madison Street, to its intersection with the west line of SW Broadway; thence northerly along said west line of SW Broadway, to its intersection with the south line of SW Yamhill Street; thence westerly along said south line of SW Yamhill Street to its intersection with the west line of SW 14th Avenue; thence northerly, along said west line of SW 14th Avenue to its intersection with the north line of West Burnside Street; thence easterly, along said north line of West Burnside Street to its intersection with the west line of NW Broadway; thence northerly, along said west line of NW Broadway to its intersection with the north line of NW Glisan Street; thence easterly along said north line of NW Glisan Street to its intersection with the east line of NW Front Avenue; thence southerly, along said east line of NW and SW Front Avenue to the place of beginning.

District B: East Burnside Street, SE Morrison Street and SE Hawthorne Boulevard, from the east line of SE and NE 3rd Avenue to the west line of SE and NE 6th Avenue; and also those portions of other streets parallel thereto lying between the south line of NE Couch Street and the south line of SE Hawthorne Boulevard which are included between a line drawn 100 feet east of and parallel to the east line of SE and NE Grand Avenue; and a line drawn 100 feet west of and parallel to the west line of SE and NE Grand Avenue; and SE Grand Avenue, from the south line of NE Couch Street to the south line of SE Hawthorne Boulevard; it being provided, however, that any crossings over streets in this District which were installed before January 1, 1950 shall be permitted to remain; and it being further provided that additional machine turned wooden street light poles and overhead wires for street lighting shall be permitted in said District, if approved by the Director of the Bureau of Transportation.

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District C: NE Martin Luther King, Jr. Boulevard (NE Union Avenue) from 100 feet north of the north line of NE Davis Street to the south line of NE Going Street, it being provided however, that any street light poles and traffic signal poles and any crossings over NE Martin Luther King, Jr. Boulevard (NE Union Avenue) which were installed before January 1, 1950 shall be permitted to remain; and it being further provided that additional machine turned wooden street light poles and overhead wires for street lighting shall be permitted in said District, if approved by the Director of the Bureau of Transportation.

District D: Beginning with the intersection of the center line of SW 4th Avenue and the north line of SW Market Street, running thence easterly along said north line of SW Market Street to its intersection with the center line of SW Harbor Drive; thence southerly along said center line of SW Harbor Drive to its intersection with the south line of SW Arthur Street; thence westerly along said south line of SW Arthur Street to its intersection with the center line of SW Barbur Boulevard; thence northerly along said center line of SW Barbur Boulevard and along the center line of SW 4th Avenue to the place of beginning.

District E: NE Airport Way lying between the following described Line 1 and Line 2. Line 1: Beginning at the most northerly corner of Tax Lot (2) of Lots 1 and 2, Block 112, Parkrose, thence running northeasterly in a straight line to a point on the westerly line of NE 112th Avenue, said point being the most westerly point in a common line between the I 205 Freeway right of way and NE 112th Avenue, and located southerly of the intersection of NE 112th Avenue with NE Marine Drive. Line 2: The common boundary line between the City of Portland and the City of Gresham approximately 826.0 feet north of the north line of NE Sandy Boulevard at its intersection with NE 181st Avenue; also public use easements 10.0 feet in width granted to the City of Portland and adjacent to either side of NE Airport Way as described above, it being provided, however that any crossings over NE Airport Way and the said 10.0 foot wide public use easements which were installed prior to November 1, 1988 shall be exempted from this District.

District F: All that portion of the SW Gibbs Street right of way between SW Bond Street and the east line of SW Barbur Boulevard and all that portion of the Pacific Highway (I-5) right of way and S.W. Naito Parkway (S.W. Front Avenue) right of way included in a strip of land 60.00 feet in width, 30.00 feet on each side of the center line of S.W. Gibbs Street as such streets were platted on CARUTHERS ADDITION TO THE CITY OF PORTLAND, Multnomah County, Oregon. Overhead lines located on SW Corbett Street running perpendicular to SW Gibbs Street are exempt from this requirement.

17.60.020 Overhead Wires Prohibited.

(Amended by Ordinance Nos. 162574 and 184957, effective November 25, 2011.)

- A.** It is unlawful for any person to erect, construct, or maintain on or over the surface of any street or public use easement designated in Section 17.60.010 within an underground wiring district, any wires, poles, cables, appliances, or apparatus of any kind, on, through or by means of which electrical current or communications are transmitted or used.
- B.** Whenever all existing utility facilities are located underground within a public right-of-way, a person with permission to occupy the same public right-of-way must also locate its new facilities underground.

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17.60.030 Application for Permit.

(Amended by Ordinance Nos. 159491 and 184957, effective November 25, 2011.) Any person owning a franchise or privilege to erect, construct, or maintain wires, cables, poles, vaults, manholes and other structures, appliances or apparatus on, over, or by means of which electric current is transmitted or used for any purpose in any portion of an underground wiring district, who desires to install, construct, reconstruct, repair, alter or maintain the same shall file with the Director of the Bureau of Transportation an application for a permit to install or maintain the facilities in trenches, conduits, structures or subways beneath the surface of the streets or parts thereof within the underground district as required. The application shall be accompanied by the agreement of the applicant promptly to repave and repair any of the streets or portions thereof which are disturbed or undermined by the applicant as the result of exercise of the permit, if granted, the repaving and repair to be made in compliance with the provisions of this Title.

17.60.040 Designation of Space.

(Amended by Ordinance Nos. 159491, 162574 and 184957, effective November 25, 2011.)

- A. Upon the filing of an application under Section 17.60.030 the Director of the Bureau of Transportation will designate the portion of space and location within the street area or public use easement designated in Section 17.60.010 to be used by the applicant. No part or parts of street area shall be used except as designated by the Director of the Bureau of Transportation.
- B. No facilities shall be constructed to prevent the City from constructing sewers, grading, paving, repairing and/or altering any Street; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, so as not to injure or prevent the unrestricted use and operation of the Permittee's system. However, if any portion of the Permittee's system interferes with the construction or repair of any street or public improvement, including construction, repair or removal of a sewer or water main, the City may direct the Permittee to relocate as provided in Section 17.56.060.

17.60.050 Filing Plans and Specifications.

(Amended by Ordinance Nos. 159491 and 184957, effective November 25, 2011.) The applicant for permit shall file with the Director of the Bureau of Transportation plans and specifications for an underground system for conduction of current or energy in trenches, conduits or subways for wires, cables, and appliances including the necessary vaults, manholes and service boxes, and in addition thereto shall file a map showing the general route and location of the trenches, conduits or subways.

17.60.060 Issuance of Permit.

(Amended by Ordinance Nos. 159491, 162574 and 184957, effective November 25, 2011.) Subject to payment of the applicable fees prescribed in Chapter 7.12, if the City Engineer finds that the application and the plans, specifications and route map filed are satisfactory, the Director of the Bureau of Transportation may approve the same and issue to the

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applicant a permit to enter upon the designated streets, public use easements designated in Section 17.60.010 or parts thereof in an underground wiring district, to make such excavation therein, as may be necessary to construct conduits or subways, to lay wires, cables and appliances therein, and to build vaults, manholes or service boxes underground within the space theretofore designated. It is unlawful to make any excavation in any street or public use easement designated in Section 17.60.010 to install underground facilities, without a permit from the Director of the Bureau of Transportation and paying the fees set forth in Section 17.24.020. All excavation work and restoration pursuant to the permit shall be under the general supervision of the Director of the Bureau of Transportation and shall be made only after notice to the Director of the Bureau of Transportation.

17.60.070 Emergency Repair.

(Repealed by Ordinance No. 184957, effective November 25, 2011.)

17.60.080 Restoration of Streets and Public Use Easements.

(Amended by Ordinance Nos. 162574 and 184957, effective November 25, 2011.) Upon the installation and completion of any underground system of wires and appliances, the person installing the same shall restore the surface of all pavements, improvements, landscaping and foundations thereof which were disturbed or undermined, in as good order and condition as they were prior to the installation, in accordance with the plans and specifications and as directed by and to the satisfaction of the Director of the Bureau of Transportation.

17.60.090 Use of Sidewalk Space and Building Fronts.

(Amended by Ordinance No. 184957, effective November 25, 2011.) Any person owning or operating underground wires, conduits, or subways in compliance with this Chapter may connect the same with the side lines of the street, if approved by the Director of the Bureau of Transportation, and to that end, may use the space under the streets and sidewalks as may be necessary or convenient, and may also have access to all area ways under sidewalks, and may place and maintain such wires, cables and appliances in proper conduits in and through such area ways or spaces. If wires or cables are run up the sides or in front of any building, such wires or cables shall be placed in proper enclosures as are required by the relevant state and local regulations governing the placement of such wires or cables to prevent danger to life or property. If there are no relevant regulations the Director of the Bureau of Transportation may establish such requirements as he or she determines necessary to prevent danger to life or property. No wire, cable or the supports therefor shall cross any window or opening in any building.

17.60.100 Location Maps.

(Amended by Ordinance Nos. 162574 and 184957, effective November 25, 2011.) Every person to whom a permit has been granted pursuant to this Chapter shall, upon completion of the installation of underground wires, cables, and appliances, file with the Director of the Bureau of Transportation maps, in a scale and format determined by the Director of the Bureau of Transportation, showing the location of the conduits or subways, wires, cables, vaults, manholes, and service boxes under said streets or within said public use easements

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designated in Section 17.60.010 or parts thereof. The Director of the Bureau of Transportation shall maintain a record thereof.

17.60.110 Exemptions.

(Amended by Ordinance Nos. 155775, 173627, 182389 and 184957, effective November 25, 2011.) The provisions of this Chapter with respect to underground construction or installation shall not apply to the following:

- A.** Wires, poles, and appliances for lighting the streets of the City under contract with the City, or under private contract, connected with wires or cables in underground conduits or subways of a public utility; but all wires for street lighting above the surface of the streets shall be placed inside or on the outside of poles used in connection with such street lighting as directed by the City and shall be connected underground from the foot or base of the respective poles directly with the nearest wires or cables placed in such conduits or subways; provided that wires for street lighting if put on the outside of poles shall be placed in proper enclosures so as not to be dangerous to life or property, excepting, however, wires above the ground connecting the poles and the wires thereof with the light fixture on the pole.
- B.** Traffic signal installations made and maintained by the City. When deemed appropriate by the City Traffic Engineer agreements may be made with private property owners permitting attachment of traffic signal installations to privately owned buildings, and the Commissioner In Charge of the Bureau of Transportation is authorized to enter into or to approve agreements relating thereto, such agreements having first been approved as to form by the City Attorney. The agreements made prior to passage hereof are hereby ratified and confirmed.
- C.** Wires, cables, and appliances for electric signs, advertisements, and decorative lighting, connected with wires or cables in underground conduits or subways of a public utility; provided that all such wires for electric signs, advertisements, and decorative lighting shall be carried from or connected with the building, and if such wires are placed on the sides or front of any such building, they shall be placed in proper enclosures so as not to be dangerous to life or property, and the wires shall be connected underground from the foundations or basement of the respective buildings directly with the nearest wires or cables placed in such conduits or subways. No wire for electric signs, advertisements, or decorative lighting shall cross any street above ground.
- D.** Wires, cables, and appliances for telegraph, telephone, district telegraph, and fire alarm systems connected with wires or cables in underground conduits or subways of a public utility or a City system; provided that all wires for telegraph, telephone, district telegraph, and fire alarm systems above the surface of streets shall be placed on the sides or front of buildings in proper enclosures as the Director of the Bureau of Transportation may find necessary to prevent danger to life or property, and these wires shall be connected underground from the foundations or basement of the buildings directly with the nearest wires or cables in conduits or subways.

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- E.** Wires, poles and attachment hardware for transit electrification systems; provided that all wires or hardware for transit electrification systems above the surface streets shall be placed as the Director of the Bureau of Transportation may find necessary to prevent danger to life or property within the requirements of the National Electrical Safety Code (ANSI C 2), and that if required, these wires shall be connected to underground wires from the foot or base of the respective poles.

17.60.120 Joint Use of Conduits.

Nothing in this Chapter shall be construed to prevent or impair any agreement between or among persons affected by this Chapter designed to provide for joint ownership, control, or use of conduits or subways.

17.60.130 Special Control Districts.

(Repealed by Ordinance No. 184957, effective November 25, 2011.)

17.60.140 Conversion to Underground Wiring Within Control Districts.

(Repealed by Ordinance No. 184957, effective November 25, 2011.)

17.60.150 Service Entrance Requirements in Control Districts.

(Repealed by Ordinance No. 184957, effective November 25, 2011.)

**CHAPTER 17.64 - PROTECTION OF CITY
OWNED TELECOMMUNICATIONS LINE
AND EQUIPMENT, STREET LIGHTING AND
TRAFFIC SIGNAL SYSTEMS.**

(Chapter amended by Ordinance No. 173369,
effective May 12, 1999.)

Sections:

- 17.64.010 Interference With.
- 17.64.020 Permit for Interference.
- 17.64.030 Supervision and Expense of Work.
- 17.64.040 Use of City Poles or Posts.

17.64.010 Interference With.

(Amended by Ordinance No. 173369, effective May 12, 1999.) It is unlawful for any person to interfere with, obstruct, change, injure, impair, or remove any pole, post, wire, cable, conduit, box, gong, or other City of Portland owned telecommunications lines and equipment, street lighting, or traffic signal systems, except as hereinafter provided.

17.64.020 Permit for Interference.

(Amended by Ordinance Nos. 173369, 173627, 181483 and 182389, effective January 2, 2009.) It is unlawful for any person to remove, temporarily or otherwise, or to change any part of the wire or cable or any pole or post or any facility belonging to or appertaining to City of Portland owned telecommunications lines and equipment, street lighting, or traffic signal systems of the City without first obtaining a written permit therefor. A person finding it necessary in the pursuit of a lawful purpose to remove, interfere with, or disturb any portion of City of Portland owned telecommunications lines and equipment, street lighting, or traffic signal systems shall give, or cause to be given, to the Director of Communications and Networks, OMF Business Operations Division or, for street lighting issues, to the Bureau of Transportation, a notice in writing, at least 2 hours before it shall be necessary to interfere with or disturb any portion of such systems, stating the locality at which, and in the manner in which it shall be necessary to remove, interfere with, or disturb the system involved. No notice shall be given between the hours of 4 p.m. and 8 a.m. The City may issue a permit for the interference if they find that the interference is necessary, and may restrict the work or the time of the interference. The permit shall specify fully the change required and any restrictions thereon. Any person aggrieved by the decision may appeal such decision to the City Council by filing notice thereof in writing with the City Auditor. No permit shall be required for emergency repairs by a public utility necessitating interference with City system, equipment or apparatus, but the City as its respective jurisdictions may appear, shall be notified as soon as possible and the public utility shall make any further changes required.

17.64.030 Supervision and Expense of Work.

All work done by or for a permittee under this Chapter shall be performed under the supervision of and completed to the satisfaction of the permitting official. All work done

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under a permit issued pursuant to this Chapter shall be at the sole expense of the permittee, and if the City is requested to do such work the fees applicable shall be as prescribed in the finance regulations.

17.64.040 Use of City Poles or Posts.

(Amended by Ordinance No. 173369, effective May 12, 1999.)

- A.** It is unlawful for any person to attach any animal, or to affix or attach any bill, sign, advertisement of any kind, or any contrivance or device of any kind or nature other than City official notices, to any pole, post, wire, cable, fixture or equipment of City of Portland owned telecommunications lines and equipment, street lighting, or traffic signal systems, except as authorized by the City.
- B.** Public utilities operating in the City under franchise or permit may attach their utility wires or cables to poles or posts of City of Portland owned telecommunications lines and equipment, street lighting, or traffic signal systems, to the extent specifically permitted by the City, in such locations as the City may specifically designate, in consideration of reciprocal privileges extended to the City when necessary or convenient for the City to use the poles of the utility in maintaining the City systems.

CHAPTER 17.68 - STREET LIGHTS

Sections:

- 17.68.010 Injuring or Destroying.
- 17.68.020 Private Street Lighting.
- 17.68.030 Design Requirements for Special Street Lighting Districts.
- 17.68.040 Requirements for Lights on New or Reconstructed Streets.
- 17.68.050 Street Light Removal and Relocation.

17.68.010 Injuring or Destroying.

(Amended by Ordinance Nos. 153667 and 182760, effective June 5, 2009.) It is unlawful for any person to cut, break, injure, destroy or deface any pole, post, standard, tower, lamp, wire, cable, conduit, fixture, appliance or appurtenance erected, constructed or used for the public lighting or the City, whether owned by the City or by any public utility contracting with the City for public lighting. Any person injuring or destroying street lighting facilities shall repair and/or replace them in accordance with current design standards and the approval of the Bureau of Transportation. All costs shall be paid by the person that injures or destroys the street lighting facilities.

17.68.020 Private Street Lighting.

(Amended by Ordinance Nos. 140207, 153667, 173627 and 182389, effective January 2, 2009.)

- A.** It is unlawful for any person to erect or maintain any lamp post, standard, or fixed light in or upon any street or public place except by the authority of written permit issued by the Commissioner In Charge of the Bureau of Transportation and in compliance with the provisions and requirements of this Section and paying the fee as prescribed in Section 17.24.020.

- B.** Any person desiring a permit to erect and maintain a lamppost, standard or fixed light on any street or public place may make written application to the Commissioner In Charge of the Bureau of Transportation. The application shall state the exact location of such post or light, the name of the street and the number of the building, the number or other designation of the lot and block or parcel of land in front of which the post, standard or light is to be erected and maintained, and complete specifications of the lamp post, standard or light the applicant proposes.

- C.** Private street lights shall be separated by not less than 40 feet on the same side of any street unless a lesser distance is approved by the Bureau of Transportation and by the City Engineer because of particular design and environmental requirements. The height above the street grade and the exact location must be approved by the Bureau of Transportation and by the City Engineer before issue of the permit.

- D.** Private lighting will be in addition to, not in lieu of, publicly owned lighting on the right of way. This condition is necessary in order to guarantee that the right of way

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is lit to a level sufficient to maintain public safety, and that there be no interruption in the service due to absence, cutbacks, or other circumstances effecting the permittee.

- E.** All private lamp posts, standards and lights shall at all times be kept in good repair and working order at the expense of the permittee.
- F.** A private street light permit issued under this Section shall be revocable for any of the following grounds:
 - 1.** Interference with a projected local or public improvement or
 - 2.** Failure to repair or properly maintain the light post or standard or light within 10 days after notice so to do by the Commissioner In Charge of the Bureau of Transportation or by the Bureau of Police.
- G.** Within 30 days after revocation of a private street light permit, the owner or person responsible for maintaining it shall remove the light and all appurtenances. Failure so to do shall be a violation of this Title. The City Engineer or Director of the Bureau of Transportation may authorize the removal of the private street light if not removed within the said 30 days, and the cost of removal shall be recoverable from the owner or person responsible for maintaining the same in a civil action.

17.68.030 Design Requirements for Special Street Lighting Districts.

(Amended by Ordinance Nos. 153667, 155955, 173627 and 182389, effective January 2, 2009.)

- A.** All street lights within the City of Portland shall be a standard overhead fixture except in areas where it is determined by the Commissioner In Charge of the Bureau of Transportation that specialty lighting would substantially enhance a unique characteristic of the district.
- B.** Design, location, plans and specifications for a special street lighting system to be installed or altered as a local improvement, shall be first approved by the Bureau of Transportation.
- C.** Establishing the source of funding necessary for the acquisition and installation of specialty lighting is the responsibility of the person(s) requesting the special lighting district to be established or altered and must be approved by the lighting manager.
- D.** When a specialty lighting system needs major refurbishing or replacement, the City will pay up to 50 percent of the cost of replacing City owned specialty light fixtures with the same style fixture when:
 - 1.** The lights are part of an historical structure that is included on the National Register of Historic Places and designated as an Oregon Historic Landmark

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and a Local Landmark, and removal or changes in the lighting would jeopardize the structure's historical status, or

2. The light fixtures themselves are included on the National Register of Historic Places and designated as an Oregon Historic Landmark and a Local Landmark.

In other cases the City will pay for replacing the specialty light fixtures with a similar but readily available fixture.

17.68.040 Requirements for Lights on New or Reconstructed Streets.

(Added by Ordinance No. 153667; amended by Ordinance No. 182760, effective June 5, 2009.)

- A. All new or reconstructed streets in the City associated with either privately or publicly funded projects must be provided with street lights corresponding to City lighting standards.
- B. Design, plans and specifications for streetlights to be installed or altered shall be first approved by the Bureau of Transportation.
- C. The full cost of providing the street lighting improvements shall be paid by the permittee or funding source used for the street construction costs.

17.68.050 Street Light Removal and Relocation.

(Added by Ordinance No. 153667, effective Sept. 12, 1982.)

- A. All costs associated with the removal of streetlights on street being vacated shall be paid by the person petitioning for the vacation.
- B. All costs associated with the removal or relocation of street light facilities to accommodate work in accordance with a public improvement permit shall be paid by the permittee.
- C. All costs for relocation of streetlights to complete work in local improvement districts shall be assessed as part of the project.

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CHAPTER 17.72 - PARKING LOTS

(Chapter repealed by Ordinance No. 177028,
effective December 14, 2002.)

CHAPTER 17.76 - FUEL TANKS

Sections:

- 17.76.010 Permit Issuance.
- 17.76.020 Conditions.
- 17.76.030 Form of Permit.

17.76.010 Permit Issuance.

(Amended by Ordinance No. 140207, effective Aug. 1, 1975.) Whenever, in the opinion of the Commissioner In Charge of Public Works, and the City Engineer, the installation of a fuel tank in the street area with not interfere with the present use or with any contemplated plans for the early use of any street, a permit may be granted by the City Engineer if approved by the Commissioner of Public Works. The permit shall then be issued to the owner or occupant of the lot or tract adjacent to the street to be occupied by the fuel tank, upon payment of a fee as prescribed in Section 17.24.020.

17.76.020 Conditions.

The applicant for fuel tank installation in the street area shall sign an application for permit in which he agrees to accept the revocable permit subject to its terms and limitations, saving the City harmless from damages both to himself and to all persons claiming or to claim therefor.

17.76.030 Form of Permit.

(Amended by Ordinance No. 185397, effective July 6, 2012.) The permit when issued shall be in substantially the following form:

REVOCABLE PERMIT

A revocable permit is hereby granted to(owner or occupant) of Lot, Block, Addition to install and maintain a tank for the storage of fuel oil in Street between Street and Street, being in that particular area lying between the curb line closest to the street centerline and the line of said street, abutting the above described property.

This permit is for the use of the street area only and shall not exempt the grantee from securing a permit from the Fire Marshal and complying with all requirements of the fire regulations, from taking out a permit from the City Engineer to open the street, or from taking out licenses or permits required by any existing ordinances for any operation or construction carried on under the permit hereby granted.

The permit granted hereunder is revocable at any time at the pleasure of the Council. No expenditure of money thereunder, lapse of time, or other act or thing shall operate as an estoppel against the City or be held to give the grantee any vested or other right. Upon revocation, the grantee shall within 30 days discontinue the use of the tank and shall put the portion of the street affected by said tank in a condition as good as the adjacent portion of the street, all of which shall be done as directed by and to the satisfaction of the City Engineer.

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The grantee herein assumes full responsibility for all accidents or damage which may occur in connection with the installation of the tank, and agrees to hold the City, the City Engineer, and each and all the officers and employees of the City free and harmless from any claims for damages to persons or property which may be occasioned by the installation or its maintenance.

