

UPDATE INFORMATION

Vols. I & II – Portland City Code

June 30, 2019 – 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:

1. Go to <http://www.portlandoregon.gov/efiles>
2. Search for **City Code Folder version** and under SORT BY check Descending.
3. Locate quarter you want and click on the plus sign to see the available update packet and/or Code Title(s).
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Contact the Auditor's Office Council Clerk/Contracts
Section if you have questions: 503-823-4082.

Previous Update Packet March 31, 2019

CODE OF THE CITY OF PORTLAND, OREGON
Insertion Guide for Code Revisions
Office of the City Auditor 503-823-4082
2nd Quarter 2019 (June 30, 2019)

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2.14.080 City Auditor's Duties.

(Amended by Ordinance No. 188842, effective March 30, 2018.) 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.

For information and records sought from City offices, employees or officials, the Auditor or any employee or agent of the Auditor employed for the purpose of auditing or investigating the City may obtain confidential and legally privileged information and records held by the City so long as privilege is not waived as to third parties. The Auditor shall not disclose confidential or legally privileged information and records and shall be subject to the same penalties as the legal custodian of records for any unlawful or unauthorized disclosure.

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.

(Amended by Ordinance No. 188842, effective March 30, 2018.) If facts supporting an enforcement action exist, the City Auditor, in the name of the City, may initiate action in Multnomah County Circuit Court to enforce the provisions of this Chapter, including collection of any unpaid fees or civil penalties. The Auditor may bring such an action through independent legal counsel retained or employed by the Auditor, or may request that the City attorney provide such representation. 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.

**TITLE 2
LEGISLATION AND ELECTIONS**

**CHAPTER 2.16 – OPEN AND
ACCOUNTABLE ELECTIONS PROGRAM**

(Chapter added by Ordinance No. 188152; amended
by Ordinance No. 188853, effective March 8,
2018.)

Sections:

- 2.16.005 Short Title.
- 2.16.010 Definitions.
- 2.16.020 Open and Accountable Elections Fund Established.
- 2.16.030 Administrative Rules, Director’s Duties and Authority.
- 2.16.040 Contribution and Expenditure Requirements for Participating and Certified Candidates.
- 2.16.050 Requirements for Certification.
- 2.16.060 Director Determination.
- 2.16.070 Distribution of Public Contribution.
- 2.16.080 Use of Contributions.
- 2.16.090 Adequate Funds.
- 2.16.100 Return of Public Contributions.
- 2.16.110 Withdrawal.
- 2.16.120 Participating and Certified Candidate Restrictions.
- 2.16.130 Open and Accountable Elections Commission.
- 2.16.140 Additional Reporting.
- 2.16.150 Removal of Certain Contribution Limits.
- 2.16.160 Penalties, Revocation of Certification and Repayment of Funds.
- 2.16.170 Hearings.
- 2.16.180 Implementation.
- 2.16.190 Program Management.

2.16.005 Short Title.

(Added by Ordinance No. 188853, effective March 8, 2018.) Chapter 2.16 of the Portland City Code shall be known as the Open and Accountable Elections Program.

2.16.010 Definitions.

(Amended by Ordinance Nos. 188853, 189336 and 189531, effective June 28, 2019.) As used in this Chapter, unless the context requires otherwise:

- A. “Allowable contribution”** means a monetary donation of no more than \$250 in support of a participating or certified candidate that is:
 - 1.** Made by an individual; and
 - 2.** Made during the election cycle in which the candidate is seeking office

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- B.** “**Campaign finance entity**” means a principal campaign committee registered with the Oregon Secretary of State.
- C.** “**Candidate**” means:
- 1.** An individual whose name is printed on a ballot, for whom a declaration of candidacy, nominating petition or certificate of nomination to public office has been filed or whose name is expected to be or has been presented, with the individual’s consent, for nomination or election to public office;
 - 2.** An individual who has solicited or received and accepted a contribution, made an expenditure, or given consent to an individual, organization, political party or political committee to solicit or receive and accept a contribution or make an expenditure on the individual’s behalf to secure nomination or election to any public office at any time, whether or not the office for which the individual will seek nomination or election is known when the solicitation is made, the contribution is received and retained or the expenditure is made, and whether or not the name of the individual is printed on a ballot.
- D.** “**Certified candidate**” means a candidate running for a covered office who is certified as eligible to receive public contribution matching from the Fund.
- E.** “**Commission**” means the Open and Accountable Elections Commission
- F.** “**Contested election**” means an election in which there are at least two candidates for a covered office who have a campaign finance entity. Contested election includes a special election held to fill a vacancy in a covered office.
- G.** “**Contribution**” has the meaning set forth in ORS 260.005 and 260.007 at the time of this Chapter’s adoption.
- H.** “**Covered office**” means the office of Mayor, Commissioner or Auditor.
- I.** “**Director**” means the Open and Accountable Elections Program Director.
- J.** “**Election cycle**” means the primary election period and the general election period for the same term of a covered office. For a special election, it means the special nominating election period and the special runoff election period.
- K.** “**Expenditure**” has the meaning set forth in ORS 260.005 and 260.007 at the time of this Chapter’s adoption.
- L.** “**Fund**” means the Open and Accountable Elections Fund.
- M.** “**General election matching period**” means the period beginning 20 days before the primary election and ending 21 days before the general election. The general

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election matching period for a special runoff election must be set by administrative rule.