**CHAPTER 17.80 - PLATS AND
DEDICATIONS**

Sections:

17.80.010 Approval by Director of the Bureau of Transportation.

17.80.020 Appeal.

17.80.010 Approval by Director of the Bureau of Transportation.

(Amended by Ordinance Nos. 184046 and 184957, effective November 25, 2011.) No new Subdivision plat of lands within the City nor of any addition to the same shall be filed for record, nor shall any street, alley, or other way be dedicated, until the plat or dedication has been submitted to the Director of the Bureau of Transportation together with proof that all special assessments on the property included have been paid, or bonded under the provisions of this Title relative to local improvement assessments, and until the Director of the Bureau of Transportation has endorsed thereon his certificate that the special assessments appear to have been paid, or payment has been provided for by bonding, and that the plat of the lands or addition, or dedication of street or way is of a suitable and convenient character. If a portion of property covered by a bonded assessment is sought to be subdivided or dedicated, the owner must first obtain an apportionment of the assessment lien in accordance with procedures set forth in the City Charter. Whenever any plat of any addition or Subdivision of land within the corporate limits of the City is submitted to the Director of the Bureau of Transportation by the Planning and Sustainability Commission, it is his duty, before approving plat, to require that all streets and alleys marked on said plats be of adequate width and he may require the streets and alleys to be aligned with other streets and alleys or extensions thereof, abutting on the land to be platted.

17.80.020 Appeal.

(Amended by Ordinance No. 184957, effective November 25, 2011.) Any person aggrieved by the refusal of the Director of the Bureau of Transportation to certify to a plat or dedication in accordance with the provisions of Section 17.80.010 may appeal to the Council by filing a written notice of appeal with the City Auditor within 10 days after refusal, and the Council shall hear and determine the matter with all convenient speed. If it reverses his decision, a certified copy of the resolution declaring the action shall be attached to the plat or dedication in lieu of the certificate.

CHAPTER 17.82 - LAND DIVISIONS

(Chapter added by Ordinance No. 176555, effective
July 1, 2002).

Sections:

- 17.82.010 Administration.
- 17.82.020 Streets and Alleys.
- 17.82.030 Partial Width Streets.
- 17.82.040 Access Control Strips.
- 17.82.045 Driveway Access Plans.
- 17.82.050 Temporary Turnarounds.
- 17.82.060 Public Utility Easements.
- 17.82.070 Improvements in Land Divisions.
- 17.82.080 Improvement Procedures for Land Divisions.
- 17.82.090 Agreement for Construction of Public Improvements.

17.82.010 Administration.

In addition to other regulations in this Title, land divisions must comply with the regulations herein.

17.82.020 Streets and Alleys.

(Amended by Ordinance No. 180917, effective May 26, 2007.) Public streets and public alleys shall conform to the requirements of the City Engineer for elements, widths, intersection location, grades, curves, materials and construction. If necessary, construction and slope easements may be required.

Public Streets shall be laid out to intersect at angles as near to right angles as practical except where topography requires a lesser angle, but in no case shall be less than 80 degrees unless the City Engineer has approved a special intersection design.

As far as is practical, public streets other than minor streets shall be in alignment with existing streets by continuation of the center lines thereof. Staggered street alignment resulting in "T" intersections shall, wherever practical, leave a minimum distance of 200 feet between the center lines of streets having approximately the same direction.

Intersecting public alleys shall be avoided, and sharp changes in alley alignment shall be avoided, but where necessary, the corners shall be widened sufficiently to permit safe vehicular movement. Dead-end public alleys shall be avoided, but where unavoidable, turnaround facilities as determined by Portland Fire & Rescue and the City Engineer shall be provided.

Where a private street or private alley accesses the public right-of-way, the location and width of the access shall conform to 17.28.110 Driveways – Permits and Conditions.

Land divisions shall provide for the continuation or appropriate projection of existing arterial or collector streets in the surrounding area unless otherwise approved by the City Engineer.

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17.82.030 Partial Width Streets.

Partial width streets are public streets where right-of-way dedicated to the public is of insufficient width to accommodate all standard improvements for a full street. Partial width rights-of-way should be considered only when alignment or existing improvements make a full street impractical. Partial street dedications must be approved by the City Engineer to ensure that the partial width called for accommodates access and provides adequate area for construction as needed.

17.82.040 Access Control Strips.

Access control strips, also known as reserve strips, are tracts of land conveyed to the City in fee. The strips are one foot in width and run for the length designated by the City Engineer. Access control strips may be required along public rights-of-way to restrict access until a street is fully developed. When new rights-of-way are being created, the access control strip will be located within the area intended to serve as right-of-way when the street is fully developed. Required access control strips must be shown on the land division plat. The City Engineer may convert access control strips to public right-of-way when there is no longer a need for access control.

17.82.045 Driveway Access Plans.

(Added by Ordinance No. 182760, effective June 5, 2009.) The City Engineer may require that future driveway locations be identified on plans submitted with the land division. The City Engineer may impose conditions of approval as appropriate and necessary regarding the number, configuration, and use of driveways necessary to ensure the safe and orderly flow of traffic, preserve on-street parking, preserve or establish street trees, maximize opportunities for vegetated stormwater management, reduce pedestrian conflicts, and enhance the pedestrian environment. The City Engineer may require access easements to facilitate joint or shared use of a driveway consistent with Chapter 17.28.

17.82.050 Temporary Turnarounds.

The City Engineer may require temporary turnarounds on public streets that are intended to be extended in the future. An easement for public use must be provided for the turnaround.

17.82.060 Public Utility Easements.

Easements for public utilities may be required by the City Engineer adjacent to public rights-of-way. Where used, public utility easements shall be a minimum of 10 feet in width unless otherwise specified by the City Engineer. Public utility easements required by the City Engineer shall be shown on the land division final plat.

17.82.070 Improvements in Land Divisions.

(Amended by Ordinance Nos. 176955 and 182760, effective June 5, 2009.) The following improvements shall be installed at no cost to the public:

- A.** Streets: Public streets and public alleys within or adjacent to the land division shall be improved in accordance with the requirements of the City Engineer. Street inlets

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shall be installed and connected to storm sewers or other approved drainage facilities.

- B.** Public pedestrian and bicycle connections, within the Land division site and located in public right-of-way or easements dedicated to the City shall be improved in accordance with the requirements of the City Engineer.
- C.** Storm sewers and drainageways: Storm sewers and drainageways shall connect the Land division site to an approved drainage system (as defined in 17.38.030) within or outside the Land division site as approved by the Chief Engineer of the Bureau of Environmental Services or the Bureau of Development Services. Design of these systems shall comply with the Bureau of Environmental Services Stormwater Management Manual and the Bureau of Environmental Services Design Manual.
- D.** Sanitary sewers: Sanitary sewers shall be installed to serve the Land division by extension of existing City sewers. In the event that the Chief Engineer of the Bureau of Environmental Services determines that it is impractical to connect the Land division site to the City sewer system, the Land division may be approved with a private disposal system which has been approved by the State's Department of Environmental Quality and the Bureau of Development Services.
- E.** Electrical and other wires in the public right-of-way: Electrical distribution laterals and other primary and secondary lines and other wires serving the Land division, including but not limited to communication, street lighting and cable television, shall be placed underground. The developer shall make necessary arrangements with utility companies or other appropriate persons for the installation of underground lines and facilities. This ordinance shall not apply to temporary utility service facilities during construction, or to utility transmission lines operating at 50,000 volts or above.
- F.** Street lighting for public rights-of-way: Street lighting shall be provided as approved by the City Engineer and shall include conduits, wiring, bases, poles, arms and fixtures as required by the City Engineer to provide a complete system.

17.82.080 Improvement Procedures for Land Divisions.

Improvements installed by a land divider in the public right-of-way shall conform to the requirements of this Title and to improvement standards of the City Engineer, and shall be installed according to the following procedure:

- A.** All public and local improvements to be placed in the public right-of-way shall meet the design requirements of the City Engineer. In addition, if the improvement also includes storm and sanitary systems, the improvement shall also meet the design requirements of the Chief Engineer of the Bureau of Environmental Services.

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- B.** All improvements to be placed in the public right-of-way are subject to approval of the City Engineer through a street improvement permit, street use permit or other revocable permit from the City Engineer.
- C.** Public and local improvement work shall not commence until a permit has been issued by the City Engineer, and County Engineer, if work is to be undertaken that involves an area under county jurisdiction, such as a county road. If such work is discontinued for any reason it shall not be resumed until after the City Engineer is notified.
- D.** Street improvements, that are public or local improvements, shall be constructed under the inspection and to the satisfaction of the City Engineer. Public sanitary and storm systems shall be constructed under the inspection and to the satisfaction of the Chief Engineer of the Bureau of Environmental Services.
- E.** Underground utilities, street lighting facilities, sanitary sewers, storm drains and water mains installed in a public roadway shall be constructed prior to the surfacing of the roadway. Stubs for service connections for underground utilities shall be placed according to the plans and specifications approved by the City Engineer. Stubs for public sewer and storm systems shall also be approved by the Chief Engineer of the Bureau of Environmental Services

17.82.090 Agreement for Construction of Public Improvements.

The land divider shall complete all required minor public street improvements (Sidewalk and curb work where engineering is not required to establish line or grade) prior to City Engineer approval of the land division final plat unless otherwise allowed by the City Engineer. The land divider shall complete permit applications for other public improvements prior to City Engineer approval of the land division final plat.

CHAPTER 17.84 - STREET VACATIONS

(Chapter amended by Ordinance No. 184957,
effective November 25, 2011.)

Sections:

- 17.84.010 Plat Must Be Filed.
- 17.84.020 Fees.
- 17.84.030 Preliminary Consideration of Petition.
- 17.84.040 Bond or Cash Deposit.
- 17.84.050 Statutory Procedures Applicable.
- 17.84.060 Consent to Vacation for City as Owner.
- 17.84.065 Vacation on Council's Own Motion; Notification.

17.84.010 Plat Must Be Filed.

No vacation of a street, public place or plat shall become effective until the ordinance providing for the vacation and a plat, as provided by law, has been filed in the office of the county clerk of the county where the street, public place or plat is located. The cost of the filing and the preparation of the plat shall be paid by the person petitioning for the vacation.

17.84.020 Fees.

(Replaced by Ordinance No. 172859; amended by Ordinance No. 184957, effective November 25, 2011.)

- A.** Whenever a request for a petition for the vacation of a street, public place or plat, or any part thereof is presented to the Director of the Bureau of Transportation, the person making the request shall pay to the Director of the Bureau of Transportation a fee for preparation of the petition for vacation. The fee for this service shall be established annually by the Director of the Bureau of Transportation and shall recover full costs including all applicable overhead charges.

- B.** When a completed petition is presented to the City Auditor for filing and consideration by the Council, the person presenting the petition for the vacation shall pay to the City Auditor a fee, established by the Director of the Bureau of Transportation, to cover the estimated costs of processing the petition. All departments or bureaus involved in processing a vacation shall keep records of the costs incurred on each individual vacation proceeding and shall submit such costs to the Director of the Bureau of Transportation prior to passage of the vacating ordinance. If the actual cost of advertising and expenses, and all processing costs, including employee salaries and applicable overheads, related to the vacation exceed the fee collected, a sum sufficient to cover all such costs shall be collected before the vacation is completed, and payment thereof shall be a condition of the vacating ordinance.

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- C. The Council, upon hearing the petition, may grant the same in whole or in part or deny it in whole or in part, and may make reservations or conditions as appear to be in the public interest. The reservations or conditions may pertain to:
1. The maintenance and use of underground public utilities or service facilities in the portion vacated;
 2. Limitations on use of the area above and adjacent to underground utilities or service facilities;
 3. Moving at petitioner's expense of utility or service facilities either below, on or above the surface;
 4. Construction, extension or relocation of sidewalks and curbs;
 5. Grading or pavement extensions;
 6. Dedication for street use or other area in lieu of the area to be vacated;
 7. Replat; and
 8. Any other matter of like or different nature relating to the vacated area and remaining or relocated street area adjacent to petitioner's property, or area dedicated in lieu of the vacation area.

17.84.030 Preliminary Consideration of Petition.

(Replaced by Ordinance No. 182760; Amended by Ordinance Nos. 184046 and 184957, effective November 25, 2011.) Pursuant to ORS 271.080 through 271.100, when a petition for the vacation of a street, public place or plat is presented to the City, the Auditor shall review the petition as provided by the statutes, and shall submit the petition to the Commissioner-in-Charge of the Bureau of Transportation, the Director of the Bureau of Transportation and Bureau of Planning and Sustainability for review. The Commissioner in charge of the Bureau of Planning and Sustainability shall refer the petition to the Planning and Sustainability Commission for action. The Commissioner in charge of the Bureau of Planning and Sustainability shall prepare a report to Auditor containing the findings and recommendations of the Planning and Sustainability Commission and Director of the Bureau of Transportation, and shall submit the report and petition to Council for consideration. The report may include recommended conditions of approval. Upon receiving the report of the Commission, the Auditor shall file the petition and forward the petition and Commissioner's report to the Council for its preliminary consideration as provided by ORS 271.100. This review process shall be completed before the City publishes or posts public notices of the contemplated vacation.

17.84.040 Bond or Cash Deposit.

(Amended by Ordinance No. 184957, effective November 25, 2011.) When the Council is petitioned to vacate any street, public place or plat or part thereof, in which water mains, fire hydrants, police or fire alarm system, gas mains, steam heating mains, conduits, sewer

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mains or laterals, manhole structures, poles, wires or other utility or public service facilities are constructed and maintained, and the proposed vacation will require the removal of the utility or public service facilities or any portion of them, or if curbs or sidewalks are required to be extended or relocated, or if grading or additional paving is required, the ordinance vacating the street or part thereof may provide that the vacation shall not be effective unless the petitioner shall file with the Auditor of the City his acceptance of the terms and provisions of the ordinance together with a surety bond or cash deposit, in such sum as shall be fixed by the Council. The surety bond or cash deposit shall be to the effect that, in the event the vacation is granted, the petitioner will, within 90 days or such other time as the Council may fix after the vacation ordinance is effective, remove or have removed by the owner, all or any part of the utility or public service facilities as required by the vacation ordinance and reconstruct and relay the facilities or have them reconstructed and relaid by the owner in the places as may be required by the Director of the Bureau of Transportation, and obtain other work as required by the ordinance in the manner directed by the Director of the Bureau of Transportation, all at the expense of the petitioner.

17.84.050 Statutory Procedures Applicable.

The provisions applicable to a vacation, set forth in ORS 271, shall apply to each vacation. Alternative procedures therein allowed may be followed.

17.84.060 Consent to Vacation for City as Owner.

Whenever City owned property abuts area of a street or plat sought to be vacated by petition, or is located within "affected area" fixed by statute, the Mayor, City Commissioner or City Commission under whose jurisdiction the property has been placed may sign consent to the vacation as an owner for the purpose of Council jurisdiction and consideration.

17.84.065 Vacation on Council's Own Motion; Notification.

(Added by Ordinance No. 136419, effective May 28, 1973.) Whenever the City Council shall initiate vacation proceedings on its own motion, the City Auditor shall give notice of the proposed action and hearing to all owners of real property affected thereby. The real property affected thereby shall be deemed to be the land lying on either side of the street or portion thereof proposed to be vacated and extending laterally to the next street that serves as a parallel street, but in any case, not to exceed 200 feet, and the land for a like lateral distance on either side of the street for 400 feet along its course beyond each terminus of the part proposed to be vacated. When a street is proposed to be vacated to its termini, the land embraced in an extension of the street for a distance of 400 feet beyond each terminus shall also be counted. Whenever the Council shall initiate proceedings to vacate a plat or portion thereof, the City Auditor shall notify all property owners within such plat or part thereof proposed to be vacated of the proposed action and hearing. The notification required by this Section shall be given not less than 28 days before the hearings on the proposed action.

CHAPTER 17.88 - STREET ACCESS

Sections:

- 17.88.001 Purpose.
- 17.88.010 Definitions.
- 17.88.020 For Building and Planning Actions.
- 17.88.030 Location of Multiple Dwellings.
- 17.88.040 Through Streets.
- 17.88.050 Transportation Impact Study.
- 17.88.060 Dedication Prior to Permit Approval.
- 17.88.070 Routes of Travel in Park Areas.
- 17.88.080 Special Requirements for East Corridor Plan District.
- 17.88.090 Local Transportation Infrastructure Charge Required.

17.88.001 Purpose.

(Added by Ordinance No. 177028; amended by Ordinance No. 182760, effective June 5, 2009.) The purpose of this chapter is to describe the requirements for a transportation impact study, to ensure an adequate level of street connections to serve land uses, and to ensure that improvements to these streets are made in conjunction with development consistent with fire, life safety, and access needs.

17.88.010 Definitions.

(Replaced by Ordinance No. 177028; amended by Ordinance No. 187681, effective May 13, 2016.) As used in this Chapter, the following terms shall have the following definitions:

A. "Exceptional Habitat Quality" for connectivity purposes:

1. Riparian-associated wetlands protected with environmental zones;
2. Locally or regionally rare or sensitive plant communities;
3. Important forest stands contributing multiple functions and values to the adjacent water feature habitats of sensitive, threatened or endangered wildlife species; or
4. Habitats that provide unusually important wildlife functions, such as (but not limited to) a major wildlife crossing/runway or a key migratory pathway.

B. "Mixed-Use Area" is compact development that allows a mix of uses, either within buildings or among buildings, and includes residential development as one of the potential components. Mixed-use areas include all commercial zones (CN1 and 2, CO1 and 2, CM, CS, CG, and CX), the EX, Central Employment Zone, and the IR, Institutional Residential Zone, All other employment zones, industrial zones, and the Open Space Zone are not included.

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- C. **"Significant alterations"** are changes to property that are 35 percent or greater than the assessed value of all improvements on the site. Mandatory improvements for fire, life safety and accessibility do not count toward the threshold.
- D. **"Single-family residential zone"** means any of the Single-Dwelling Zones identified in Title 33 of the City Code.
- E. **"Frontage"** means the length of public right-of-way adjacent to a property, measured in feet, but does not apply to collectors, arterials, or alleyways.
- F. **"Unimproved street"** means any local street without a curb other than a local street that has been formally accepted by the Bureau of Transportation as having been fully built to an adopted Residential Shared or Residential Separated City street standard that does not require a curb.
- G. **"Local street"** means any street classified as a Local Service Street in the City's adopted Transportation System Plan.
- H. **"Subdivision"** means a division of land into four or more lots.
- I. **"Local Transportation Infrastructure Charge"** is a charge collected to fund improvements to the City's network of unimproved local streets and adjacent or related transportation facilities.

17.88.020 For Buildings and Planning Actions.

(Replaced by Ordinance No. 177028; amended by Ordinance Nos. 182760, 184957 and 187681, effective May 13, 2016.) All building permits and planning actions are subject to the following:

- A. No single family, multiple dwelling, industrial or commercial building shall be constructed, or altered so as to increase its number of occupants, or make significant alterations to a building without resulting in increased occupancy, on property that does not have direct access by frontage or recorded easement with not less than 10 feet width of right of way to a street used for vehicular traffic.
- B. If a street adjacent to a property described in Subsection A. above does not have a standard full-width improvement, including sidewalks, the owner, as a condition of obtaining a building permit, conditional use, zone change, land partition or adjustment, shall provide for such an improvement or a portion thereof as designated by the Director of the Bureau of Transportation in accordance with provisions elsewhere in this Title. The payment of a Local Transportation Infrastructure Charge will satisfy the requirements of this Subsection.
- C. Based on findings that a standard improvement is not feasible, the Director of the Bureau of Transportation may allow a temporary improvement appropriate for the circumstances, on the condition that the City will not maintain said temporary improvement and the owner will provide the City with a notarized document,

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approved as to form by the City Attorney, to be filed with the County in which property is located, stating that the present and future owners will be counted in favor of any proposed standard improvement of said street. Fee for said filing and any other expense of the City incidental to accomplishing the temporary improvement shall be paid by the owner.

17.88.030 Location of Multiple Dwellings.

(Replaced by Ordinance No. 177028; amended by Ordinance No. 182760, effective June 5, 2009.) Unless permitted as part of an approved Planned Development the Council permits by ordinance, no multiple dwellings or accessory building shall be so located on any lot, block, tract or area within the City that any portion of the dwelling or building will be more than 250 feet from a dedicated street abutting the lot or block or that portion of a tract or area on which the multiple dwelling or accessory building shall have direct access to such street by way of an approved roadway.

17.88.040 Through Streets.

(Replaced by Ordinance No. 177028; amended by Ordinance No. 184957, effective November 25, 2011.) Street connectivity provides access to adjacent properties and reduces out-of-direction travel. New or expanding development must include the following:

- A. Through streets as required by the Director of the Bureau of Transportation connecting existing dedicated streets, or at such locations as designated by the Director of the Bureau of Transportation, shall be provided for any development or redevelopment.
- B. Partial-width streets as required by the Director of the Bureau of Transportation where full-width streets could reasonably be provided in the future with the development or redevelopment of abutting property.
- C. New residential development or development in existing or future mixed-use areas that will require construction of new street(s) must:
 - 1. Respond to and expand on the adopted street plans, applicable to the site or area, or in the absence of such plan, as directed by the Director of the Bureau of Transportation;
 - 2. Provide for street connections no further apart than 530 feet, except where prevented by barriers such as topography, railroads, freeways, pre-existing development, or natural features where regulations do not allow construction of or prescribe different standards for streets;
 - 3. Provide bicycle and/or pedestrian connections when full street connections are not possible, no further apart than 330 feet except where prevented by barriers as noted above;

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4. Limit the use of cul-de-sac or closed street systems; and
 5. Include street cross section(s), as directed by the Director of the Bureau of Transportation.
- D.** Street and pedestrian/bicycle spacing standards may be modified in areas of exceptional habitat quality to the following standards:
1. Where streets must cross over protected water features, provide crossings at an average spacing of 800 to 1,200 feet, unless exceptional habitat quality or length of crossing prevents a full street connection.
 2. Pedestrian and bicycle connections that cross protected water features should have an average spacing of no more than 530 feet, unless exceptional habitat quality or length of crossing prevents a connection.

17.88.050 Transportation Impact Study.

(Replaced by Ordinance No. 177028, effective December 14, 2002.) The traffic impacts of dividing or developing land may warrant a transportation impact study. The purpose of a transportation impact study is to assess the effects of development in the vicinity of a site on traffic conditions and operations; transit, pedestrians, and bicycle movement; and neighborhood livability. A transportation impact study may be required under the following situations:

- A.** Where approval criteria for a land use review include a requirement of adequacy of transportation services and the development proposed through the review meets or exceeds the following thresholds:
1. Trip generation threshold. More than 100 new vehicle trips will be generated in the peak direction (inbound or outbound) during the site's peak traffic hour; or
 2. Neighborhood traffic threshold. More than 250 new trips will be generated per day that are likely to use predominately residential Local Service Traffic Streets.
- B.** Safety or operational impacts. Where the City Engineer has identified potential safety or operational concerns that may be impacted by the layout of a site or the location or size of driveways for a proposed development.

17.88.060 Dedication Prior to Permit Approval.

(Added by Ordinance No. 177028; amended by Ordinance No. 182760, effective June 5, 2009.) No permit shall be issued for the construction of any dwellings or buildings upon any lot, block, tract or area within the City until required dedications, as outlined in this Chapter, are complete.

17.88.070 Routes of Travel in Park Areas.

(Added by Ordinance No. 177028; amended by Ordinance No. 182760, effective June 5, 2009.) The Bureau of Transportation, may, upon the request of the Commissioner In Charge of the Bureau of Parks and Recreation, take over and perform the construction, reconstruction, maintenance and repair of any boulevards, roadways, drives, paths, trails, walks or other routes of travel in park areas of the City. The transfer of such responsibility to the Bureau of Transportation shall not operate to remove the routes of travel from the jurisdiction and control of the Bureau of Parks and Recreation, and the planning and location of new routes shall remain the responsibility of, and in the jurisdiction of the Bureau of Parks and Recreation.

17.88.080 Special Requirements for East Corridor Plan District.

(Added by Ordinance No. 178424; amended by Ordinance No. 182760, effective June 5, 2009.) East Corridor Plan District. Until a master street plan is adopted in the Transportation Element of the Comprehensive Plan for the East Corridor Plan District, as shown in Title 33, Map 526-1, street connectivity for the area should generally be based on a block size of 400 by 200 feet and connect to the surrounding street grid consistent with the prevailing block pattern.

17.88.090 Local Transportation Infrastructure Charge Required.

(Added by Ordinance No. 187681, effective May 13, 2016.)

- A.** An applicant for a new, single-family, residential, building permit for a project of one or two units or for approval to create multiple lots other than as part of a subdivision on real property within a single-family residential zone must pay a Local Transportation Infrastructure Charge.
- B.** The Bureau of Transportation will assess a Local Transportation Infrastructure Charge according to the total number of linear feet of unimproved street frontage. The charge will be based on the average, location-specific, actual cost to the City to build local street improvements to City standards at the time of application.
- C.** Payment of a Local Transportation Infrastructure Charge will exempt the property subject to the application from future Local Transportation Infrastructure Charges.
- D.** Local Transportation Infrastructure Charges will be collected and administered by the Bureau of Transportation. The Director of the Bureau of Transportation may establish rules and procedures for the Local Transportation Infrastructure Charge.
- E.** An applicant may not appeal under Chapter 17.06 of this Code the City's calculation of a Local Transportation Infrastructure Charge.

CHAPTER 17.92 - STREET DESIGNATION

Sections:

- 17.92.010 Administration.
- 17.92.020 Prefixes for Street Designations in the City.
- 17.92.030 Designation of Streets, Avenues, Boulevards and Drives.

17.92.010 Administration.

(Added by Ordinance No. 161984; amended by Ordinance No. 176555, effective July 1, 2002.) For public streets and private street tracts, the City Engineer shall designate street prefixes, names, and numbers, keep records of such designations and exercise such other powers as are necessary to carry out the provisions of this Chapter.

17.92.020 Prefixes for Street Designations in the City.

(Amended by Ordinance No. 161984, effective July 1, 1989.) All streets in that section of the City north of the Willamette River and west of the center line of Williams Avenue shall be designated as North and the prefix "N" shall be added to the street name. All streets in that section of the City north of the center line of East Burnside Street and east of the center line of Williams Avenue shall be designated as Northeast, and the prefix "NE" shall be added to the street name, except Williams Avenue, which shall have the prefix "N" added to the street name and except Burnside Street which shall have the prefix "E" added to the street name. All streets in that section of the City south of the center line of East Burnside Street and east of the Willamette River shall be designated as Southeast and the prefix "SE" shall be added to the street name, except Burnside Street which shall have the prefix "E" added to the street name. All streets in that section north of the center line of Burnside Street and west of the Willamette River shall be designated as Northwest, and the prefix "NW" shall be added to the street name, except Burnside Street which shall have the prefix "W" added to the street name. All streets in that section of the City south of the center line of Burnside Street and west of the Willamette River shall be designated as Southwest and the prefix "SW" shall be added to the street name, except Burnside Street which shall have the prefix "W" added to the street name.

17.92.030 Designation of Streets, Avenues, Boulevards and Drives.

(Amended by Ordinance Nos. 161984 and 177028, effective December 14, 2002.)

- A. All streets within the corporate limits of the City running in an easterly and westerly direction shall hereafter be designated as "streets," and all streets running in a northerly and southerly direction shall be designated as "avenues." Streets lying between two consecutively numbered streets shall be designated as "place" and shall take the lesser number of said two numbered streets. The terms "drive," "court," "lane," "terrace" or "way" may be used to designate winding or circuitous streets. Scenic, arterial or greenscape streets may be designated as "boulevards" or "drives" in lieu of the term "streets" or "avenues."
- B. All streets shall be designated by one name for the entire length.

**CHAPTER 17.93 - RENAMING CITY
STREETS**

(Chapter added by Ordinance No. 161897, effective
June 4, 1989.)

Sections:

- 17.93.010 Criteria for Renaming a City Street.
- 17.93.020 Selection of Street to be Renamed.
- 17.93.030 Application Procedures and Fees.
- 17.93.040 Review of Application and Public Hearings.
- 17.93.050 City Initiated Action to Rename a City Street.
- 17.93.060 Implementation.

17.93.010 Criteria For Renaming a City Street.

- A.** Any individual or organization may apply to the City to rename a City street. City streets may only be renamed after a prominent person. Such prominent person must be:
 - 1.** a person who has achieved prominence as a result of his or her significant, positive contribution to the United States of America and/or the local community;
 - 2.** a real person; and
 - 3.** a person who has been deceased for at least five years.
- B.** Only one street renaming application shall be processed at a time, and only one street name change shall be implemented per year for a major traffic or district collector street. Additional applications shall be placed on a waiting list and processed in order of submission when this criteria can be met.

17.93.020 Selection of Street to be Renamed.

- A.** The name of the street proposed for renaming shall not be changed if the existing name is of historic significance, or the street is significant in its own right.
- B.** The street proposed for renaming must start and terminate entirely within City boundaries.
- C.** The name of any street shall be the same for its entire length. Renaming only portions of a street shall not be permitted.

17.93.030 Application Procedure and Fees.

(Amended by Ordinance No. 183829, effective July 1, 2010.) The applicant must conform to the following procedure in applying to rename a City street:

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- A.** The applicant shall submit evidence to the City Engineer that the street renaming proposal is in compliance with Section 17.93.010 A. 2. and A. 3., and Section 17.93.020 B. and C. If the City Engineer determines the submittal does not comply with these sections, the applicant will be so advised and the City shall take no further action. If the submittal is in compliance with the above referenced sections, the City Engineer shall issue the application materials described in Subsection B.
- B.** The applicant shall obtain from the City Engineer:

 - 1. official petition forms;
 - 2. instructions as to fees and required procedures; and
 - 3. the application form.
- C.** The applicant shall, after filing a completed City Engineer's application form and paying any applicable fees:

 - 1. Obtain a minimum of 2500 signatures in support of the proposal from legal residents of the City at large or signatures of at least 75% of the abutting property owners along the street proposed for renaming on the petition forms supplied by the City Engineer.
 - 2. Make a good faith effort to obtain a letter of concurrence to the proposed street renaming from the honoree's surviving spouse, children, or parents, in that order. The City Engineer shall accept registered mail receipts and copies of all letters as evidence of compliance with this provision.
 - 3. Provide to the City Engineer supporting information including a complete biography of the proposed honoree with references of substantiation, honors received, contributions to the national and/or local community, et cetera, which will be reviewed by a historian panel appointed pursuant to Section 17.93.040 A. This submission shall contain sufficient information to allow the historian panel to accurately assess the appropriateness of renaming a street after the proposed honoree.
- D.** The applicant shall have 180 calendar days to complete and submit the information required by Subsection C. to the City Engineer's office. If the completed application has not been submitted to the City Engineer within 180 calendar days after the application has been received by the applicant, the application shall be invalid. No time extension shall be granted. At the time of submission, the City Engineer shall check the applicant's application and accept it only if it is complete and appears to comply with the requirements of Sections 17.93.010 through 17.93.030.

 - 1. If the City Engineer accepts the submission, the applicant shall make a fee deposit to cover the full cost of printing and mailing postcards and public

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notices as determined by the City Auditor. The minimum fee deposit shall be as established in the Transportation Fee Schedule if the street proposed for renaming is ten City blocks (½ mile) or less in length. If the street proposed for renaming is more than ten City blocks (½ mile), the minimum deposit shall be as established in the Transportation Fee Schedule. The Auditor shall refund any unused portion of the deposit to the applicant, or the applicant shall be required to pay for any cost of printing, mailings, and public notices in excess of the fee deposit.

17.93.040 Review of Application and Public Hearings.

(Amended by Ordinance Nos. 182389 and 184046, effective September 10, 2010.) Upon receipt of the applicant's packet, the City shall process the application as follows:

- A. The City Engineer shall, within 14 calendar days after submission of the completed application, refer the street renaming application to a panel of three historians or persons with appropriate expertise appointed by the Commissioner in charge of the Bureau of Transportation for review and determination as to appropriateness of the proposed name and its compliance with criteria for selecting a new street name, and determination as to historic significance of the street.
- B. The City Engineer shall notify all neighborhood and business associations recognized by the City which encompass or represent owners of property or businesses located on property abutting the street proposed for renaming of the proposed renaming and request that they submit in writing to the City Engineer their support or opposition to the proposed name change within 45 days.
- C. The Historian Panel shall have 45 calendar days from the date of receipt to review the application and advise the City Planning and Sustainability Commission as to its recommendations. If the panel does not provide a recommendation within the 45-day period, the Planning and Sustainability Commission shall review the application with no recommendation unless the Planning and Sustainability Commission grants a time extension to the Historian Panel, which shall not exceed 14 calendar days.
- D. Concurrent with the Historian Panel review under Subsection C. of this Section, the Auditor shall conduct a postcard mailing survey of each legal owner and each legal address abutting the street in question, notifying them that there will be public hearings by the Planning and Sustainability Commission and City Council regarding the proposed street renaming and requesting the occupant and owner's input within 30 calendar days, as to the proposed name change. The Auditor shall also receive and tabulate all responses to the postcard survey and forward the results to the City Planning and Sustainability Commission.
- E. The City Engineer shall prepare and submit to the Planning and Sustainability Commission a budget impact statement as to the direct cost of production and installation of new street name signs and related City costs.

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- F.** The City Planning and Sustainability Commission shall conduct a public hearing on the matter and make a recommendation to the City Council as to the best interest of the City and the area within six miles of the City limits in accordance with ORS 227.120.
- G.** The Auditor shall schedule a public hearing before City Council on the matter. Notice of the hearing shall be published in a newspaper of general circulation not less than once within the week prior to the week within which the hearing is to be held.
- H.** A public hearing shall be held before City Council on the proposed street name change.
- I.** The Council may approve or deny application for a street name change upon determination of the best interests of the City and the area within six miles of the City limits. If Council denies the application, it is filed with no further consideration, and the subject name and street shall not be considered again under this Policy for a period of at least two years. If Council approves the application, certified copies of the enabling Ordinance shall be filed with the County Recorder, County Assessor, and County Surveyor.

17.93.050 Council Initiated Action to Rename a City Street.

The Council may rename a street in order to correct errors in street names, or to eliminate confusion. Such action may be taken if it is determined that insignificant impact will result and it is desirable for the convenience of the general public. Renaming of a street by the City under provisions of this paragraph shall not be undertaken to rename a street after a person as provided for in other sections of the Chapter. Therefore, City initiated actions to rename a street under provisions of this paragraph shall be exempt from compliance with Sections 17.93.010 through 17.93.030 and Section 17.93.040 A. through D. Section 17.93.040 E. through I. shall continue to be applicable.

17.93.060 Implementation.

- A.** After Council approval of the name change, the Bureau of Maintenance shall install the new name signs adjacent to the existing street name sign. Both signs shall be in place for a period of five years, unless a petition is submitted to City Council from a majority of abutting property occupants requesting that the dual signage period be shortened. Both street name signs shall be maintained for the five year period at the same level of maintenance approved for street name sign maintenance Citywide, after which time the old name shall be removed.
- B.** The Auditor shall also notify the following organizations and individuals of the street name change through public notice, inter office correspondence, or other appropriate means within 30 days after approval of the enabling Ordinance:
 - 1.** The applicant;

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2. Affected City, County, State, and Federal Agencies;
3. General public;
4. Emergency service organizations;
5. Owners and occupants of all property abutting the street being renamed; and
6. United States Postal Service.

**CHAPTER 17.96 - SURVEYS, ELEVATIONS
AND MONUMENTS**

(Chapter amended by Ordinance No. 182760,
effective June 5, 2009.)

Sections:

- 17.96.005 Preservation of Record Monuments.
- 17.96.050 Datum Plane Established (City of Portland Vertical Datum).
- 17.96.062 City Benchmarks.
- 17.96.065 Preservation of City Benchmarks.
- 17.96.070 Grade Elevations To Be Referred to Datum Plane.
- 17.96.080 Prior Grades Not Affected.

17.96.005 Preservation of Record Monuments.

(Added by Ordinance No. 182760, effective June 5, 2009.) Any person or public agency removing, disturbing or destroying any survey monument of record in the office of the County surveyor or County clerk shall cause a registered professional land surveyor to reference and replace the monument as prescribed by the applicable Oregon Revised Statutes. The cost of referencing and replacing the survey monument shall be paid by the person or public agency causing the removal, disturbance or destruction.

17.96.010 Base Line Established.

(Repealed by Ordinance No. 182760, effective June 5, 2009.)

17.96.020 Monuments Established.

(Repealed by Ordinance No. 182760, effective June 5, 2009.)

17.96.030 Base Line for Couch's Addition Established.

(Repealed by Ordinance No. 182760, effective June 5, 2009.)

17.96.040 Monuments Established in Couch's Addition.

(Repealed by Ordinance No. 182760, effective June 5, 2009.)

17.96.050 Datum Plane Established (City of Portland Vertical Datum).

(Amended by Ordinance No. 182760, effective June 5, 2009.) All grade elevations in the City shall be referred to a fixed datum established herein. The datum plane for grades was originally established 56.743 feet below the initial bench mark set by the City in the southerly quadrant of the top step of the Soldiers' Monument located in Lownsdale Square in the City, said bench mark being marked "CITY OF PORTLAND, INITIAL CLASS A BENCH MARK NO. 00, \$50 FINE FOR DISTURBING." A datum plane above described is hereby established as the official datum of the City. The United States geological survey bench mark set in the granite base of the north pillar of the porte cochere at the SW 5th Avenue central entrance to the City Hall in Portland has an elevation 78.835 feet above the datum plane of the City as herein established.

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17.96.060 Grade Elevations To Be Recorded.

(Repealed by Ordinance No. 182760, effective June 5, 2009.)

17.96.062 City Benchmarks.

(Added by Ordinance No. 182760, effective June 5, 2009.) The City Surveyor shall establish and maintain a network of benchmarks throughout the City. Benchmarks are survey markers that have a specific elevations determined for them and these elevations are referenced to the City of Portland Vertical Datum. Benchmark information can be found on the Portland Transportation Survey Section website.

17.96.065 Preservation of City Benchmarks.

(Added by Ordinance No. 182760, effective June 5, 2009.) Any person or public agency removing, disturbing or destroying a City Benchmark shall contact the Portland Transportation Survey Section as soon as it is apparent that a Benchmark will be or has been removed, disturbed or destroyed. Survey may set a new Benchmark in the vicinity of the old one and establish an elevation for it.

17.96.070 Grade Elevations To Be Referred to Datum Plane.

All proposed establishment of grades or changes of grades in the City submitted to the Council shall be referred to the datum plane.

17.96.080 Prior Grades Not Affected.

The establishment of a fixed base to which all grade elevations are referred as outlined in this Chapter shall in no way affect the validity of grades or any improvements carried out prior to such establishment.

**CHAPTER 17.100 - REMEDIES &
PENALTIES**

(Chapter replaced by Ordinance No. 155257,
effective October 27, 1983.)

Sections:

- 17.100.010 Enforcement Independent of Other Officials.
- 17.100.020 Responsible Official and Responsible Engineer Designated Representative.
- 17.100.030 Liability.
- 17.100.040 Remedies.
- 17.100.050 Penalty for Violation.

17.100.010 Enforcement Independent of Other Officials.

(Amended by Ordinance No. 173295, effective April 28, 1999.) The authority of Responsible Officials and Responsible Engineers to enforce the provisions of this Title is independent of and in addition to the authority of other City officials to enforce the provisions of any Title of the City Code.

17.100.020 Responsible Official and Responsible Engineer Designated Representative.

(Amended by Ordinance No. 173295, effective April 28, 1999.) Responsible Officials and Responsible Engineers as used in this Chapter shall include their representatives.

17.100.030 Liability.

(Amended by Ordinance No. 173295, effective April 28, 1999.) The Responsible Officials and Responsible Engineers, or authorized representatives of the Responsible Officials and Responsible Engineers charged with the enforcement of this Title, acting in good faith and without malice in the discharge of their duties, shall not thereby render themselves personally liable for any damage that may accrue to persons or property as a result of any act or by reason of any act or omission in the discharge of their duties. Any suit brought against the Responsible Officials and Responsible Engineers or employee because of such act or omission performed by them in the enforcement of any provision of this Title shall be defended by legal counsel provided by this jurisdiction until final termination of such proceedings.

17.100.040 Remedies.

(Amended by Ordinance No. 173295, effective April 28, 1999.)

- A. In addition to any other remedies or penalties provided by this Title or by any other law, the Responsible Officials and Responsible Engineers may enforce the provisions of this Title by:
 - 1. Instituting an action before the Code Hearings Officer as set out in Title 22 of this Code, or

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2. Causing appropriate action to be instituted in a court of competent jurisdiction, or
 3. Taking such other actions as the Responsible Officials and Responsible Engineers in the exercise of their discretion deem appropriate.
- B.** Nothing in this Section shall be construed to afford a person the right of appeal, pursuant to Chapter 22.10, to the Code Hearings Officer from a decision or determination of the Responsible Officials and Responsible Engineers, or any bureau designated under Chapter 3.12 of this Code.

17.100.050 Penalty for Violation.

(Amended by Ordinance No. 173295, effective April 28, 1999.) Any person who violates any provision of this title shall be subject to a civil penalty of not more than \$500 for each violation. In the event that any provision of this Title is violated by a firm or corporation, the officer or officers or person or persons responsible for the violation shall be subject to the penalty herein provided.

**CHAPTER 17.102 - SOLID WASTE &
RECYCLING COLLECTION**

(Chapter replaced by Ordinance. No. 182190,
effective October 10, 2008.)

Sections:

- 17.102.010 Declaration of Policy.
- 17.102.020 Definitions.
- 17.102.030 Authority of Director to Adopt Rules.
- 17.102.040 General Requirements for Franchisees and Permittees.
- 17.102.050 Clean and Efficient Fleet Practices for Franchisees and Permittees.
- 17.102.060 Fees Credited to Solid Waste Management Fund.
- 17.102.070 Fees As a Debt, Enforcement and Collection.
- 17.102.080 Daytime Prohibition of Downtown Garbage Collection.
- 17.102.090 Assessments for Infractions.
- 17.102.100 Right of Appeal and Payment of Assessments.
- 17.102.110 Divulging Particulars of Reports Prohibited.
- 17.102.120 Franchise Administration.
- 17.102.130 Franchise Size Limitation.
- 17.102.140 Residential Collection Franchise Required.
- 17.102.150 Exceptions to Residential Franchise Requirement.
- 17.102.160 Forfeiture and Replacement.
- 17.102.170 Residential Recycling Services.
- 17.102.180 Franchise System Evaluation.
- 17.102.190 Residential Solid Waste and Recycling Rates and Charges.
- 17.102.200 Large Size Container Service to Residential Customers.
- 17.102.210 Commercial Collection Permit Required.
- 17.102.220 Exceptions to Commercial Collection Permit Requirement.
- 17.102.230 Applications for Commercial Collection Permits, Issuance, Denial.
- 17.102.240 Revocation or Suspension of Commercial Collection Permits.
- 17.102.250 Commercial Tonnage Fee.
- 17.102.260 Registration Required for Independent Commercial Recyclers.
- 17.102.270 Businesses and Multifamily Complexes Required to Recycle.
- 17.102.280 Inspections to Determine Compliance with Business Recycling Requirements.
- 17.102.290 Storing solid waste, recycling or compostable containers on the right of way prohibited.
- 17.102.295 Separation of Recyclables, Compost and Solid Waste.
- 17.102.300 Definitions for Ban of Polystyrene Foam Food Containers (PSF).
- 17.102.310 Prohibition on Certain PSF Uses.
- 17.102.320 Exemptions for PSF Use.
- 17.102.330 Enforcement and Notice of Violations for PSF Ban.
- 17.102.340 Fines for PSF Ban.

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17.102.010 Declaration of Policy.

It is the policy of the City of Portland to reduce the amount of solid waste, both generated and disposed of, by promoting aggressive waste prevention and recycling activities. The City shall promote the development of environmentally and economically sound practices regarding the collection, processing and end use of solid waste, recyclable material and compostable material. In order to attain these goals and protect public health and the environment, the City shall regulate collection of solid waste, recyclable and compostable materials within the City. In carrying out this policy, the goals of this Chapter are:

- A.** To promote sustainability of the system of solid waste and recycling collection, by seeking to maximize efficiency, equity and economic vitality, improve worker safety and reduce environmental and human health impacts over the entire life cycle of the materials.
- B.** To set and achieve recycling goals for Portland that are among the highest in the nation.
- C.** To achieve a recycling goal of 75 percent by 2015 and promote highest value use of recovered materials.
- D.** To reduce per capita waste generation below 2005 levels by the year 2015.
- E.** To target reductions in toxic waste, to minimize its harmful effects and to reduce greenhouse gas emissions.
- F.** To ensure the safe and sanitary collection, transportation and recovery of solid waste, recyclable and compostable materials.
- G.** To provide Portland residents and businesses the opportunity to recycle more materials through convenient on-site, curbside and depot collection programs and through the addition of recyclable materials to the curbside collection program as appropriate.
- H.** To establish and enforce solid waste, recyclable and compostable material collection standards to ensure uniform, cost effective and high quality service delivery to all residential customers.
- I.** To establish rates for residential waste collection which are fair to the public, encourage waste reduction, and promote safe, efficient collection.
- J.** To promote community awareness in order to achieve the highest participation possible in the solid waste and recycling collection system.
- K.** To enhance solid waste reduction and recycling in the multifamily, commercial, institutional and industrial sectors by ensuring that comprehensive recycling systems are provided at every establishment not covered by the residential

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franchise, and that owners of the establishments encourage extensive use of those systems by all employees.

- L. To undertake research, studies and demonstration projects on developing more efficient, economical and effective methods of solid waste reduction, recycling and collection.

17.102.020 Definitions.

(Amended by Ordinance Nos. 182671 and 186877, effective December 12, 2014.) For purposes of Chapter 17.102, and rules adopted thereunder, the following terms shall be understood to have the meanings specified in this Section. Terms, words, phrases, and their derivatives used but not specifically defined in this Chapter shall have meanings commonly accepted in the community.

- A. **“Administrative Rule”** means all rules promulgated under Section 17.102.030 of this Chapter.
- B. **“Approved Residential Recycler”** means a person that has been granted approved residential recycler status by the Director. Approved residential recycler includes any employees or other persons authorized to act on behalf of the approved residential recycler.
- C. **“Assessment”** means a civil penalty assessed for an infraction as provided in Chapter 17.102 or the franchise.
- D. **“Assigned Territory”** means an area within the City in which only a franchisee designated by the City may collect solid waste and recyclable material from residential customers.
- E. **“Business”** means any commercial entity, including industrial and institutional, but not including multifamily complexes or commercial entities that occupy 50 percent or less of the floor area of a residence.
- F. **“City”** means the City of Portland, Oregon, and such territory outside of this City over which the City has jurisdiction or control by virtue of any Intergovernmental Agreement or law.
- G. **“Collect”** or **“Collection”** means to accept, accumulate, store, process, transport, market or dispose of.
- H. **“Commercial”** means relating to an entity that is non-residential in nature or, if residential, consists of five or more dwelling units on a single tax lot.
- I. **“Commercial Collection”** means the collection of solid waste, recyclable and compostable materials in exchange for compensation from:
 - 1. A non-residential source; or

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2. A multifamily residence of five or more dwelling units located on a single tax lot.;

J. “Compensation” means:

1. Any type of consideration paid for collection service, including, without limitation, rent or lease payments and any other direct or indirect provision of payment of money, goods, services or benefits by owners, tenants, lessees, occupants or similar persons;
2. The exchange of services between persons; and
3. The flow of consideration from the person owning or possessing the solid waste recyclable or compostable material to the person providing collection service or from the person providing collection service to the person owning or possessing the solid waste recyclable or compostable material.

K. “Compostable Material” and “Compostable” means yard debris, food scraps and food soiled paper when source separated for controlled biological decomposition. Compostable material shall not include food soiled paper containing plastic or other materials that inhibit controlled biological decomposition.

L. “Composting” means the series of activities, including collection, separation, and processing, by which compostable materials are recovered from or otherwise diverted from the solid waste stream for controlled biological decomposition. Composting includes composting of source separated organics but not composting of mixed waste.

M. “Customer” when used to refer to commercial collection service, means a person that has arranged for the collection of solid waste, recyclable or compostable materials, excluding residential collection service covered by a franchise. Where several businesses share containers and service, customer refers only to the person that arranges for the service.

N. “Customer” when used to refer to residential collection service means any person who receives solid waste, recycling or yard debris collection service at a residence (four-plex or smaller) in a franchise territory or any non-residential customer who qualifies for collection services as provided in the franchise granted by Ordinance No. 181666. The customer need not be the person billed for such service. For rental properties where the owner of the property is required to subscribe for service, the owner shall be considered the customer.

O. “Director” means the Director of the City’s Bureau of Planning and Sustainability or his or her authorized representative, designee or agent.

P. “Food Soiled Paper” means paper products that cannot be recycled into paper products or that have been in contact with organic materials to the degree that they

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would not be able to be recycled into paper products. Food soiled paper includes, but is not limited to, used paper table covers, used napkins, and waxy corrugated cardboard. Food soiled paper includes otherwise recyclable paper that has been in contact with food to the degree that it is not recyclable into paper products, but does not include unsoiled cardboard boxes, newspaper or office paper.

- Q. "Food Scraps"** means all waste from meats, fish, and vegetables, which attends or results from the storage, preparation, cooking, handling, selling or serving of food for human consumption. Food scraps includes, but are not limited to, excess, spoiled or usable food or dairy products, meats, vegetable and meat trimmings, grains, breads and dough, incidental amounts of edible oils, and organic waste from food processing. Food scraps does not include large amounts of oils and meats which may be collected for rendering, fuel production or other reuse applications.
- R. "Food Waste Generating Business"** means businesses and institutions whose waste is composed of a large amount of food scraps and food soiled paper. It includes but is not limited to restaurants, grocery stores, or food markets, hotels with catering operations, institutions with cafeterias, caterers, central kitchens or commissaries, bakeries, produce wholesalers and food processors. It does not include businesses that produce only incidental amounts of food waste in the course of doing business, such as from employee lunches.
- S. "Franchise"** means a franchise for the collection of residential solid waste, recyclable materials and yard debris, granted by Ordinance No. 181666, and as amended by subsequent ordinances.
- T. "Franchisee"** means a business that has been granted a franchise by Ordinance No. 181666 and subsequent amending ordinances. Franchisee includes any employees or other persons authorized to act on behalf of the franchisee. Franchisee has a meaning identical to that of "grantee" as used in the franchise. A franchisee holds a single franchise for collection service in any and all of its franchise territories, including any territories transferred from other franchisees as approved by the Portland City Council, subsequent to Ordinance No. 181666, and as amended by subsequent ordinances.
- U. "Franchise Territory"** means an area within the City in which only a person granted a franchise by the City may collect residential solid waste, recyclable materials or yard debris, from residential customers. A single franchisee may serve more than one franchise territory.
- V. "Independent Commercial Recycler"** means a person who collects only recyclable and/or compostable materials from non-residential sources for the sole purpose of recycling or composting, and who does not collect solid waste.
- W. "Infraction"** means a failure to comply with Portland City Code Chapter 17.102, the franchise, or the administrative rules promulgated thereunder, as applicable.

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- X.** “**Metro**” means the metropolitan service district responsible for regional solid waste management and planning within Clackamas, Multnomah and Washington Counties.
- Y.** “**Multifamily Complex**” or “**Multifamily**” means any multidwelling building or group of buildings that contain(s) five dwelling units or more on a single tax lot, such as apartments, condominiums, mobile home parks, or houseboat moorages. Multifamily also includes certified or licensed residential care housing, such as adult foster care homes.
- Z.** “**BPS**” means the City’s Bureau of Planning and Sustainability.
- AA.** “**Permittee**” means any person granted a commercial collection permit under Section 17.102.210 of this Chapter.
- BB.** “**Person**” means any individual, partnership, association, firm, trust, estate, a public or private corporation, a local government unit, a public agency, the state or any other legal entity.
- CC.** “**Recyclable Material**” and “**Recyclable**” includes, but is not limited to, newspaper, scrap paper, ferrous scrap metal, non-ferrous scrap metal, used motor oil, corrugated cardboard and kraft paper, container glass, aluminum, tin cans, magazines, aseptic packaging, coated paper milk cartons, steel aerosol cans, plastic bottles, office paper, cooking grease, wood, rubble and other materials as may be designated by the City.
- DD.** “**Recycling**” means the series of activities including collection, separation, and processing, by which products or other materials are recovered from or otherwise diverted from the solid waste stream for use in the following:
1. In the form of raw materials in the manufacture of new products other than fuel.
 2. As fuel in the case of source separated wood waste which has no other material use.
- EE.** “**Residence**” means any dwelling unit that is a four-plex or smaller, regardless of whether it has subscribed for waste collection, or has waste collection, in individual cans, carts or containers. Residence includes multifamily dwellings such as apartment complexes, condominiums, mobile home parks, or houseboat moorages with four units or fewer on a single tax lot. Residence also includes dwelling units used by fraternities or sororities. Residence does not include any multifamily complex as defined in this Section, multi-dwelling building or group of buildings that contain(s) five dwelling units or more on a single tax lot, such as condominiums, mobile home parks, or houseboat moorages, nor does residence include certified or licensed residential adult foster care homes. Residence does not include any dwelling where over 50 percent of the entire building is being used

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for business purposes. Agreements between owners of residences purporting to provide for the collection of solid waste and recyclable on a combined basis shall not alter the status of each dwelling unit as a residence.

FF. “Resident” means any person living in a residence.

GG. “Residential” means of or pertaining to a residence.

HH. “Self Haul, Commercial” when used in reference to solid waste, recyclables or compostables generated by a commercial entity, means the collection and transportation of material from a commercial entity where an owner or employee of the entity hauls the material rather than hiring a permittee or independent commercial recycler to perform this function.

II. “Solid Waste” has the meaning given in ORS 459.005(24) (2013), but does not include the following materials:

1. Sewage sludge, septic tank and cesspool pumpings or other sludge, and grit, screenings and other residues delivered by sewer systems to municipal treatment plants.
2. Discarded or abandoned vehicles;

JJ. “Source Separate” means that the person who last used recyclable or compostable material separates the material from solid waste and keeps the recyclable or compostable material separate from solid waste.

KK. “Yard Debris” means leaves, grass clippings, sod, weeds, vines, vegetative material from the yard, pumpkins, and prunings of no greater than four inches in diameter or 36 inches in length. Large branches (greater than four inches in diameter or more than 36 inches in length), dirt, stumps, metal, rocks, ashes, animal waste, food and household solid waste are not considered yard debris.

17.102.030 Authority of Director to Adopt Rules.

(Amended by Ordinance No. 182671, effective May 15, 2009.)

A. The Director is hereby authorized to administer and enforce the provisions of this Chapter.

B. The Director is authorized to adopt rules, procedures, and forms to implement the provisions of this Chapter.

1. Any rule adopted pursuant to this section shall require a public review process. Not less than ten nor more than thirty days before such public review process, notice shall be given by publication in a newspaper of general circulation. Such notice shall include the place, time, and purpose

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of the public review process and the location at which copies of the full set of the proposed rules may be obtained.

2. During the public review, the Director shall hear testimony or receive written comment concerning the proposed rules. The Director shall review the recommendations; taking into consideration the comments received during the public review process, and shall either adopt the proposed rules, modify or reject them. If a substantial modification is made, additional public review shall be conducted, but no additional notice shall be required if such additional review is announced at the meeting at which the modification is made. Unless otherwise stated, all rules shall be effective upon adoption by the Director and shall be filed in the Office of the Director.
3. Notwithstanding paragraphs 2 and 3 of this Section, an interim rule may be adopted by the Director without prior notice upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties, including the specific reasons for such prejudice. Any rule adopted pursuant to this paragraph shall be effective for a period of not longer than one year (365 days). Within five business days of the adoption of an interim rule, the Director shall send notice of the rule to all the following, giving the language of the rule change, describing the purpose of the rule, and inviting the submission of comments.
 - a. Neighborhood associations recognized by the City Office of Neighborhood Involvement,
 - b. District Coalitions recognized by the City Office of Neighborhood Involvement,
 - c. Business District Associations identified by the City Office of Neighborhood Involvement,
 - d. Persons on the BPS list of parties interested in administrative rules, and
 - e. Franchisees and permittees,

17.102.040 General Requirements for Franchisees and Permittees.

All franchisees and permittees must comply with applicable federal law, statutes of the State of Oregon, ordinances of Metro or the City and rules and regulations promulgated thereunder.

17.102.050 Clean and Efficient Fleet Practices for Franchisees and Permittees.

(Replaced by the Ordinance No. 185449, effective July 21, 2012.) The Director is authorized to draft regulations to protect the public health and the environment. This can include requiring the use of a blend of biodiesel fuel in any collection vehicle with a diesel

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engine and requiring regular replacement of all collection vehicles used by franchisees or permittees within the City.

- A.** All collection vehicles with a diesel engine shall use a blend of biodiesel fuel as specified by the Director, consistent with the requirements set forth in Chapter 16.60.
- B.** Fleet Replacement-Residential.
 - 1.** By January 1, 2016, all residential vehicles shall have engines that are 12 years old or newer. For purposes of this Section, "residential vehicles" are vehicles used by franchisees for residential solid waste, recycling, or composting collection at least 50 percent of their hours or miles. "Residential vehicles" do not include back-up vehicles used less than 20 percent of a full-time vehicle's hours or miles.
 - 2.** Diesel Particulate Filter Retrofits. Residential vehicles that have been retrofitted with a Diesel Particulate Filter through a Metro grant-funded program will be considered to have 2007 model year engines and will not be required to be replaced until December 31, 2019.
 - 3.** Residential Fleet Replacement Plan. Franchisees shall prepare and annually update a Residential Fleet Replacement Plan (Plan) that complies with the following deadlines:
 - a.** The Plan shall provide for the replacement of all residential vehicles with engines older than the 2004 model year by December 31, 2015.
 - b.** The Plan shall provide for replacement of no more than five residential vehicles with engines older than the 2004 model year between January 1, 2015 and December 31, 2015.

The Plan must be approved by the Director.

- C.** Fleet Replacement-Commercial.
 - 1.** By January 1, 2018, all commercial vehicles shall have engines that are 12 years old or newer. For purposes of this Section, "commercial vehicles" are vehicles used by permittees for commercial collection more than 50 percent of their hours or miles. "Commercial vehicles" do not include back-up vehicles used less than 20 percent of a full-time vehicle's hours or miles.
 - 2.** Diesel Particulate Filter Retrofits. Commercial vehicles that have been retrofitted with a Diesel Particulate Filter through a Metro grant-funded program will be considered to have 2007 model year engines and will not be required to be replaced until December 31, 2019.

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3. Commercial Fleet Replacement Plan. Permittees that have more than five commercial vehicles with engines older than the 2006 model year shall prepare a Commercial Fleet Replacement Plan (Plan). The Plan shall provide for the replacement of all commercial vehicles with engines older than the 2006 model year by December 31, 2017. The Plan must be approved by the Director.

17.102.060 Fees Credited to Solid Waste Management Fund.

(Amended by Ordinance No. 182671, effective May 15, 2009.)

- A. All fees, assessments and interest received by the Bureau of Planning and Sustainability with respect to solid waste collection or disposal shall be deposited with the City Treasurer and credited to the Solid Waste Management Fund.
- B. Monies deposited into the Solid Waste Management Fund shall be used for administration, implementation and operation of solid waste, recycling, composting and sustainable development programs, consistent with all applicable constraints on use of funds. BPS may spend or apply such fees and charges to implement and administer solid waste, recycling, composting and sustainable development policies approved by the Council.
- C. The proceeds from the City's sale of a forfeited franchise shall be deposited with the City Treasurer and credited to the Solid Waste Management Fund. Such proceeds shall be used to offset the City's costs of the process of replacing a franchisee, including its costs for providing any necessary temporary collection services, and to offset program costs to the public.

17.102.070 Fees As a Debt, Enforcement and Collection.

- A. All fees, assessments and interest imposed by this Chapter shall be a debt due and owing to the City of Portland and may be collected by civil action in the name of the City of Portland. Any fees and assessments remaining unpaid after the due date shall accrue interest at 1 percent per month, compounded daily from the due date. In addition, the Director may revoke, suspend or deny issuance of any commercial collection permit to permittees who have not paid commercial permit or tonnage fees or infraction assessments by the deadlines provided in this Chapter or in administrative rules adopted pursuant to this Chapter.
- B. Fees, assessments and interest shall be enforced and collected by the Director. The Director may waive or reduce any assessments for good cause, according to and consistent with written policies. The Director may refer collection and enforcement to another agency of the City.

17.102.080 Daytime Prohibition of Downtown Garbage Collection.

No person, whether acting as private citizen, principal, employee, agent, franchisee or permittee shall transport any refuse through streets in the district bounded by SW Oak

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Street, SW First Avenue, SW Yamhill Street and SW Tenth Avenue, except between the hours of 10 p.m. and 10 a.m. or when otherwise authorized by the City Engineer, a city police officer, or the Director.

17.102.090 Assessments for Infractions.

- A.** The Director may impose assessments as follows:
- 1.** A first violation of this Chapter may be subject to an assessment of up to \$500.
 - 2.** A second violation of this Chapter by the same person may be subject to an assessment of up to \$1,000.
 - 3.** Third and subsequent violations of this Chapter by the same person may be subject to an assessment of up to \$1,500.
 - 4.** Assessments may be imposed on a per month, per day, per incident, per class or such other basis as the Director may determine as appropriate based upon the nature of the infraction.
- B.** The Director shall consider the following criteria in determining the amount of assessments to be imposed under this Section:
- 1.** The nature and extent of the person's involvement in the violation;
 - 2.** Whether the person was seeking any benefits, economic or otherwise, through the violation;
 - 3.** Whether the violation was isolated and temporary, or repeated and continuous;
 - 4.** The length of time from any prior violations;
 - 5.** The magnitude and seriousness of the violation;
 - 6.** The costs of investigation and remedying the violation;
 - 7.** Whether any criminal prosecutions have occurred in regard to the violations; and
 - 8.** Other relevant, applicable evidence bearing on the nature and seriousness of the violation.

17.102.100 Right of Appeal and Payment of Assessments.

(Amended by Ordinance No. 184288, effective January 7, 2011.)

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- A.** Any person receiving a Notice of Assessment shall, within ten days of issuance of the notice either pay to the City the stated amount of the assessment or request an appeal hearing by the Code Hearings Officer in accordance with procedures set forth in Chapter 22.10 of the City Code. The filing of an appeal request shall stay the effective date of the assessment until the appeal is determined by the Code Hearings Officer. If, pursuant to said appeal hearing, payment of the assessment is ordered, such payment must be received by the Director or postmarked within 15 calendar days after the order becomes final.
- B.** A person may appeal to the Code Hearings Office in accordance with Title 22 of the City Code if the person receives:

 - 1.** A written denial of an application for a commercial collection permit;
 - 2.** Any written suspension or revocation of a commercial collection permit.
- C.** A business or property owner may appeal to the Code Hearings Office in accordance with Title 22 of the City Code if they receive a written denial of an application for a limited term extreme economic hardship exemption from the Containers in the Right of Way rules.
- D.** Any person requesting an appeal to the Code Hearings Office in accordance with procedures set forth in Chapter 22.10 of the City Code may be assessed a fee of up to \$500 at the time of their application. Failure to submit full payment of appeal fee within the time allowed to request an appeal hearing shall result in the denial of the request for an appeal hearing.

 - 1.** If the Code Hearings Officer decides in favor of the appellant at the Code Hearing, the submitted appeal fee shall be refunded in full to the appellant.

17.102.110 Divulging Particulars of Report Forms Prohibited.

(Amended by Ordinance No. 182671, effective May 15, 2009.)

- A.** Except as otherwise required by law, it shall be unlawful for the Bureau of Planning and Sustainability or any officer, employee, or agent of the City, to divulge, release or make known in any manner:

 - 1.** Any information submitted or disclosed to the City under Section 17.102.250; or,
 - 2.** Any information submitted or disclosed to the City by solid waste collectors regarding past hazardous waste remedial action surcharges.
- B.** Nothing in this Section shall be construed to prohibit:

 - 1.** The disclosure of the names and addresses of any persons to whom permits have been issued; or

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2. The disclosure of general statistics in a form which would prevent the identification of financial information regarding any individual permittee.

17.102.120 Franchise Administration.

(Amended by Ordinance No. 182671, effective May 15, 2009.) Notwithstanding Section 3.114.020, the Bureau of Planning and Sustainability shall be responsible for administration of residential collection franchises.

17.102.130 Franchise Size Limit.

(Amended by Ordinance No. 184224, effective December 10, 2010.)

- A. No franchisee shall serve residential customers greater than 40 percent of the residential customer base, as determined on a quarterly basis. For purposes of this Section, the Bureau of Planning and Sustainability will calculate the residential customer base and the residential customer cap using the most recent Quarterly Residential Customer Count Report, and shall keep this calculation on file for public reference.
- B. No franchisee shall be a subsidiary corporation of another franchisee.

17.102.140 Residential Collection Franchise Required.

- A. No person may collect residential solid waste, recyclable material or yard debris, within the City without having obtained a franchise from the City, except as provided in 17.102.150 or 17.102.170 of this Chapter.
- B. Having obtained a franchise for residential solid waste, recyclable material and yard debris collection from the City, no person shall provide or offer to provide such collection in an area within the City other than the assigned territory for which the franchise was issued.
- C. No person shall accumulate, store collect, transport, dispose of or resource recover solid waste, recyclable materials or yard debris, except in compliance with this Chapter, other city ordinances and regulations, and state laws dealing with solid waste management.
- D. Nothing in this section shall prohibit the City from withdrawing certain solid waste, recyclable materials or yard debris collection services by amendment of this Chapter on the basis of finding that such change is appropriate.
- E. No person other than an approved residential recycler may remove recyclable materials or yard debris that are in or next to a residential recycling or yard debris container set out at a residence.
- F. As provided in Section 29.30.140, owners of rental housing shall not collect solid waste generated by their tenants. Owners of rental residences must arrange for collection by a franchisee.

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17.102.150 Exceptions to Residential Franchise Requirement.

- A.** A franchise is not required for the collection or transportation of residential solid waste, recyclable materials or yard debris by the following persons:
- 1.** Persons transporting solid waste, recyclable materials, or yard debris, collected outside the City;
 - 2.** Organizations which have been granted non-profit tax status by the federal government or who are organized as non-profit corporations in accordance with ORS Chapter 61 (2007) and who collect residential recyclable materials or yard debris without charge to the person who generates those recyclable materials or yard debris;
 - 3.** A contractor employed to demolish, construct or remodel a building or structure, including, but not limited to, land clearing operations and construction wastes, when collecting or transporting wastes created in connection with such employment;
 - 4.** Landscapers, gardeners, tree service contractors, janitors or renderers when collecting or transporting wastes created in connection with such employment;
 - 5.** Persons collecting and transporting waste produced by that person, except for waste produced by a tenant at a rental dwelling. For purposes of this Subsection, solid waste produced by a tenant, licensee, occupant or similar person is produced by that person and not by the landlord;
 - 6.** Persons collecting or transporting only waste tires under a valid waste tire storage or carrier permit pursuant to OAR Chapter 340;
 - 7.** Persons transporting only reusable beverage containers as defined in ORS 459A.725 (2007);
 - 8.** Federal or state agencies that collect, store, transport and dispose of solid waste or those who contract with such agencies to perform the service, but only insofar as the service is performed by or for such agencies; and,
 - 9.** Persons exclusively collecting recyclable materials or yard debris, from non-residential sources.
- B.** An organization is not required to have a franchise for the acceptance, storage or transportation of recyclable materials or yard debris if those materials are accepted and stored at a depot or depots which accept recyclable material or yard debris without a charge to the generator of that recyclable material or yard debris.

17.102.160 Forfeiture and Replacement.

(Amended by Ordinance No. 182671, effective May 15, 2009.)

- A.** In the event that the Director finds grounds for declaring a forfeiture, according to the terms of the franchise awarded by Ordinance No. 181666 and as amended by subsequent ordinances, the Director shall make a recommendation for Council action on the matter, following procedures specified in the BPS's adopted rules.
- B.** In preparing for the transfer of a forfeited franchise to another party, the Director shall solicit applications from current franchisees and from other parties who have given a written notice of their interest following a public notification. The Director shall determine the applicants' qualifications to assume the franchise responsibilities. The Director is authorized to then use a lottery in selecting among qualified applicants. In addition, the Director may conduct an appraisal of the value of the forfeited franchise. The lottery winner(s) shall then be offered the opportunity to purchase the franchise from the City within a specified time period at the appraised value.
- C.** In cases where a franchisee abruptly ceases to provide collection service, and there is insufficient time to conduct an appraisal and permanently transfer a franchise, the Director may recommend that the Council appoint a temporary service provider. If the Council makes such an appointment, it may also guarantee a minimum level of revenue to that company, in order to encourage companies who would not otherwise be willing to assume this responsibility on a short-term basis. Such minimum level of revenue would be achieved by the City's supplementing revenues received by the temporary service provider from its temporary customers.

17.102.170 Residential Recycling Services.

- A.** No person shall provide residential recycling collection without first applying for and receiving approval as an approved residential recycler.
- B.** To have status as an approved residential recycler an applicant must receive the City's approval of recycling collection and processing plans prior to initiation of collection service, and at subsequent times as provided in the administrative rules.
- C.** To receive approval as an approved residential recycler, an applicant shall submit a recycling collection and processing plans on forms provided by the Director and shall include, at a minimum, the following information:

 - 1.** Number of residential households to be served;
 - 2.** Description of recycling collection equipment;
 - 3.** Address and City zoning classification of all processing/storage sites that relate to collection services provided in the City;

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4. Description of all processing and storage activities that relate to collection services provided in the City;
 5. List of markets where each recyclable material will be sold;
 6. List of the number of staff, their positions and full-time equivalent (FTE) for each;
 7. Address and phone number of office;
 8. Cost of recycling collection and processing equipment, the financial institution used and type of financing obtained; and
 9. Any subcontracted collection services, including the names of the providers, description of the services provided and the number of customers served.
 10. Written consent of the franchisee in whose territory the applicant seeks to provide collection service.
 11. Other information as deemed relevant and necessary by the Director.
- D.** The Director shall review the recycling collection and processing plans submitted by an applicant to determine if the plan sets out reasonable means and methods to deliver high quality recycling to City residents, and which are capable of meeting administrative rule standards for residential recycling service delivery. The Director shall notify the applicant of the decision on his/her status as an approved residential and any recommended modifications if approval is not given. Approved residential recyclers shall use recycling containers that meet the Director's specifications.
- E.** An applicant's failure to receive the Director's approval of a plan shall result in denial of the City's permission for that applicant to provide recycling collection service and the appointment of another approved residential recycler by the Director to provide recycling collection service to those residential customers.

17.102.180 Franchise System Evaluation.

(Amended by Ordinance No. 182671, effective May 15, 2009.)

- A.** Periodically the Director shall prepare and submit a report to the City Council on the status and performance of the franchise collection system. The report shall comment on progress toward achievement of the relevant goals identified in Section 17.102.010 and as otherwise described in BPS's budget documents.
- B.** Commencing at least five years prior to the expiration of the franchise term, the City Council shall evaluate the franchise system to determine if the system is achieving waste reduction, increased recycling, and cost-effective collection

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service. Such evaluation shall include an opportunity for public discussion and comment.

17.102.190 Residential Solid Waste and Recycling Rates and Charges.

For all service levels of franchised residential collection, rates and charges shall be as set forth in Figures 6 and 6-1 published at the end of Title 17.

17.102.200 Large Size Container Service to Residential Customers.

- A.** Any residential putrescible waste collected in containers exceeding two yards capacity shall be emptied within seven days of the empty container being placed at the residence.
- B.** Commercial permittees are prohibited from providing collection of any putrescible waste more than four times in a 365-day period to residential customers without the express written permission of the franchisee in whose territory the collection would be occurring.
- C.** Within the City, franchisees are prohibited from providing containers larger than two cubic yards which are emptied more than four times in a 365-day period to residential customers outside their franchise territory.

17.102.210 Commercial Collection Permit Required.

(Amended by Ordinance No. 182671, effective May 15, 2009.)

- A.** No person shall provide commercial collection of solid waste, compostables and recyclable material within the City without having a currently valid commercial collection permit from the Bureau of Planning and Sustainability, except as provided in Section 17.102.220. Permits shall be issued annually, with the permit being valid for the period beginning July 1 and ending June 30. No expenditure of money, lapse of time or other act or thing, shall give the permittee any vested rights or other property rights.
- B.** The Director may impose conditions upon the issuance of a permit which are necessary to implement the provisions of this Chapter or administrative rules promulgated under Section 17.102.030. Conditions shall include but not be limited to:
 - 1.** Permittees must comply with the provisions of this Chapter and administrative rules promulgated under Section 17.102.030.
 - 2.** If a permittee provides solid waste collection services to a customer, the permittee must offer recycling collection services to the customer. The permittee shall also offer compostable material collection services to a customer that is a food scrap generating business subject to the requirements of Subsection 17.102.270 A.1.c.

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- a.** Permittees may provide recycling and compostable material collection services either directly or through third-party providers. Where a permittee provides such services through a third party provider, the permittee shall be responsible for reporting to the City the quantities of all materials collected by that provider on its behalf within the City.
 - b.** In providing recycling and compostable material collection services, permittees shall use containers that comply with the City's administrative rules.
- 3.** If the Director determines that a permittee is delivering as waste, loads containing significant amounts of recyclable materials to a transfer station, reload, or landfill, the Director shall work with the permittee to identify customers on the routes serviced in those loads for the purpose of providing customer outreach, assistance and education.
- 4.** Permittees may charge a person who source separates recyclable material - and makes it available for reuse or recycling - less, but not more, for collection and disposal of solid waste and collection of recyclable material than the collection service charges a person who does not source separate recyclable material. This subsection does not affect charges for the collection of food scraps and food soiled paper.
- C.** Any person who provides commercial collection of solid waste within the City without a current commercial collection permit from the City shall be subject to an assessment as provided by Section 17.102.090.
- D.** No person who is not authorized by the customer may remove recyclable material that is set out by the customer for recycling.
- E.** As provided in Section 29.30.140, owners of rental housing shall not collect solid waste generated by their tenants. Owners of multifamily complexes must arrange for collection by a permittee.

17.102.220 Exceptions to Commercial Collection Permit Requirement.

A commercial collection permit is not required for the collection or transportation of commercial solid waste by any of the following:

- A.** Persons transporting solid waste collected outside the City;
- B.** A contractor employed to demolish, construct or remodel a building or structure, including, but not limited to, land clearing operations and construction wastes, when collecting or transporting wastes created in connection with such employment;

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- C.** Landscapers, gardeners, farmers, tree service contractors, janitors or renderers when collecting or transporting wastes created in connection with such employment;
- D.** Persons collecting or transporting only waste tires under a valid waste tire storage or carrier permit pursuant to OAR Chapter 340;
- E.** Persons transporting only reusable beverage containers as defined in ORS 459A.725 (2007);
- F.** Federal or state agencies that collect, store, transport and dispose of solid waste or those who contract with such agencies to perform the service, but only insofar as the service is performed by or for such agencies; and
- G.** Persons exclusively collecting recyclable or compostable materials from anyone other than residential customers.

17.102.230 Applications for Commercial Collection Permits, Issuance, Denial.
(Amended by Ordinance No. 184288, effective January 7, 2011.)

- A.** Applications for commercial collection permits required by Chapter 17.102 shall be submitted to the Director. The Director shall prepare application forms and make them available upon request.
- B.** Each application for a commercial collection permit shall be accompanied by a nonrefundable fee of \$350.
- C.** An applicant for a commercial collection permit shall submit an application that sets forth the following information:
 - 1.** The name, address and telephone number of the business or proposed business;
 - 2.** Whether the applicant is organized as a sole proprietorship, partnership, limited partnership, family limited partnership, joint venture, association, cooperative, trust, estate, corporation, personal holding company, limited liability company, limited liability partnership or any other form of organization for doing business;
 - a.** If a partnership, the application must set forth the names, addresses and telephone numbers of each general or managing partner.
 - b.** If a corporation, or limited liability company, the application must set forth the corporate or company name and the names, addresses and telephone numbers of every person owning more than twenty percent of the business;

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- c. If the business is organized in some other form, the application must set forth the name, address and telephone number of the designated contact person for the business.
 3. A City of Portland business license number.
 4. A signed statement that the permittee shall hold harmless the City of Portland, its officers and employees and shall indemnify the City of Portland, its officers and employees for any claims for damage to property or injury to persons which may be occasioned by any activity carried on under the terms of the commercial collection permit. Permittee shall furnish and maintain such public liability, food products liability, and property damage insurance as will protect permittee, property owners, and City from all claims for damage to property or bodily injury, including death, which may arise from operations under the permit or in connection therewith. Such insurance shall provide General Liability coverage insurance with a combined single limit of not less than \$1,000,000 per occurrence for bodily injury and property damage. Such insurance shall be without prejudice to coverage otherwise existing therein, and shall name as additional insureds the City of Portland, their officers and employees with respect to the permittee's activities carried on under the terms of the commercial collection permit, and shall further provide that the policy shall not terminate or be canceled prior to the completion of the contract without 30 days written notice to the Auditor.
 5. Any other information that the Director may reasonably feel is necessary to accomplish the goals of this Chapter.
- D. Applications shall contain a written declaration, verified by the applicant, to the effect that the statements made therein are true.
 - E. Applications shall contain written demonstration of adequate staff, equipment and collection vehicles necessary to provide services as required under Subsection 17.102.210 B.2.
 - F. The Director may investigate and verify data reported in the permit application.
 - G. The permittee shall provide written notice to the Director within 10 days of any changes in the information provided in the application that occurs after the application is submitted.
 - H. The Director shall approve issuance of a commercial collection permit to the applicant after payment of the required fee, completion of the application form and following an evaluation of the information provided with the application. The Director may deny the issuance of a commercial collection permit to an applicant under the following conditions:

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1. The permit application contains falsehoods or facts that cannot be verified;
 2. The applicant has failed to pay fees, assessments and interest as provided in Chapter 17.102;
 3. The applicant has been found by a court of competent jurisdiction to have practiced fraud or deceit upon the City; or,
 4. The applicant has had their permit revoked during the two years prior to the application. For purposes of this section, "applicant" includes any individual who was a managing partner, or who owned or controlled more than 20 percent of the voting interests in the permittee whose permit was revoked.
- I.** There shall be no right to renewal of a commercial collection permit; each application shall be considered as it would be for a new permit notwithstanding that the applicant has previously been issued a permit.
- J.** Denial of an application may be appealed to the Code Hearings Officer as provided in accordance with procedures set forth in Chapter 22.10 of the City Code.
1. Any person requesting an appeal to the Code Hearings Office may be assessed a fee of up to \$500 at the time of their application. Failure to submit full payment of appeal fee within the time allowed to request an appeal hearing shall result in the denial of the request for an appeal hearing.
 2. If the Code Hearings Officer decides in favor of the appellant at the Code Hearing, the submitted appeal fee shall be refunded in full to the appellant.

17.102.240 Revocation or Suspension of Commercial Collection Permits.

(Amended by Ordinance No. 184288, effective January 7, 2011.)

- A.** The Director may suspend or revoke a commercial collection permit under the following conditions:
1. One or more of the permit conditions is being violated;
 2. The permittee is in violation of any of the provisions of this Chapter or the commercial administrative rules for solid waste and recycling.
 3. The permittee has failed to pay fees and assessments as provided in Chapter 17.102.
 4. The permittee has been found by a court of competent jurisdiction to have practiced fraud or deceit upon the City.

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- B.** The Director shall consider the following criteria in determining whether to revoke or suspend the commercial collection permit due to violations of the provisions of this Chapter or the commercial administrative rules for solid waste and recycling:
1. The nature and extent of the permittee's involvement in the violation;
 2. Whether the permittee was seeking any benefits, economic or otherwise, through the violation;
 3. Whether the violation was isolated and temporary, or repeated and continuous;
 4. The magnitude and seriousness of the violation;
 5. The relative harms of continued collection service from the permittee and the potential for service disruption;
 6. Whether any criminal prosecutions have occurred in regard to the violations; and
 7. Other relevant, applicable evidence bearing on the nature and seriousness of the violation.
- C.** Revocation or suspension of a permit may be appealed to the Code Hearings Officer as provided in accordance with procedures set forth in Chapter 22.10 of the City Code.
1. Any person requesting an appeal to the Code Hearings Office may be assessed a fee of up to \$500 at the time of their application. Failure to submit full payment of appeal fee within the time allowed to request an appeal hearing shall result in the denial of the request for an appeal hearing.
 2. If the Code Hearings Officer decides in favor of the appellant at the Code Hearing, the submitted appeal fee shall be refunded in full to the appellant.

17.102.250 Commercial Tonnage Fee.

(Amended by Ordinance Nos. 183828, 185349 and 187771, effective July 1, 2016.) Commercial permittees shall, when invoiced quarterly by the Director, pay a tonnage fee to the City. Fees shall be assessed up to \$9.60 per ton of commercial solid waste collected within the City and deposited in disposal facilities authorized by Metro. Payments shall be made within 30 days of the date of the invoice. Interest shall accrue at 1 percent per month on balances which remain unpaid as of 30 days after the date of invoice, compounded daily from the due date.

17.102.260 Registration Required for Independent Commercial Recyclers.

(Amended by Ordinance No. 182671, effective May 15, 2009.)

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- A.** No person shall provide collection service as an independent commercial recycler within the City without having registered with the Bureau of Planning and Sustainability, by providing BPS with a copy of their City of Portland Business License, with their Business License number, or with a copy of their current annual Business License exemption application or request submitted to the City's Revenue Bureau.
- B.** All independent commercial recyclers which collect in the City at least 25 tons of recyclables and/or compostables per year shall report quarterly to BPS on the amounts of recyclables collected in the City, on forms provided by BPS.

17.102.270 Businesses and Multifamily Complexes Required to Recycle.

- A.** Waste Prevention and Recycling Requirements.
 - 1.** To achieve the City's waste prevention and recycling goals as set forth in Section 17.102.010, all businesses within the City shall comply with waste prevention, recycling and composting requirements as set forth in the administrative rules established by the Director. The following recycling requirements shall be in effect:
 - a.** All businesses and multifamily complexes shall recycle 75 percent of the solid waste they produce;
 - b.** All businesses shall recycle all of their paper and containers. For the purposes of this Section, containers means all recyclable metal, plastic and glass containers;
 - c.** Food scraps generating businesses shall separate their food scraps for composting.
 - d.** For all building projects within the City where the total job cost (including both demolition and construction phases) exceeds \$50,000, the general contractor shall ensure that 75 percent of the solid waste produced on the job site is recycled. In addition, certain materials generated on the job site shall be recycled in compliance with administrative rules established by the Director. For an affected building project where there is no general contractor, this requirement applies to the property owner is the person responsible for ensuring compliance with the recycling requirements.
 - 2.** Commercial customers that provide garbage collection service to business tenants as part of their rental/lease, shall provide recycling and, where appropriate, compostable collection systems that will enable the business tenants to recycle in compliance with administrative rules established by the Director.

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3. All multifamily complexes within the City shall establish recycling systems for their tenants' use, in compliance with administrative rules established by the Director.
- B. The Director may monitor compliance with the requirements of Subsection A by reviewing available information including, but not limited to, information reported by the customers on their recycling activities, as well as onsite inspections.
- C. Any business or any other person may sell or exchange at fair market value its own recyclable materials which are source separated for reuse or recycling. This Chapter and any administrative rules promulgated hereunder are not intended to limit the ability of any person to compete openly to provide recycling collection service to businesses within the City of Portland.

17.102.280 Inspections to Determine Compliance with Business Recycling Requirements.

- A. The Director shall be responsible for the administration and enforcement of Section 17.102.270 relating to recycling goals for businesses and multifamily complexes. In furtherance of these responsibilities, the Director shall have the authority to inspect sites, buildings and other structures and equipment for compliance with Section 17.102.270. The Director shall establish a program for the periodic inspection of businesses and multifamily complexes for compliance with these requirements. The program shall identify the frequency, priority and types of inspections, subject to the availability of staff and budgeted funds.
- B. Right of Entry. The Director may enter the premises of any business or multifamily complex, except private residences, between the hours of 9:00 am and 5:00 pm on any business day to conduct inspections for the purpose of determining compliance with recycling requirements established pursuant to Section 17.102.270. The Director shall first present proper credentials and request entry. If entry is refused, the Director may attempt to gain entry by obtaining an inspection warrant. Failure to respond to repeated requests may constitute refusal for entry. For the purposes of Section 17.102.280, the premises shall include the common areas of the business or multifamily complex used to store solid waste, recycling or compostable materials.
- C. Warrants. Whenever an inspection is necessary to determine compliance with Section 17.102.270 and the Director has been refused entry, the Director may apply to any Circuit Court judge to obtain an inspection warrant for the inspection of the premises of a business or multifamily complex. The inspection warrant is a court order authorizing entry onto the premises of a business or multifamily complex for the purposes of conducting an inspection to determine compliance with the requirements of Section 17.102.270.
- D. Grounds for Issuance of Inspection Warrants; Affidavit.

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1. Affidavit. An inspection warrant shall be issued only upon cause, supported by affidavit, particularly describing the applicant's status in applying for the inspection warrant, the applicable code sections or regulation requiring or authorizing the inspection, the property to be inspected and the purpose for which the inspection is to be made including the basis upon which cause exists to inspect. In addition, the affidavit shall contain either a statement that entry has been sought and refused.
2. Cause. Cause shall be deemed to exist if the affidavit demonstrates that:
 - a. The inspection is authorized pursuant to reasonable legislative or administrative standards for conducting a routine, periodic or area inspection are satisfied with respect to the premises of a business or multifamily complex;
 - b. There is a reasonable basis for believing that a condition of nonconformity with Section 17.102.270 exists with respect to the designated property; or,
 - c. An inspection is reasonably believed to be necessary in order to discover or verify the condition of the property for conformity with any of the requirements of Section 17.102.270 or any regulations promulgated pursuant thereto.

E. Procedure for Issuance of Inspection Warrant.

1. Examination. Before issuing an inspection warrant, the judge may examine under oath the applicant and any other witness and shall be satisfied of the existence of grounds for granting such application.
2. Issuance. If the judge is satisfied that cause for the inspection exists and that the other requirements for granting the application are satisfied, the judge shall issue an inspection warrant, particularly describing the person or persons authorized to execute the inspection warrant, the property to be entered and the purpose of the inspection. The inspection warrant shall contain a direction that it be executed on any business day between the hours of 9:00 a.m. and 5:00 p.m., or where the judge has specially determined upon a showing that it cannot be effectively executed between those hours, that it be executed at any additional or other time of the day or night.
3. Police Assistance. In issuing an inspection warrant, the judge may authorize any peace officer, as defined in Oregon Revised Statutes, to enter the described property to assist the person authorized to execute the inspection warrant in any way necessary to complete the inspection.

F. Execution of Inspection Warrants

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1. In executing an inspection warrant, the person authorized to execute the warrant shall, before entry into any occupied premises of a business or multifamily complex, make a reasonable effort to present the person's credentials, authority and purpose to an occupant or person in possession of the premises of the business or the multifamily complex designated in the inspection warrant and show the occupant or person in possession of the property the warrant or a copy thereof upon request. The person authorized to execute the warrant shall leave a copy of the inspection warrant at the premises.
2. Return. The inspection warrant must be executed within 10 working days of its issue. The return of warrant must be submitted to the judge by whom it was issued within 10 working days from its date of execution. After the expiration of the time prescribed by this subsection, the inspection warrant shall be void unless it has been timely executed.

17.102.290 Storing Solid Waste, Recycling or Compostable Containers in the Right of Way Prohibited.

(Amended by Ordinance Nos. 182671 and 184288, effective January 7, 2011.)

- A. No person may store, or cause to be stored, containers of solid waste, recycling or compostables in public right-of-way without a permit from the City Engineer, the City Traffic Engineer, or the Bureau of Planning and Sustainability. For the purposes of this Section, storage means leaving containers in the right of way for more than 2 hours either before or after collection during normal business hours. If collection occurs after normal business hours, containers may be placed in the right of way at the close of business but must be removed from the right of way by the start of the following business day or within 24 hours of set out, whichever occurs first.
- B. The Director may provide exemptions from Subsection A. for extreme economic hardship. Criteria for eligibility shall be based upon such factors as financial hardship for the property or business owner, conditions related to the property and resources necessary to provide adequate on-site, interior storage space for garbage and recycling containers. Exempted property shall be subject to the requirements of this Section following the termination of the hardship exemption. Exemptions shall be for no more than two years. Exemptions may be renewed upon reapplication by the property owner or business owner, after a re-evaluation of eligibility by the Director. Exemptions shall be personal to the property or business owner, and shall not be assignable, transferable or otherwise be conveyable. Exempted property shall be subject to the requirements of Subsection A. following expiration of any hardship exemption granted by the Director.
- C. The Director shall develop administrative rules and procedures for determining extreme economic hardships under Subsection B., using the process under Section 17.102.030. The Director shall also adopt standards for space requirements for

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storage of containers of solid waste, recycling or compostables in new construction and when major alterations are made to existing buildings.

- D.** The Bureau of Planning and Sustainability may charge fees to business and property owners who apply for an extreme economic hardship exemption to recover costs of administering the exemption program. All fees are stated in the Fee Schedule adopted by City Council. Fees will be updated on an as needed basis. The approved Fee Schedule is available through the Bureau of Planning and Sustainability.
- E.** Denial of a request for exemption for extreme economic hardship may be appealed to the Code Hearings Officer in accordance with procedures set for in Chapter 22.10.
 - 1.** Any person requesting an appeal to the Code Hearings Office may be assessed a fee of up to \$500 at the time of their application. Failure to submit full payment of appeal fee within the time allowed to request an appeal hearing shall result in the denial of the request for an appeal hearing.
 - 2.** If the Code Hearings Officer decides in favor of the appellant at the Code Hearing, the submitted appeal fee shall be refunded in full to the appellant.

17.102.295 Separation of Recyclables, Compost and Solid Waste.

(Added by Ordinance No. 185452, effective July 21, 2012.) It shall be a violation of Chapter 17.102 for any customer to:

- A.** Place in a recycling cart, recycling container or recycling bin any plastic bag, diapers, pet waste, Styrofoam, wood, food, yard debris, or any Solid Waste; or,
- B.** Place in a compost cart or compost container any plastic bag, diapers, pet waste, Styrofoam, or any Solid Waste.

17.102.300 Definitions for Ban of Polystyrene Foam Food Containers (PSF).

As used in Sections 17.102.300 through 17.102.340, the following terms have the following meanings:

- A.** “**Biodegradable**” means material capable of being broken down by micro-organisms into simple substances or basic elements.
- B.** “**Chlorofluorocarbons**” are the family of substances containing carbon, fluorine and chlorine.
- C.** “**Customer**” means any person obtaining food or beverages from a restaurant or retail food vendor.
- D.** “**Food vendor**” means any restaurant or retail food vendor.

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- E.** “**Food packager**” means any person, located within the City of Portland, who places meat, eggs, bakery products, or other food in packaging materials for the purpose of retail sale of those products.
- F.** “**Non profit food provider**” means a recognized tax exempt organization which provides food as a part of its services.
- G.** “**Prepared food**” means food or beverages which are served on the vendor's premises without preparation, or are prepared on the vendor's premises by cooking, chopping, slicing, mixing, brewing, freezing or squeezing. Prepared food does not include any raw uncooked meat or eggs. Prepared food may be eaten either on or off the premises.
- H.** “**Person**” means any natural person, firm, corporation, partnership, or other organization or group however organized.
- I.** “**PSF**” means any material composed of polystyrene and having a closed cell air capacity of 25 percent or greater, or a density of less than 0.787 grams per cubic centimeter based on an average polystyrene density of 1.05 grams per cubic centimeter, as determined by an analytical testing laboratory.
- J.** “**Recycled**” describes a type of material that is separated from the solid waste stream and utilized as a raw material in the manufacture of a new product or new economic use.
- K.** “**Restaurant**” means any establishment located within the City of Portland, selling prepared food to be eaten by customers. Restaurant includes a sidewalk food vendor.
- L.** “**Retail Food Vendor**” or “**Vendor**” means any store, shop, sales outlet or other establishment, including a grocery store or a delicatessen, located within the City of Portland, which provides prepared food.
- M.** “**Reuse**” means the process by which a product is reclaimed or reprocessed into another useful product.

17.102.310 Prohibition on Certain PSF Uses.

- A.** On and after March 1, 1989, no restaurant, retail food vendor or non profit food provider shall serve food and after June 30, 1989 no packager shall package meat, eggs, bakery products or other food in polystyrene foam (PSF) containers, manufactured with chlorofluorocarbons (CFCs) which do not reduce the potential for ozone depletion by more than 95 percent, compared to the ozone depletion potential of CFC 12 (dichlorodifluorothane). Compounds banned include: CFC 11, CFC 12, CFC 113, CFC 114, CFC 115, Halon 1211, Halon 13 1 and Halon2402. Food vendors may be required to furnish a written statement from the manufacturer or supplier of polystyrene foam products used by that food vendor,

indicating that the chemical compounds used in the manufacture of the vendor's polystyrene foam products meet the provisions of this code.

- B.** On and after January, 1990, no restaurant or retail food vendor shall serve prepared food in any polystyrene foam (PSF) products.

17.102.320 Exemptions for PSF Use.

The City Council, or its appointee, may exempt a food vendor, food packager or non profit food provider from the requirements of this Code for a one year period, upon showing by the applicant that the conditions of this Code would cause undue hardship. The phrase undue hardship, shall be construed to include, but not be limited to:

- A.** Situations where there are no acceptable alternatives to PSF packaging for reasons which are unique to the vendor or provider;
- B.** Situations where compliance with the requirements of this Code would deprive a person of a legally protected right. If a request for exemption is based upon a claim that a legally protected right would be denied if compliance were required and such request for exemption is denied, review of the denial shall only be by writ of review as provided for in ORS 34.010 to 34.102 and not otherwise.

17.102.330 Enforcement and Notice of Violations for PSF Ban.

(Amended by Ordinance No. 184288, effective January 7, 2011.)

- A.** The Director upon determination that a violation of this code or regulations duly adopted pursuant to this code has occurred, shall issue a written notice of the violation by certified mail to the food vendor or food packager which will specify the violation and appropriate penalty.
- B.** The food vendor or food packager shall, upon receipt of a notice of violation, pay to the City the stated penalty or appeal the finding of a violation to the Code Hearings Officer in accordance with the procedures set forth in Chapter 22.10.
 - 1.** Any person requesting an appeal to the Code Hearings Office may be assessed a fee of up to \$500 at the time of their application. Failure to submit full payment of appeal fee within the time allowed to request an appeal hearing shall result in the denial of the request for an appeal hearing.
 - 2.** If the Code Hearings Officer decides in favor of the appellant at the Code Hearing, the submitted appeal fee shall be refunded in full to the appellant.

17.102.340 Fines for PSF Ban.

Violations of this ordinance shall be punishable by fines as follows:

- A.** A fine not exceeding \$250 for the first violation in a one year period;

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- B.** A fine not exceeding \$500 for the second and each subsequent violation in a one year period.

**CHAPTER 17.103 - SINGLE-USE PLASTIC
CHECKOUT BAGS**

(Chapter replaced by Ordinance No. 185737,
effective March 1, 2013.)

Sections:

- 17.103.010 Purpose.
- 17.103.020 Definitions.
- 17.103.030 Authority of Director to Adopt Rules.
- 17.103.040 Checkout Bag Regulation.
- 17.103.050 Enforcement and Penalties.
- 17.103.060 Severability.

17.103.010 Purpose.

The purpose of this Chapter is to regulate the distribution of plastic bags at retail and food establishments. The distribution of plastic bags has significant, on-going harmful impacts upon the environment, including

- A. Plastic bags are a major source of litter.
- B. When littered, the material is detrimental to wildlife that ingests it.
- C. The materials used in plastic bags are persistent in the environment.

17.103.020 Definitions.

For purposes of Chapter 17.103, and any rules adopted thereunder, the following terms shall have the meanings specified in this Section.

- A. **“Director”** means the Director of the Bureau of Planning and Sustainability, or his or her authorized representative, designee or agent.
- B. **“Food provider”** means any person in the City that provides prepared food for public consumption on or off its premises and includes, without limitation, any retail establishment, shop, sales outlet, restaurant, grocery store, delicatessen, or catering truck or vehicle.
- C. **“Grocery store”** means any business in the City with gross annual receipts of \$2,000,000 or greater, offering for sale items of food and perishable items as well as other household goods and supplies.
- D. **“Recycled paper bag”** means a paper checkout bag provided by a retail establishment or food provider to customers, meeting the following requirements:
 - 1. Contains a minimum of 40 percent recycled content; and,

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2. Is accepted for recycling in the City of Portland recycling program regulations under Chapter 17.102 of the City Code.
- E. “Reusable bag”** means a bag with handles that is specifically designed and manufactured for long-term multiple reuse and is
1. Made of cloth or other machine washable fabric; or
 2. Made of durable plastic that is at least 4.0 mils thick.
- F. “Retail establishment”** means any sole proprietorship, partnership, limited partnership, family limited partnership, joint venture, association, cooperative, trust, estate, corporation, personal holding company, limited liability company, limited liability partnership or any other form of organization located within the City that sells or offers for sale goods to a customer.
- G. “Single-use plastic checkout bag”** means a plastic bag that is provided by a retail establishment or food provider to a customer and is not a reusable bag. A single-use checkout bag does not include either of the following:
1. A bag provided by a pharmacist to contain prescription medication purchased by customers of the pharmacy;
 2. A non-handled bag used to protect a purchased item from damaging or contaminating other purchased items when placed in a recycled paper bag or reusable bag; or,
 3. A plastic cover designed and used for protecting garments on a hanger.

17.103.030 Authority of Director to Adopt Rules.

- A.** The Director is hereby authorized to administer and enforce the provisions of this Chapter.
- B.** The Director is authorized to adopt rules, procedures, and forms to implement the provisions of this Chapter.
1. Any rule adopted pursuant to this Section shall require a public review process. Not less than 10 nor more than 30 days before such public review process, notice shall be given by publication in a newspaper of general circulation. Such notice shall include the place, time, and purpose of the public review process and the location at which copies of the full set of the proposed rules may be obtained.
 2. During the public review, the Director shall hear testimony or receive written comment concerning the proposed rules. The Director shall review the recommendations; taking into consideration the comments received

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during the public review process, and shall either adopt the proposed rules, modify or reject them. If a substantial modification is made, the Director shall conduct additional public review, but no additional notice shall be required if such additional review is announced at the meeting at which the modification is made. Unless otherwise stated, all rules shall be effective upon adoption by the Director and shall be filed in the Office of the Director and with the City Auditor's Portland Policy Documents repository.

3. Notwithstanding paragraphs 2 and 3 of this Section, an interim rule may be adopted by the Director without prior notice upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties, including the specific reasons for such prejudice. Any rule adopted pursuant to this paragraph shall be effective for a period of not longer than one year (365 days). Within 5 business days of the adoption of an interim rule, the Director shall send notice of the rule to all the following, giving the language of the rule change, describing the purpose of the rule, and inviting the submission of comments.
 - a. Neighborhood associations recognized by the City Office of Neighborhood Involvement,
 - b. District Coalitions recognized by the City Office of Neighborhood Involvement,
 - c. Business District Associations identified by the City Office of Neighborhood Involvement; and,
 - d. Persons on the Bureau of Planning and Sustainability list of parties interested in administrative rules.

17.103.040 Checkout Bag Regulation.

- A. As of March 1, 2013, the following shall provide only recycled paper bags or reusable bags as checkout bags to customers:
 1. Grocery stores; or,
 2. Retail establishments or food providers with greater than 10,000 square feet in specific store size.
- B. As of October 1, 2013, all retail establishments and food providers shall provide only recycled paper bags or reusable bags as checkout bags to customers.
- C. Violators of the requirements of Subsection 17.103.040 A. shall be subject to penalties as set forth in Section 17.103.050.

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17.103.050 Enforcement and Penalties.

- A.** Any retail establishment or food provider that violates this Chapter shall be subject to:
- 1.** Upon the first violation, the Director shall issue a written warning notice to the retail establishment or food provider that a violation has occurred.
 - 2.** Upon subsequent violations, the following penalties shall apply:
 - a.** \$100 for the first violation after the written warning in a calendar year;
 - b.** \$200 for the second violation in the same calendar year; and,
 - c.** \$500 for any subsequent violation within the same calendar year.
 - 3.** No more than one penalty shall be imposed upon any single location of retail establishment or food provider within a 7-day period.
- B.** Upon making a determination that a violation of this code or regulations duly adopted pursuant to this Chapter 17.103 has occurred, the Director will send a written notice of the violation by mail to the retail establishment or restaurant specifying the violation and the applicable penalty as set forth in Subsection A.
- C.** Any store receiving a notice of violation must pay to the City the stated penalty or appeal the finding of a violation to the Code Hearings Officer in accordance with the procedures set forth in Section 22.10.030.

17.103.060 Severability.

If any Section, Subsection, sentence, clause, or phrase of this Chapter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Chapter. The Council declares that it would have passed this Chapter, and each Section, Subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more Sections, Subsections, sentences, clauses, or phrases may be declared invalid or unconstitutional, and, if for any reason this Chapter should be declared invalid or unconstitutional, then the remaining Section, Subsection, sentence, clause or phrases shall be in full force and effect.

**CHAPTER 17.104 - COMMERCIAL
BUILDING ENERGY PERFORMANCE
REPORTING**

(Chapter added by Ordinance No. 187095, effective
May 22, 2015.)

Sections:

- 17.104.010 Purpose.
- 17.104.020 Definitions.
- 17.104.030 Authority of Director to Adopt Rules.
- 17.104.040 Energy Performance Tracking and Reporting for Covered Buildings.
- 17.104.050 Energy Performance Reporting Schedule.
- 17.104.060 Transparency of Energy Performance Information.
- 17.104.070 Notification and Posting.
- 17.104.080 Utility Data Access.
- 17.104.090 Building Data Access.
- 17.104.100 Enforcement and Penalties.
- 17.104.110 Right of Appeal and Payment of Assessments.
- 17.104.120 Annual Review of Reported Information.

17.104.010 Purpose.

The purpose of this Chapter is to provide information about building energy performance and motivate investment in efficiency improvements that save energy and reduce carbon emissions. This Chapter shall be known as the Commercial Building Energy Performance Program.

17.104.020 Definitions.

For purposes of this Chapter, and administrative rules adopted under this Chapter, the following words and phrases shall be construed as defined in this Section.

- A. “Covered building”** means any commercial building containing a gross floor area of at least 20,000 square feet and predominantly used for office, retail, grocery, health care, higher education and hotel purposes. “Covered building” does not include buildings predominantly used for housing, industrial, nursing home, parking, primary and secondary education, residential, warehouse and worship purposes.
- B. “Director”** means the Director of the Bureau of Planning and Sustainability or his or her authorized representative, designee or agent.
- C. “Energy”** means electricity, natural gas, steam, heating oil, or other product sold for use in a building, or renewable on-site electricity generation, for purposes of providing heating, cooling, lighting, water heating, or for powering or fueling other end-uses in the building and related facilities.

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- D.** “**ENERGY STAR**” score means the 1 to 100 numeric rating generated by the ENERGY STAR Portfolio Manager tool that compares the relative energy usage of the building to that of similar buildings, where available.
- E.** “**Energy performance information**” means information related to a building’s energy consumption as generated by the ENERGY STAR Portfolio Manager tool, and descriptive information about the physical building and its operational characteristics.
- F.** “**ENERGY STAR Portfolio Manager**” means a software program developed for evaluating and managing building energy data, used for creating an ENERGY STAR score.
- G.** “**Energy use intensity (EUI)**” means a numerical value calculated by the ENERGY STAR Portfolio Manager that represents the annual site energy consumed by a building relative to its gross floor area, reported as thousand British thermal units per square foot (kBtu/sf).
- H.** “**Gross floor area**” means the total number of enclosed square feet measured between the principal exterior surfaces of the fixed walls of a building.
- I.** “**Owner**” means any of the following:
 - 1.** Any individual or entity possessing title to a property with one or more covered buildings;
 - 2.** The net lessee in the case of a building or property subject to a triple net lease;
 - 3.** The association of unit owners responsible for overall management in the case of a condominium; or
 - 4.** Any agent designated to act on behalf of a building or property owner.
- J.** “**Shared Utility Services**” means energy-related services such as electricity, natural gas, chilled water, heated water or steam serving two or more buildings from a centralized system or a single utility billing meter.
- K.** “**Tenant**” means a person or entity occupying or holding possession of any part of a building or premises pursuant to a rental or condominium agreement.
- L.** “**Utility**” means an entity that distributes and sells natural gas, electric, or thermal energy services to covered buildings.

17.104.030 Authority of Director to Adopt Rules.

- A.** The Director is hereby authorized to administer and enforce provisions of this Chapter.
- B.** The Director is authorized to adopt rules, procedures, and forms to implement the provisions of this Chapter.
 - 1.** Any rule adopted pursuant to this Section shall require a public review process. Not less than 10 nor more than 30 days before such public review process, notice shall be given by publication in a newspaper of general circulation. Such notice shall include the place, time and purpose of the public review process and the location at which copies of the full set of the proposed rules may be obtained.
 - 2.** During the public review, the Director shall hear testimony or receive written comment concerning the proposed rules. The Director shall review the recommendations; taking into consideration the comments received during the public review process, and shall either adopt the proposed rules, modify or reject them. Unless otherwise stated, all rules shall be effective upon adoption by the Director and shall be filed in the Office of the Director and with the City Auditor's Portland Policy Documents repository.

17.104.040 Energy Performance Tracking and Reporting for Covered Buildings.

- A.** No later than April 22nd of each year, the owner of a covered building shall accurately report energy performance information of such building to the Director for the previous calendar year using ENERGY STAR Portfolio Manager. At a minimum, the energy performance information shall include:
 - 1.** Building address;
 - 2.** Year of construction;
 - 3.** Primary use type and additional use types;
 - 4.** Gross floor area as defined by ENERGY STAR Portfolio Manager's glossary;
 - 5.** ENERGY STAR score, where available;
 - 6.** Site energy use intensity (Site EUI);
 - 7.** Source energy use intensity (Source EUI);
 - 8.** Weather-normalized Site EUI;

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9. Weather-normalized Source EUI; and
 10. Total annual greenhouse gas emissions.
- B.** Optional energy performance information may be reported annually by the owner of a covered building to the Director, including but not limited to:
1. Contextual information related to energy use in the building; and
 2. Verification of energy performance information in this section by a professional engineer or a registered architect licensed in the State of Oregon, or another trained energy professional as prescribed by rule.
- C.** The owner of a covered building shall retain all information tracked and entered into the ENERGY STAR Portfolio Manager for at least three years beyond the date on which reporting was required, and make all energy performance information available for inspection and audit by the Director during normal business hours, following reasonable notice by the Director.
- D.** For campus portfolios where two or more covered buildings are served by shared utility services and predominantly used for health care, research or higher education purposes, the owner may opt to report a campus-wide gross floor area, Site EUI and total annual greenhouse gas emissions using the ENERGY STAR Portfolio Manager.

17.104.050 Energy Performance Reporting Schedule.

- A.** The reports required by Section 17.104.030 shall occur according to the following schedule:
1. For every covered building containing a gross floor area of at least 50,000 square feet, the report shall be submitted no later than April 22, 2016, and no later than every April 22nd thereafter.
 2. For every covered building containing a gross floor area of at least 20,000 square feet but less than 50,000 square feet, the first report shall be submitted no later than April 22, 2017, and not later than every April 22nd thereafter.
- B.** The Director may extend the reporting submission date.

17.104.060 Transparency of Energy Performance Information.

- A.** The Director shall make city-wide summary statistics available to the public for the previous calendar year no later than October 1, 2016, and each October 1 thereafter.

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- B.** For every covered building containing a gross floor area of at least 50,000 square feet, the Director shall make the compliance status and energy performance information of such covered buildings available to the public for the previous calendar year no later than October 1, 2017, and each October 1 thereafter.
- C.** For every covered building containing a gross floor area of at least 20,000 square feet but less than 50,000 square feet, the Director shall make the compliance status and energy performance information of such covered buildings available to the public for the previous calendar year no later than October 1, 2018, and each October 1 thereafter.

17.104.070 Notification and Posting.

- A.** Between September 1 and December 31 of each year, the Director shall notify owners of their obligation to report energy performance information for that calendar year, provided that the failure of the Director to notify any such owner shall not affect the obligation of such owner to report.
- B.** The Director may exempt a building owner from the requirements of Sections 17.104.040 and 17.104.050 if the building owner submits documentation establishing any of the following:
 - 1.** The covered building or areas of the building subject to the requirements of this section have been fully unoccupied during the entire calendar year for which reporting is required;
 - 2.** The building is a new construction and the building's certificate of occupancy was issued during the calendar year for which reporting is required;
 - 3.** A demolition permit has been issued for the building during the calendar year for which reporting is required;
 - 4.** Due to a special circumstance unique to the building, compliance would cause undue hardship.

17.104.080 Utility Data Access.

- A.** The owner of a covered building shall obtain data from each utility providing energy service to such building, subject to the governing state and/or federal data privacy laws to which the utility is subject at the time of the owner's request.
- B.** On and after January 1, 2016, and every year thereafter, upon the written or electronic request of an owner, each utility shall provide the building owner with access to the monthly energy consumption data for all utility meters identified by the owner. The data provided by the utility to the building owner will be aggregated by the utility and shall not contain personally identifying information or any

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customer-specific billing data. The utility shall provide access to such aggregated utility data within 45 days of the building owner's request. Utilities providing energy service to a covered building shall maintain energy consumption data for meters serving each building for at least the most recent calendar year.

1. Where a unit or other space is occupied by a tenant and separately metered by a utility, the utility may require the owner to submit a written or electronic request identifying such meters and follow the consent requirements of such utility.

17.104.090 Building Data Access.

- A. Where a unit or other space is occupied by a tenant and separately metered by a utility, the owner may request tenant data relating to energy use, use of space, operating hours, and other information required for ENERGY STAR Portfolio Manager reporting.
 1. Within 30 days of a request by the owner, each tenant located in a covered building shall provide all data that cannot otherwise be acquired by the owner and that is needed by the owner to comply with the requirements of this section including consent to access utility data as described in Section 17.104.080. If such tenant is not in compliance, the building owner may provide a written or electronic request to the Director for an extension to the reporting schedule in Section 17.104.050.
 2. When the owner of a covered building receives notice that a tenant intends to vacate a space in such building, the owner shall request information relating to such tenant's energy use for any period of occupancy relevant to the owner's obligation to meet the reporting requirements in Sections 17.104.040 and 17.104.050.
 3. When a covered building changes ownership, the previous owner must provide the new owner all information for the months of the calendar year during the time the previous owner was still in possession of the property.

17.104.100 Enforcement and Penalties.

It shall be a violation of this Chapter for any entity or person to fail to comply with the requirements of this section or to misrepresent any material fact in a document required to be prepared or disclosed by this Chapter.

- A. Any building owner, tenant, utility or person who fails, omits, neglects, or refuses to comply with the provisions of this Chapter shall be subject to:
 1. Upon the first violation, the Director may issue a written warning notice to the entity or person, describing the violation.

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2. Upon any subsequent violation, the Director may assess a civil penalty of up to \$500 for every 90 day period during which the violation continues.

17.104.110 Right of Appeal and Payment of Assessments.

After being issued a written warning notice of a first violation, any person receiving a subsequent notice of violation shall, within ten days of issuance of the notice, either pay to the City the stated amount of the assessment or request an appeal hearing by the Code Hearings Officer in accordance with procedures set forth in Chapter 22.10 of the City Code. The filing of an appeal request shall stay the effective date of the assessment until the appeal is determined by the Code Hearings Officer. If, pursuant to said appeal hearing, payment of the assessment is ordered, such payment must be received by the Director or postmarked within 15 calendar days after the order becomes final.

17.104.120 Annual Review of Reported Information.

The Director may arrange for annual reviews of verifying the energy performance information submitted to the City. The Director or a duly authorized agent may examine the records of the building owner regarding the energy performance data to verify the accuracy of the information submitted to the City. The Director shall provide prior written notice to the building owner at least 30 days prior to examining the energy performance data. The building owner shall provide the Director with access to the requested records within the Portland metropolitan region, during normal business hours. Any failure by the building owner to comply with the City's efforts to verifying the energy performance information shall constitute a violation of this Chapter.

**CHAPTER 17.105 - MOTOR VEHICLE FUEL
TAX**

(Chapter added by Resolution 37185 (approved at
May 17, 2016 election); effective May 17, 2016.)

Sections:

- 17.105.010 Tax Imposed.
- 17.105.015 Temporary Tax of 4 Years.
- 17.105.020 Use of Tax Revenues.
- 17.105.025 Definitions.
- 17.105.030 License Requirements.
- 17.105.035 License Applications and Issuance.
- 17.105.040 Failure to Secure License.
- 17.105.045 Amount and Payment of Tax.
- 17.105.050 Revocation of License.
- 17.105.055 Cancellation of License.
- 17.105.060 Remedies Cumulative.
- 17.105.065 Billing Purchasers.
- 17.105.070 Failure to Provide Invoice or Delivery Tag.
- 17.105.075 Transporting Motor Vehicle Fuel in Bulk.
- 17.105.080 Exemption of Weight Receipt Holders.
- 17.105.085 Exemption of Export Fuel.
- 17.105.090 Exemption of Motor Vehicle Fuel Sold or Distributed to Dealers.
- 17.105.095 Payment of Tax and Delinquency.
- 17.105.100 Monthly Statement of Dealer or Seller.
- 17.105.105 Failure to File Monthly Statement.
- 17.105.106 Refunds.
- 17.105.110 Examinations and Investigations.
- 17.105.115 Limitation on Credit for or Refund of Overpayment and on Assessment of Additional Tax.
- 17.105.120 Examining Books and Accounts of Carriers of Motor Vehicle Fuel.
- 17.105.125 Records to be Kept by Dealer and Seller.
- 17.105.130 Records to be Kept 3 Years.
- 17.105.135 Citizen Oversight Committee; Annual Audits.
- 17.105.140 Tax Effective If Passed.
- 17.105.145 Administrative Rules.

17.105.010 Tax Imposed.

A Motor Vehicle Fuel Tax is hereby imposed on every Dealer or Seller. The tax imposed shall be paid monthly to the City. The Tax Administrator is authorized to exercise all supervisory and administrative powers with regard to the enforcement, collection and administration of the Motor Vehicle Fuel Tax, including all powers specified in ORS 319.010 to 319.430, and ORS 310.510 to 310.990.

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17.105.015 Temporary Tax of 4 Years.

This Chapter will be in full force and effect upon enactment. The Motor Vehicle Fuel Tax established in Section 17.105.045 shall be imposed beginning on the tax implementation date established by the Tax Administrator and shall sunset 4 years after the tax implementation date. The tax implementation date shall not be earlier than September 1, 2016. The Tax Administrator is authorized to collect amounts receivable under this Chapter for taxes and penalties accrued prior to the termination of the Motor Vehicle Fuel Tax.

17.105.020 Use of Tax Revenues.

- A.** For the purpose of this Section, Motor Vehicles Fuel Tax net revenues means the revenue from the tax and penalties imposed by this Chapter remaining after interest, collection, administrative, other costs, refunds, and credits are deducted from Motor Vehicle Fuel Tax revenues.
- B.** The City shall use Motor Vehicles Fuel Tax net revenues only for construction, reconstruction, improvement, repair, maintenance, operation and use of public Highways, roads and streets as described in the Oregon Constitution, Article IX, Section 3a.
- C.** The type of projects to be completed will be those approved and undertaken out of the Street Repair and Traffic Safety Program, and will include but not be limited to projects in the following categories:
 - 1.** Street Repair
 - 2.** Safe Routes to Schools
 - 3.** Sidewalk Completion
 - 4.** High Crash Corridor Safety Improvements
 - 5.** Reducing Bicycle/Car conflicts
 - 6.** Intersection Safety Improvements

17.105.025 Definitions.

As used in this Chapter, unless the context requires otherwise, the following words and phrases shall mean:

- A.** City means the City of Portland.
- B.** Dealer means any Person who:
 - 1.** Imports or causes to be imported Motor Vehicle Fuel for sale, use or Distribution in the city, but Dealer does not include any Person who imports

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into the city Motor Vehicle Fuel in quantities of 500 gallons or less purchased from a supplier who is licensed as a Dealer hereunder if that Dealer assumes liability for the payment of the applicable Motor Vehicle Fuel Tax to the City and Dealer does not include terminal storage facilities; or

2. Produces, refines, manufactures or compounds Motor Vehicle Fuel in the city for use, Distribution or sale in the city; or
 3. Acquires in the city for sale, use or Distribution in the city Motor Vehicle Fuel with respect to which there has been no Motor Vehicle Fuel Tax previously incurred.
- C.** Distribution. In addition to its ordinary meaning, the delivery of Motor Vehicle Fuel by a Dealer or Seller to any Service Station or into any tank, storage facility or series of tanks or storage facilities connected by pipelines, from which Motor Vehicle Fuel is withdrawn directly for sale or for delivery into the fuel tanks of Motor Vehicles whether or not the Service Station, tank or storage facility is owned, operated or controlled by the Dealer or Seller.
- D.** Highway means every way, thoroughfare and place of whatever nature, open for use of the public for the purpose of vehicular travel.
- E.** Motor Vehicle means all vehicles, engines or machines, movable or immovable, operated or propelled by the use of Motor Vehicle Fuel.
- F.** Motor Vehicle Fuel includes gasoline, diesel, mogas, methanol and any other flammable or combustible gas or liquid, by whatever name such gasoline, diesel, mogas, methanol, gas or liquid is known or sold, usable as fuel for the operation of Motor Vehicles, except gas, diesel, mogas, methanol or liquid, the chief use of which, as determined by the Tax Administrator, is for purposes other than the propulsion of Motor Vehicles upon the Highways.
- G.** Person means any natural Person, association, firm, partnership, corporation, joint venture or other business entity.
- H.** Seller means
1. A person that sells Motor Vehicle Fuel to a user of vehicles; or
 2. If the Motor Vehicle Fuel is dispensed at a non-retail facility, the person that owns the users accounts and bills the users for Motor Vehicle Fuel purchased at a non-retail facility.
- I.** Service Station means any place operated for the purpose of retailing and delivering Motor Vehicle Fuel into the fuel tanks of Motor Vehicles.

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- J.** Street Repair and Traffic Safety Program means the City of Portland program in the Transportation Operating Fund where Motor Vehicle Fuel Tax net revenue pursuant to this chapter is deposited and street repair and traffic safety expenditures are recorded.
- K.** Terminal Storage Facility means any fuel storage facility that has marine or pipeline access.
- L.** Tax Administrator means the City Council, the City Council's designees, or any Person or entity with whom the City Council contracts to implement the Motor Vehicle Fuel Tax program or a portion thereof.
- M.** Weight Receipt means a receipt issued by the Oregon Department of Transportation, stating the combined weight of each self-propelled or motor-driven vehicle.

17.105.030 License Requirements.

No Dealer or Seller shall sell, use, or distribute any Motor Vehicle Fuel until he/she has secured a Dealer's or Seller's license as required herein.

17.105.035 License Applications and Issuance.

- A.** Every Person, who is a Dealer or Seller of Motor Vehicle Fuel in the City of Portland, shall make application to the Tax Administrator for a license authorizing such Person to engage in business as a Dealer or Seller in the City of Portland.
- B.** Applications for the license shall be made on forms prescribed by the Tax Administrator.
- C.** Applications shall include, among other items as may be required by the Tax Administrator:
 - 1.** The business name under which the applicant transacts business.
 - 2.** The address of applicant's principal place of business and location of distributing stations in and within three miles of the city.
 - 3.** The name and address of the managing agent, the names and addresses of the several Persons constituting the firm or partnership or, if a corporation, the name under which the corporation is authorized to transact business and the names and addresses of its principal officers and registered agent, as well as primary transport carrier.
- D.** If an application for a Motor Vehicle Fuel Dealer's license or Seller's license is complete and accepted for filing, the Tax Administrator shall issue to the Dealer or Seller a license in such form as the Tax Administrator may prescribe to transact

business in the city. A license issued hereunder is not assignable, and is valid only for the Dealer or Seller in whose name it is issued.

- E.** The Tax Administrator shall retain all completed applications together with a record of all licensed Dealers and Sellers.

17.105.040 Failure to Secure License.

- A.** If a Dealer or Seller sells, distributes, or uses any Motor Vehicle Fuel without first filing the application and obtaining the license required by Section 17.105.035, the Motor Vehicle Fuel Tax on all Motor Vehicle Fuel sold, distributed or used by that Dealer or Seller shall be immediately due and payable.
- B.** The Tax Administrator shall determine, from as many available sources as the Tax Administrator determines reasonable, the amount of tax due, shall assess the Dealer or Seller for the tax due together with a penalty of 100 percent of the tax. In any suit or proceeding to collect the tax or penalty or both, the assessment shall be prima facie evidence that the Dealer or Seller therein named is indebted to the City in the amount of the tax and penalty stated.
- C.** Any tax or penalty assessed pursuant to this Section may be collected in the manner prescribed in Section 17.105.095 with reference to delinquency in payment of the fee or by an action at law.
- D.** In the event any suit or action is instituted to enforce this Section, if the City is the prevailing party, the City shall be entitled to recover from the Person sued reasonable attorney's fees at trial or upon appeal of such suit or action, in addition to all other sums provided by law.

17.105.045 Amount and Payment of Tax.

In addition to any fees or taxes otherwise provided for by law, every Dealer or Seller engaging in the city in the sale, use or Distribution of Motor Vehicle Fuel shall:

- A.** Not later than the 25th day of each calendar month, submit a report to the Tax Administrator on forms prescribed by the Tax Administrator of all Motor Vehicle Fuel sold, used or distributed by him/her in the city as well as all such fuel sold, used or distributed in the city by a purchaser thereof upon which sale, use or Distribution the Dealer or Seller has assumed liability for the applicable Motor Vehicle Fuel Tax during the preceding calendar month.
- B.** Pay a Motor Vehicle Fuel Tax computed on the basis of 10 cents per gallon of such Motor Vehicle Fuel so sold, used or distributed as shown by such statement in the manner and within the time provided in this Code or Administrative Rules promulgated in accordance with this Chapter.

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17.105.050 Revocation of License.

- A.** The Tax Administrator may revoke the license of any Dealer or Seller who fails to comply with any provision of this Chapter. The Tax Administrator shall mail, by certified mail addressed to the Dealer or Seller at his/her last known address appearing in the files of the Tax Administrator, a notice of intent to revoke. The notice of revocation shall provide the reason(s) for revocation which include, but are not limited to, failure to register for a license, failure to remit the tax, failure to file required reports or any information as required by the Tax Administrator, or failure to pay any penalty or interest assessments.
- B.** A Dealer or Seller has the right to protest a notice of revocation to the Tax Administrator in writing within 14 days. The Tax Administrator must forward the appeal, including the reasons for the determination, to the Business License Appeals Board within 30 days. The Tax Administrator may prescribe by Administrative Rule procedures for the protest and appeal of license revocations. The license revocation shall become effective when the local protest and appeal process provided in Administrative Rules is completed and a final decision has been issued.

17.105.055 Cancellation of License.

- A.** The Tax Administrator may, upon written request of a Dealer or Seller, cancel a license issued to that Dealer or Seller. The Tax Administrator shall, upon approving the Dealer's or Seller's request for cancellation, set a date not later than 30 days after receipt of the written request, after which the license shall no longer be effective.
- B.** The Tax Administrator may, after 30 days' notice has been mailed to the last known address of the Dealer or Seller, cancel the license of Dealer or Seller upon finding that the Dealer or Seller is no longer engaged in the business of a Dealer or Seller.

17.105.060 Remedies Cumulative.

Except as otherwise provided in Sections 17.105.095 and 17.105.105, the remedies provided in Sections 17.105.040, 17.105.050, and 17.105.055 are cumulative. No action taken pursuant to those sections shall relieve any Person from the penalty provisions of this Code.

17.105.065 Billing Purchasers.

Dealers in Motor Vehicle Fuel shall render bills to all purchasers of Motor Vehicle Fuel. The bills shall separately state and describe the different products sold or shipped thereunder and shall be serially numbered except where other sales invoice controls acceptable to the Tax Administrator are maintained.

17.105.070 Failure to Provide Invoice or Delivery Tag.

No Person shall receive and accept Motor Vehicle Fuel from any Dealer, or pay for the same, or sell or offer the Motor Vehicle Fuel for sale, unless the Motor Vehicle Fuel is accompanied by an invoice or delivery tag showing the date upon which Motor Vehicle Fuel was delivered, purchased or sold and the name of the Dealer in Motor Vehicle Fuel.

17.105.075 Transporting Motor Vehicle Fuel in Bulk.

Every Person operating any conveyance for the purpose of hauling, transporting or delivering Motor Vehicle Fuel in bulk shall, before entering upon the public Highways of the city with such conveyance, have and possess during the entire time of the hauling or transporting of such Motor Vehicle Fuel, an invoice, bill of sale or other written statement showing the number of gallons, the true name and address of the seller or consignor, and the true name and address of the buyer or consignee, if any, of the same. The Person hauling such Motor Vehicle Fuel shall, at the request of any officer authorized by law to inquire into or investigate such matters, produce and offer for inspection the invoice, bill of sale or other statement.

17.105.080 Exemption of Weight Receipt Holders.

Motor Vehicle Fuel sold to holders of a Weight Receipt shall not be charged the Motor Vehicle Fuel Tax.

17.105.085 Exemption of Export Fuel.

- A.** The Motor Vehicle Fuel Tax imposed by Section 17.105.010 shall not be imposed on Motor Vehicle Fuel:
 - 1.** Exported from the city by a Dealer; or
 - 2.** Sold by a Dealer for export by the purchaser to an area or areas outside the city in containers other than the fuel tank of a Motor Vehicle, but every Dealer shall be required to report such exports and sales to the city in such detail as may be required
- B.** In support of any exemption from Motor Vehicle Fuel Taxes claimed under this Section other than in the case of stock transfers or deliveries in the Dealer's own equipment, every Dealer must execute and file with the Tax Administrator an export certificate in such form as shall be prescribed, prepared and furnished by the Tax Administrator, containing a statement, made by some Person having actual knowledge of the fact of such exportation, that the Motor Vehicle Fuel has been exported from the city, and giving such details with reference to such shipment as the Tax Administrator may require. The Tax Administrator may demand of any Dealer such additional data as is deemed necessary in support of any such certificate, and failure to supply such data will constitute a waiver of all right to exemption claimed by virtue of such certificate. The Tax Administrator may, in a case where the Tax Administrator believes no useful purpose would be served by filing of an export certificate, waive the filing of the certificate. Any Motor Vehicle

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Fuel carried from the city in the fuel tank of a Motor Vehicle shall not be considered as exported from the city.

- C.** No Person shall, through false statement, trick or device, or otherwise, obtain Motor Vehicle Fuel for export as to which the Motor Vehicle Fuel Tax has not been paid and fail to export the same, or any portion thereof, or cause the Motor Vehicle Fuel or any portion thereof not to be exported, or divert or cause to be diverted the Motor Vehicle Fuel or any portion thereof to be used, distributed or sold in the city and fail to notify the Tax Administrator and the Dealer from whom the Motor Vehicle Fuel was originally purchased of his/her act.
- D.** No Dealer, or other Person shall conspire with any Person to withhold from export, or divert from export or to return Motor Vehicle Fuel to the city for sale or use so as to avoid any of the fees imposed herein.
- E.** In support of any exemption from taxes on account of sales of Motor Vehicle Fuel for export by the purchaser, the Dealer shall retain in his/her files for at least 3 years, an export certificate executed by the purchaser in such form and containing such information as is prescribed by the Tax Administrator. This certificate shall be prima facie evidence of the exportation of the Motor Vehicle Fuel to which it applies only if accepted by the Dealer in good faith.

17.105.090 Exemption of Motor Vehicle Fuel Sold or Distributed to Dealers.

- A.** Notwithstanding Section 17.105.095 of this Chapter, if the first sale, use or distribution of motor vehicle fuel is from one licensed Dealer to another licensed Dealer, the selling or distributing Dealer is not required to pay the Motor Vehicle Fuel Tax imposed in this Chapter. When the purchasing or receiving Dealer first sells, uses or distributes the fuel, that Dealer shall pay the Motor Vehicle Fuel Tax regardless of whether the sale, use or distribution is to another licensed Dealer.
- B.** A Dealer who renders monthly statements to the Tax Administrator as required by this Chapter shall show separately the number of gallons of Motor Vehicle Fuel sold or delivered to Dealers.

17.105.095 Payment of Tax and Delinquency.

- A.** The Motor Vehicle Fuel Tax imposed by this Chapter shall be paid to the Tax Administrator on or before the 25th day of each month.
- B.** Except as provided in Subsections 17.105.095 C. and E., if payment of the Motor Vehicle Fuel Tax is not paid as required by Subsection 17.105.095 A., a penalty of 1 percent of such tax shall be assessed and be immediately due and payable.
- C.** Except as provided in Subsection 17.105.095 E., if the payment of the tax and penalty, if any, is not made on or before the 1st day of the next month following that month in which payment is due, a further penalty of 10 percent of the tax shall

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be assessed. Said penalty shall be in addition to the penalty provided for in Subsection 17.105.095 B. and shall be immediately due and payable.

- D.** If the Motor Vehicle Fuel Tax imposed by this Chapter is not paid as required by Subsection 17.105.095 A., interest shall be charged at the rate of .0329 percent per day until the tax, interest and penalties have been paid in full.
- E.** Penalties imposed by this Section shall not apply if a penalty has been assessed and paid pursuant to Section 17.105.040. The Tax Administrator may for good cause shown waive any penalties assessed under this Section.
- F.** If any Person fails to pay the Motor Vehicle Fuel Tax, interest, or any penalty provided for by this Section, the Tax Administrator shall commence and prosecute in any court of competent jurisdiction an action at law to collect the amounts due. Such action may be taken on the sole authority of the Tax Administrator.
- G.** In the event any suit or action is instituted to collect the Motor Vehicle Fuel Tax, interest, or any penalty provided for by this Section, if the City is the prevailing party, the City shall be entitled to recover from the Person sued reasonable attorney's fees at trial or upon appeal of such suit or action, in addition to all other sums provided by law.

17.105.100 Monthly Statement of Dealer or Seller.

Every Dealer or Seller in Motor Vehicle Fuel shall provide to the Tax Administrator on or before the 25th day of each month, on forms prescribed, prepared and furnished by the Tax Administrator, a statement of the number of gallons of Motor Vehicle Fuel sold, distributed or used by the Dealer or Seller during the preceding calendar month. The statement shall be signed by the Dealer or Seller or the Dealer's or Seller's agent.

17.105.105 Failure to File Monthly Statement.

If a Dealer or Seller fails to file any statement required by Section, the Tax Administrator shall determine from as many available sources as the Tax Administrator determines reasonable the amount of Motor Vehicle Fuel sold, distributed or used by such Dealer or Seller for the period unreported, and such determination shall in any proceeding be prima facie evidence of the amount of fuel sold, distributed or used. The Tax Administrator shall assess the Dealer or Seller for the Motor Vehicle Fuel Tax upon the amount determined, adding a penalty of 10 percent of the tax for non-reporting. The penalty shall be cumulative to other penalties provided in this Code.

17.105.106 Refunds.

Refunds on the Motor Vehicle Fuel Tax will be made pursuant to any refund provisions of Chapter 319 of the Oregon Revised Statutes, including but not limited to ORS 319.280, 319.320, and 319.831. Claim forms for refunds may be obtained from the Tax Administrator's office.

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17.105.110 Examinations and Investigations.

The Tax Administrator, or duly authorized agents, may make any examination of accounts, records, stocks, facilities and equipment of Dealers, Sellers, Service Stations and other Persons engaged in storing, selling or distributing Motor Vehicle Fuel or other petroleum product or products within this city, and such other investigations as it considers necessary in carrying out the provisions of this Chapter. If the examinations or investigations disclose that any reports of Dealers, Sellers, or other Persons filed with the Tax Administrator pursuant to the requirements herein, have shown incorrectly the amount of gallonage of Motor Vehicle Fuel distributed or the tax accruing thereon, the Tax Administrator may make such changes in subsequent reports and payments of such Dealers, Sellers, or other Persons, or may make such refund or credit, as may be necessary to correct the errors disclosed by its examinations or investigation. The Dealer or Seller shall reimburse the City for the reasonable costs of the examination or investigation if the action discloses that the Dealer or Seller paid 95 percent or less of the tax owing for the period of the examination or investigation. In the event that such an examination or investigation results in an assessment by and an additional payment due to the City, such additional payment shall be subject to interest at the rate of .0329 percent per day from the date the original tax payment was due.

17.105.115 Limitation on Credit for or Refund of Overpayment and on Assessment of Additional Tax.

- A.** Except as otherwise provided in this Code, any credit for erroneous overpayment of tax made by a Dealer or Seller taken on a subsequent return or any claim for refund of tax erroneously overpaid filed by a Dealer or Seller must be taken or filed within 3 years after the date on which the overpayment was made to the City.
- B.** Except in the case of a fraudulent report or failure to make a report, every notice of additional tax proposed to be assessed under this Code shall be served on Dealers and Sellers within 3 years from the date upon which such additional taxes become due or were paid, whichever is later, and shall be subject to penalty as provided in Section 17.105.095.
- C.** In the case of the filing of a false or fraudulent report, a failure to file a required report, or willful refusal to remit the tax, an assessment may be made, or a proceeding for the collection of such assessment may be commenced, at any time.

17.105.120 Examining Books and Accounts of Carriers of Motor Vehicle Fuel.

The Tax Administrator or duly authorized agents of the Tax Administrator may at any time during normal business hours examine the books and accounts of any carrier of Motor Vehicle Fuel operating within the city for the purpose of enforcing the provisions of this Code.

17.105.125 Records to be Kept by Dealers and Sellers.

Every Dealer and Seller in Motor Vehicle Fuel shall keep a record in such form as may be prescribed or approved by the Tax Administrator of all purchases, receipts, sales and

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Distribution of Motor Vehicle Fuel. The records shall include copies of all invoices or bills of all such sales and shall at all times during the business hours of the day be subject to inspection by the Tax Administrator or authorized officers or agents of the Tax Administrator.

17.105.130 Records to be Kept 3 Years.

Every Dealer and Seller shall maintain and keep, for a period of 3 years and 6 months, all records of Motor Vehicle Fuel used, sold and distributed within the city by such Dealer or Seller, together with stock records, invoices, bills of lading and other pertinent papers as may be required by the Tax Administrator. In the event such records are not kept within the state of Oregon, the Dealer or Seller shall reimburse the Tax Administrator for all travel, lodging, and related expenses incurred by the Tax Administrator in examining such records. The amount of such expenses shall be assessed in addition to the tax imposed by Section 17.105.010.

17.105.135 Citizen Oversight Committee; Annual Audits.

- A. The City will appoint a citizen oversight committee that is representative of the city's diverse communities to ensure the Motor Vehicle Fuel Tax is being implemented as required, to monitor revenues and review expenditures made, and to report their findings in a public record to the City Council on an annual basis. The committee will be comprised of a minimum of 8 and a maximum of 20 members.
- B. The use of Motor Vehicle Fuel Tax net revenues will be audited annually.

17.105.140 Chapter Effective If Passed.

Chapter 17.105 of this Code does not take effect unless Measure 26-173 is approved by the people according to elections results for the election held in the City on May 17, 2016.

17.105.145 Administrative Rules.

The Tax Administrator has authority to promulgate administrative rules in accordance with this Chapter which shall have the same force and effect as any other provision of Chapter 17.105.

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FIGURE 1 - (SECTION 17.12.020)

(Figure repealed by Ordinance No. 163420,
effective September 29, 1990.)

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FIGURE 2 - (SECTION 17.24.020)

(Figure repealed by Ordinance No. 183829,
effective July 1, 2010.)

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FIGURE 3 - (SECTION 17.36.010)

(Figure repealed by Ordinance No. 181846,
effective July 1, 2008.)

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FIGURE 4 - (SECTION 17.36.020)

(Figure repealed by Ordinance No. 178449,
effective May 26, 2004.)

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FIGURE 5 - (SECTION 17.36.020)

(Figure repealed by Ordinance No. 181846,
effective July 1, 2008.)

FIGURE 6 - CHAPTER 17.102

(Figure replaced by Ordinance No. 187771,
effective July 1, 2016.)

Residential Solid Waste and Recycling Rates

As used in Figure 6 the following terms have the meanings described below:

"Excess distance" is applicable to any collection beyond seventy-five (75) feet from the curb. This charge is in addition to the "non-curb surcharge."

"Clean up containers" include hauler-provided containers which are provided as requested by the customer for occasional or temporary use.

"Small multiplex" refers to any multidwelling building or a combination of buildings on a single tax lot in the residential franchise territory that contains 2-4 dwelling units.

"Non-curb surcharge" is the charge for collection service provided at a location more distant than curbside.

"Terrain differential" is applicable to services within the territory designated on Figure 6-1.

Residential Curbside Collection Service Rates and Charges				
Single Family Service Level	Monthly Rate Curbside Pickup	Per Unit or Per Pickup	Non-Curb Surcharge	Excess Distance
Standard Service - Service includes weekly collection of composting & recycling, every-other-week garbage				
20-gallon Can*	24.50		1.70	0.55
32-gallon Can*	28.50		1.70	0.55
20-gallon Rollcart	24.50			
35-gallon Rollcart	29.15			
60-gallon Rollcart	35.00			
90-gallon Rollcart	41.50			
1.0 Cubic Yard Container	84.20			
1.5 Cubic Yard Container	115.50			
2.0 Cubic Yard Container	146.80			
Every-four-weeks Service - Service includes weekly collection of composting & recycling, every-four-weeks garbage				
32-gallon Can*	21.60		0.85	0.30
35-gallon Rollcart	21.60			
* Customer-provided garbage cans are being phased out and these service levels are generally not available. Customers currently providing their own garbage cans are grandfathered in				

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Single Family Service Level	Monthly Rate Curbside Pickup	Per Unit or Per Pickup	Non-Curb Surcharge	Excess Distance
Special Services				
Recycling Only, Weekly Collection	8.50			
Composting & Recycling Only, Weekly Collection	18.10			
On Call Yard Debris Collection (32 gallon Can, Bag or Bundle--Yard Debris Only)		7.15		
On Call Garbage (32-Gallon Can or Bag)		9.40	0.85	0.30
Yard Debris, Extra Can, Bag or Bundle--Yard Debris Only		3.75		
Garbage, Extra Can or Bag		5.00	0.85	0.30
Courtesy Callback (Garbage or Composting)		7.95		
Rollcart Delivery**		12.00		
Extra Composting Rollcart	11.90			
Extra Recycling Rollcart	3.70			
Multiple Cans/Rollcars- Service includes weekly collection of composting & recycling, every-other-week garbage				
32-Gallon Cans, Two*	38.85		3.40	1.10
32-Gallon Cans, Three*	44.90		5.10	1.65
32-Gallon Cans, Four*	49.40		6.80	2.20
20-Gallon Rollcart, Two	30.60			
20-Gallon Rollcart, Three	36.70			
20-Gallon Rollcart, Four	42.80			
35-Gallon Rollcart, Two	38.40			
35-Gallon Rollcart, Three	45.90			
35-Gallon Rollcart, Four	53.40			
60-Gallon Rollcart, Two	45.00			
60-Gallon Rollcart, Three	55.00			
60-Gallon Rollcart, Four	65.00			
90-Gallon Rollcart, Two	53.50			
90-Gallon Rollcart, Three	65.50			
90-Gallon Rollcart, Four	77.50			
<p>*Customer-provided garbage cans are being phased out and these service levels are generally not available. Customers currently providing their own garbage cans are grandfathered in.</p> <p>**Rollcart delivery fees may be charged in the following scenarios:</p> <ol style="list-style-type: none"> 1. For composting and recycling, if it is the customer's second (or greater) rollcart delivery. 2. For garbage, if it is the customer's second (or greater) rollcart delivery within a one year period. 3. Any time the customer requests a clean rollcart. 				

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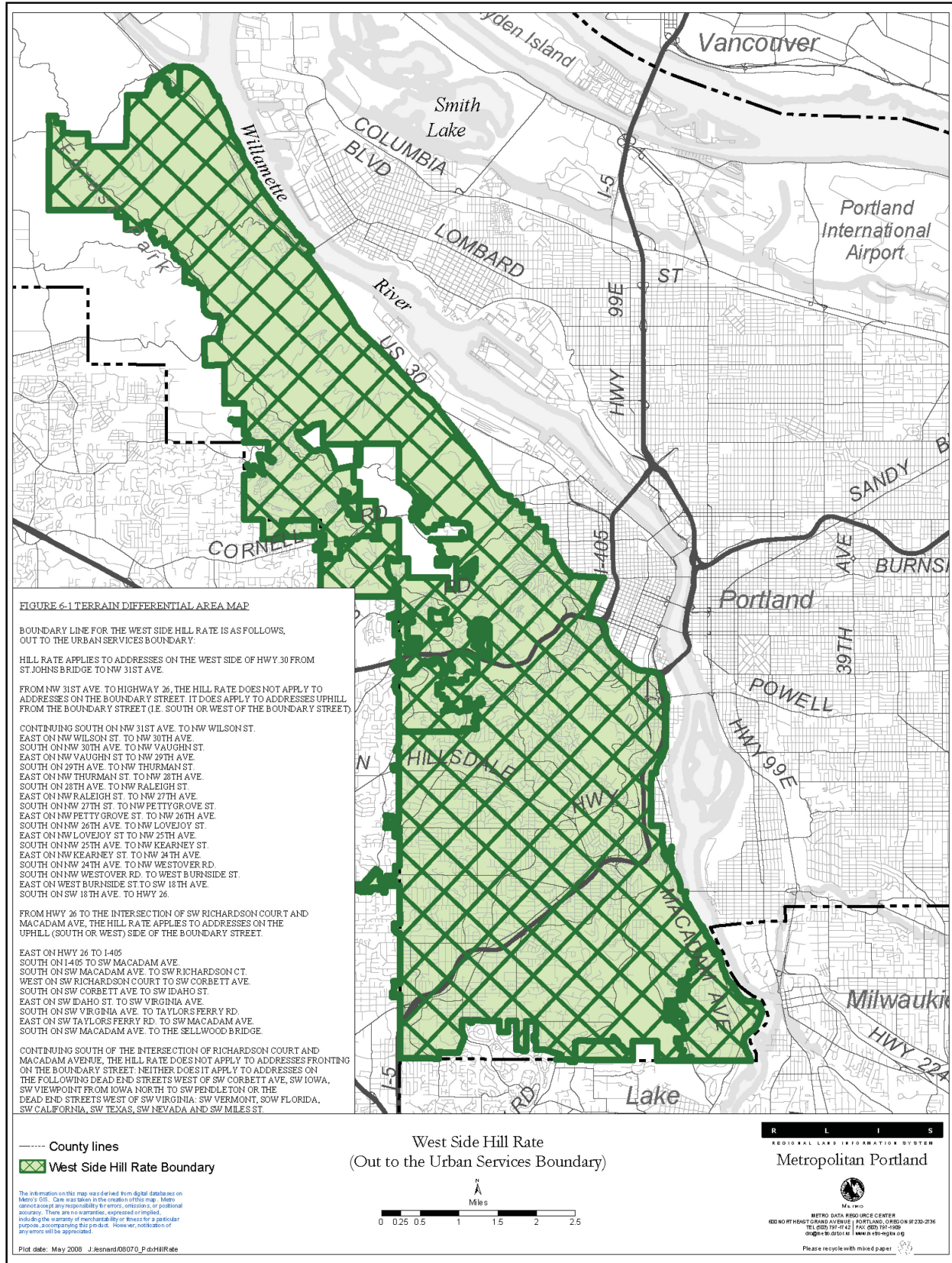
Service Level	Monthly Rate Curbside Pickup	Per Unit or Per Pickup	Non-Curb Surcharge	Excess Distance
Clean-Up Containers				
One 1.0 Cubic Yard		87.50		
One 1.5 Cubic Yard		96.00		
One 2.0 Cubic Yard		104.35		
Terrain Differential				
Every-Other-Week Garbage (Single Can/Rollcart)	4.00			
Every-Other-Week Garbage (Multiple Cans/Rollcars)	4.15			
Every-Four-Weeks Garbage	2.70			
Recycling Only	1.45			
Composting & Recycling Only	2.55			
32-Gallon Can Garbage On-Call	0.80			
On Call Yard Debris Collection (32 gallon Can, Bag, or Bundle –Yard Debris Only	0.50			

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**Curbside Collection Service Rates and Charges
for Small Multiplexes**

Weekly Composting & Recycling, Every-Other-Week Garbage			
Collection for:	Duplex	Tri-Plex	Four-Plex
Single Container Service, where rollcart / container is shared by residents of 2, 3 or 4 units			
One shared 60-Gallon Rollcart	39.10	46.15	N / A
One shared 90-Gallon Rollcart	42.90	49.95	57.00
One shared 1.0 Cubic Yard Container	68.35	75.40	82.45
One shared 1.5 Cubic Yard Container	85.80	92.85	99.90
One shared 2.0 Cubic Yard Container	103.15	110.20	117.25
Multiple Containers, where all cans / rollcarts are placed together in a single location at curbside for pickup. Where unshared cans / rollcarts are located separately at curbside for pickup then each is considered a separate account, charged at single-family rate.			
Two 32-Gallon Cans*	39.65	46.70	N / A
Three 32-Gallon Cans*	43.80	50.85	57.90
Four 32-Gallon Cans*	48.00	55.05	62.10
Two 20-Gallon Rollcarts	37.65	N / A	N / A
Three 20-Gallon Rollcarts	40.80	47.85	N / A
Four 20-Gallon Rollcarts	43.90	50.95	58.00
Two 35-Gallon Rollcarts	40.95	48.00	55.05
Three 35-Gallon Rollcarts	45.75	52.80	59.85
Four 35-Gallon Rollcarts	50.55	57.60	64.65
Two 60-Gallon Rollcarts	46.90	53.95	61.00
Three 60-Gallon Rollcarts	54.65	61.70	68.75
Four 60-Gallon Rollcarts	62.40	69.45	76.50
Two 90-Gallon Rollcarts	54.40	61.45	68.50
Three 90-Gallon Rollcarts	65.90	72.95	80.00
Four 90 Gallon Rollcarts	77.45	84.50	91.55
--N/A services are not available. --Non-curbside service is available at small multiplexes for garbage cans and rollcarts at an additional monthly charge of \$1.70 per can and \$3.50 per rollcart. Excess distance charge for a can is \$0.55. Excess distance charge for a rollcart is \$1.15. --For composting services, extra cans, bags, or bundles of yard debris only are \$3.75 each and accrue on a per account, rather than per unit, basis. --Recycling labor surcharge is \$7.05 per additional dwelling unit. *Customer-provided garbage cans are being phased out and these service levels are generally not available. Customers currently providing their own garbage cans are grandfathered in.			

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**FIGURE 7 - (SECTION 17.37.020)
DOWNSPOUT DISCONNECTION PROGRAM
AREA MAP**

(Figure replaced by Ordinance No. 182467,
effective February 6, 2009.)

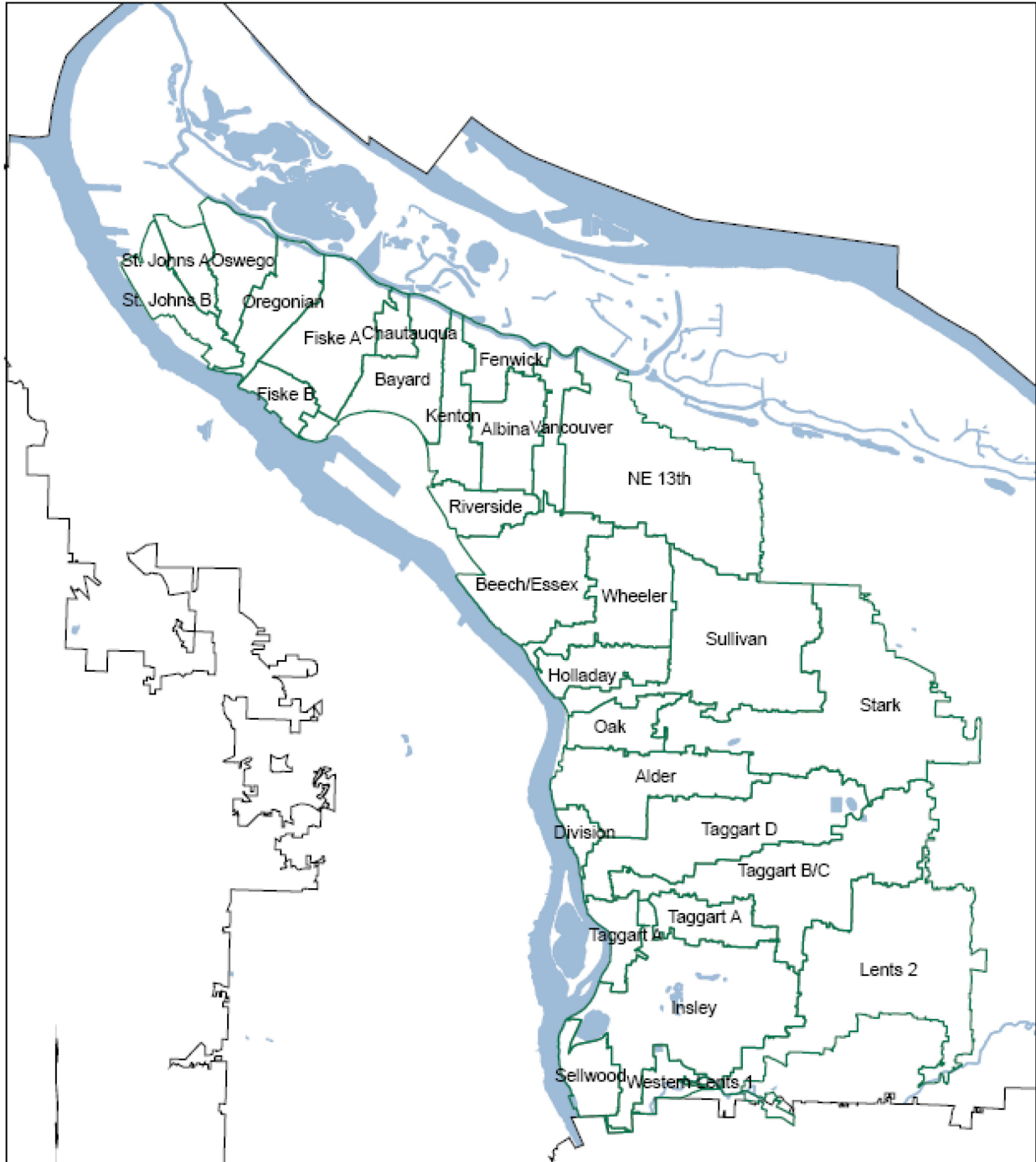


FIGURE 8 - (SECTION 17.36.065)

(Figure repealed by Ordinance No. 181846,
effective July 1, 2008.)

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FIGURE 9 - (SECTION 17.38.060)

(Figure repealed by Ordinance No. 182144,
effective September 26, 2008.)

FIGURE 10 - (SECTION 17.38.060)

(Figure repealed by Ordinance No. 182144,
effective September 26, 2008.)

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FIGURE 11 - (SECTION 17.13.070)

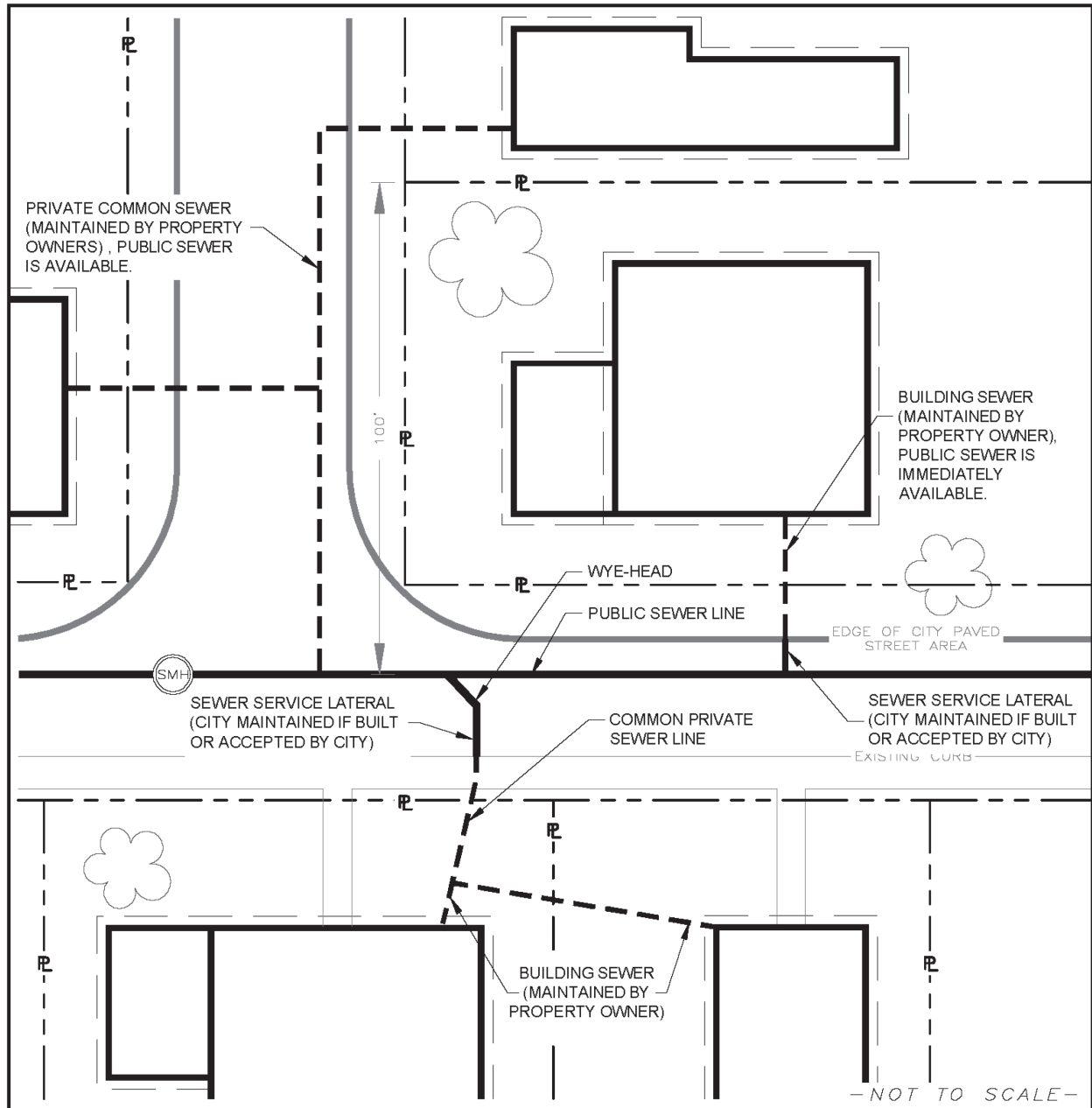
(Figure repealed by Ordinance No. 174617,
effective July 28, 2000.)

FIGURE 12 - (SECTION 17.15.060)

(Figure repealed by Ordinance No. 181322,
effective January 1, 2008.)

FIGURE 13 - (SECTION 17.32.055 AND
17.33.020)

(Figure replaced by Ordinance No. 186659,
effective July 18, 2014.)



Legend

- PUBLIC SEWER
- PRIVATE SEWER

**FIGURE 14 – HOURLY LABOR RATES FOR
ENGINEERING AND SUPERINTENDENCE
SERVICES FOR PUBLIC SEWER
IMPROVEMENTS (SECTION 17.32.150)**

(Figure repealed by Ordinance No. 181846,
effective July 1, 2008.)

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- B.** A Landlord may terminate a Rental Agreement without a cause specified in the Act only by delivering a written notice of termination to the Tenant of (a) not less than 90 days before the termination date designated in that notice as calculated under the Act; or (b) the time period designated in the Rental Agreement, whichever is longer. This requirement does not apply to Rental Agreements for week-to-week tenancies or to Tenants that occupy the same Dwelling Unit as the Landlord.
- C.** A Landlord may not increase a Tenant's Rent or Associated Housing Costs by 5 percent or more over a 12 month period unless the Landlord gives notice in writing to each affected Tenant: (a) at least 90 days prior to the effective date of the rent increase; or (b) the time period designated in the Rental Agreement, whichever is longer. Such notice must specify the amount of the increase, the amount of the new Rent or Associated Housing Costs and the date, as calculated under the Act, when the increase becomes effective.
- D.** A Landlord that fails to comply with any of the requirements set forth in this Section 30.01.085 shall be liable to the Tenant for an amount up to three months Rent as well as actual damages, reasonable attorney fees and costs (collectively, "Damages"). Any Tenant claiming to be aggrieved by a Landlord's noncompliance with the foregoing has a cause of action in any court of competent jurisdiction for Damages and such other remedies as may be appropriate.

30.01.090 City Subsidy Projects - Long-Term Affordability Requirements.

(Amended by Ordinance Nos. 186028 and 187380, effective November 13, 2015.)

- A.** City Subsidy Projects that in the future request and receive a City Subsidy from PDC, PHB or other City bureau or agency for the purpose of creating or preserving rental housing affordable to households below 80 percent of MFI, will be subject to a minimum of 60 year affordability contract requirements developed by PHB consistent with the implementing charge in Subsection 30.01.090 B.
- B.** All City Bureaus and agencies administering affordable rental housing subsidy programs will be responsible for implementing this section. As the primary agency charged by the City to negotiate and confer affordable housing subsidies, PHB will develop implementing strategies consistent with the 60 year affordability principles contained in this section, the Administrative Procedures Implementing Title 30.01 and the approved 1998/99 Consolidated Plan, Principle III (Ordinance No. 172259).

30.01.095 Partial and Full Exemptions of System Development Charges for Affordable Housing Developments.

(Added by Ordinance No. 183448; Amended by Ordinance Nos. 186712, 186744, 187380 and 187975, effective September 7, 2016.)

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- A.** The purpose of this Section is to reduce the costs of developing permanent affordable housing by exempting system development charges for qualified affordable housing developments. This section advances a Council-recognized public policy goal to provide for a diversity of housing types to meet the needs of the citizens of the City.
- B.** The City will exempt qualified affordable housing developments from paying all or part of system development charges required by Code. The Applicant must apply for exemptions under this Section prior to the date the City issues the permit on the new development. Where new development consists of only part of one or more of the uses described in this Section, only that portion of the development that qualifies under this Section is eligible for an exemption. The balance of the new development that does not qualify for any exemption under this Section is subject to system development charges to the full extent authorized by Code or general ordinance. The Applicant has the burden to prove entitlement to exemptions so requested.
- C.** The City shall calculate exemptions in the manner authorized for calculating system development charges for rented and owner-occupied residential properties. Non-residential properties or the non-residential portion of mixed-use developments are not eligible for exemptions provided by this Section. Exemptions are applicable to the portions of residential properties that are directly used in providing housing for its low-income residents such as on-site manager units and shared space including but not limited to restrooms, community rooms and laundry facilities.
- D.** To obtain the exemption, the applicant must present to the City, at the time of Application, documentation from PHB that the development qualifies for the exemption pursuant to this Chapter. Applicant must also pay an administration fee per unit on rental and/or owner-occupied units as determined by PHB.
- E.** The City shall require the recording of real property covenants in the deed records for properties receiving exemptions under this Section in order to ensure compliance, or to provide remedies for failure to restrict units, or both. Deed restrictions may be used by PHB in order to restrict sale prices and rents charged for exempt units, or to provide remedies for failure to restrict units, or both.
- F.** Applicants shall meet the following affordable housing qualifications to be exempt from paying all or a portion of system development charges based on the type of housing provided:

 - 1.** Rental Units.

 - a.** For purposes of this Section, "affordable" for rental housing means that the rent and expenses associated with occupancy such as

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utilities or fees, does not exceed 30 percent of the gross household income at the level of the rent restrictions.

- b.** The units receiving an exemption shall be affordable to households earning 60 percent or less of MFI at time of occupancy and shall be leased, rented or made available on a continuous basis to persons or households whose incomes are 60 percent or less of MFI, as adjusted by household size and as determined by HUD for the Portland Metropolitan Area, except as provided for below. Such units shall remain affordable for a period of 60 years.
- c.** Effective July 1, 2014, developments of new buildings in Old Town/Chinatown shall be eligible for exemption subject to the following conditions:

 - (1)** Units must be located in the Old Town/Chinatown Action Plan Focus Area;
 - (2)** Financial need must be verified through project pro forma underwriting conducted by the PDC;
 - (3)** All units shall remain affordable for a period of not less than 10 years, to persons or households whose incomes are 100 percent or less of MFI, as adjusted by household size and as determined by HUD for the Portland Metropolitan Area, and for not less than 5 years thereafter shall continue to remain affordable to persons or households whose incomes are 120 percent or less of MFI, as so described; and
 - (4)** The exemption granted by this Subsection shall not be available to developments for which a building permit application is filed on or after July 1, 2019, or after permit applications have been filed for development of 500 qualifying units, in the aggregate, whichever occurs first.

2. Owner-Occupied Units.

- a.** For the purposes of this Section, “Affordable” means that ownership units are sold to persons or households whose incomes are at or below 100 percent of MFI for a family of four as determined annually for the Portland Metropolitan Area by HUD, which income may be adjusted upward for households with more than four persons; and

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- b. The ownership units sell at or below the price limit as provided by Subsection 3.102.090 D.
3. Mass Shelters.
 - a. For the purposes of this Section, “affordable” means that shelter is provided on a daily basis without a fee.
 - b. A mass shelter is a structure that contains one or more open sleeping areas, or is divided only by non-permanent partitions, furnished with cots, floor mats, or bunks. Individual sleeping rooms are not provided. The shelter may or may not have food preparation or shower facilities. The shelter is managed by a public or non-profit agency to provide shelter. The number of beds is determined by the maximum number of people who can be given overnight accommodations at one time on the site.
 - c. Mass shelters shall provide shelter for a minimum of 10 years.
- G. Pursuant to Section 30.01.040, the PHB is responsible for enforcing property covenants and other agreements with applicants that are conditions of receiving exemptions provided by this Section. PHB may adopt, amend and appeal administrative rules, establish procedures, and prepare forms for implementation, administration and compliance monitoring consistent with the provisions of this Section.

In the event that an applicant violates the covenants, agreements or other requirements that were established by the City as a condition of approval of an exemption application, or the owner of the property wants to remove the affordability covenants of Subsection 30.01.095 F., the City shall terminate the exemption and make due and payable all previously exempt portions of system development charges based on rates in effect on the date of the submittal of a complete building permit application, plus accrued interest from the date of the issuance of the building permit to the date of the termination of the exemption calculated with the interim interest rate in effect on the date of the termination of the exemption as set by general ordinance pursuant to Section 17.12.140, and a processing fee of \$250 due to each City bureau exempting system development charges and to PHB as the administrator. The City may collect reinstated system development charges, processing fees, carrying charges and the actual costs of collections by recording a property lien pursuant to Title 22.

30.01.100 Compliance and Enforcement.

(Amended by Ordinance No. 186028, effective May 15, 2013.)

- A.** PHB shall develop and implement procedures to enforce the provisions of this code. Such procedures should include, where feasible, record notice of the applicability of this code to affected properties, filing a lien to enforce the provisions of this code, and developing civil penalties or other enforcement provisions necessary or appropriate to enforce this code.
- B.** The City Attorney's Office may enforce the provisions of this code on behalf of the City in any court of competent jurisdiction or City administrative body.

30.01.110 No Restriction of Powers of Eminent Domain; Severability.

- A.** This Chapter shall not be construed to restrict the City's existing authority to exercise powers of eminent domain through condemnation as outlined in state law.
- B.** If any part or provision of this Chapter, or application thereof to any person or circumstance, is held invalid, the remainder of this Chapter and the application of the provision or part thereof, to other persons not similarly situated or to other circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Chapter are severable.