- N.** “**General election period**” means the period beginning the day after the biennial primary election and ending the day of the biennial general Election.
- O.** “**Independent expenditure**” means an expenditure by a person for a communication in support of or in opposition to a clearly identified candidate for City office that is not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate. The terms “expenditure”, “clearly identified” and “agent” and the phrases “communication in support of or in opposition to a clearly identified candidate or measure” and “made with the cooperation or with the prior consent of, or in consultation with or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate” shall have the meanings set forth in ORS 260.005 and 260.007 at the time of this Chapter’s adoption.
- P.** “**Individual**” means a natural person.
- Q.** “**In-kind contribution**” has the meaning set forth in the Oregon Administrative Rule 165-012-005 at the time of this Chapter’s adoption.
- R.** “**Matchable contribution**” is an allowable contribution of at least \$5 that is acknowledged by documentation, as specified by administrative rule.
- S.** “**Matchable donor**” means an individual 18 years of age or older who resides within the City limits of the City of Portland, whose residency is verified pursuant to criteria established by the Director, and who can legally contribute to campaigns under state and federal law. The Director may use voter registration as the sole means of verifying residency if the Director determines other methods are not reliable or expedient. Matchable donors may only have their contributions matched for one candidate in each contested election in each matching period.
- T.** “**Non-participating candidate**” means a person who is running for a covered office who chooses not to apply to be a certified candidate, applies to be a certified candidate but fails to qualify, or a certified candidate who declines to accept a public contribution.
- U.** “**Notice of intent**” means a notice filed with the Director that a candidate intends to seek qualification as a certified candidate.
- V.** “**Participating candidate**” means a person who is a candidate for a covered office and who seeks to be a certified candidate in a primary election or general election. Limitations imposed on a participating candidate apply during the entire election cycle, both before and after filing a notice of intent to participate, whether or not

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the candidate has announced an intention to seek public contribution matching, and continue to apply once the candidate becomes a certified candidate.

- W.** “**Primary election matching period**” means the period of time beginning July 1 of the year preceding the primary election for the office the candidate seeks and ending 21 days before the date of the primary election. The primary election matching period for a special nominating election must be set by administrative rule.
- X.** “**Primary election period**” means the period beginning on the 45th day after the preceding biennial general election and ending the day of the biennial primary election.
- Y.** “**Public contribution**” or “**public contribution matching**” means money disbursed from the Fund to a certified candidate.
- Z.** “**Publicly funded campaign account**” means a campaign finance account established by a candidate for the exclusive purpose of receiving allowable contributions, public contribution matching and seed money contributions and spending funds in accordance with this Chapter.
- AA.** “**Seed money contribution**” means a contribution that is not an allowable contribution or in-kind contribution, which is received by a participating candidate before filing a notice of intent. A loan from the candidate or the candidate’s spouse is considered a seed money contribution.
- BB.** “**Special nominating election**” means a nominating election for a covered office held on any date other than the biennial primary election date when the Primary Election for that office would normally be held pursuant to City Charter Section 3-301.
- CC.** “**Special nominating election period**” means the period beginning on the day a vacancy exists or a notice of intent to resign from office is filed with the Auditor and ending the day of the Special Nominating Election.
- DD.** “**Special runoff election**” means a runoff election for a covered office held on any date other than the biennial general election date when the General Election for that office would normally be held pursuant to City Charter Section 3-301.
- EE.** “**Special runoff election period**” means the period beginning on the day after the special nominating election and ending the day of the special runoff election.

2.16.020 Open and Accountable Elections Fund Established.

(Amended by Ordinance No. 189336, effective January 2, 2019.)

- A.** The Open and Accountable Elections Fund is established, separate from the General Fund. All monies described in Subsection 2.16.020 E. shall be paid and

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credited to the Fund. Monies in the Fund shall be invested in the same manner as other City monies, and any interest earned shall be credited to the Fund.

- B.** The Director shall keep a record of all monies deposited into the Fund and the activity or program against which any withdrawal is charged.
- C.** If monies credited to the Fund are withdrawn, transferred, or otherwise used for purposes other than the program or activity for which the Fund is established, interest shall accrue on the amount withdrawn from the date of withdrawal and until the monies are restored.
- D.** Monies in the Fund shall provide, and are continuously appropriated for, the financing of election campaigns of certified candidates for nomination or election to City Office, and the payment of administrative, enforcement, and other expenses of the Director in carrying out the Director's functions and duties under this Chapter.
- E.** The following will be deposited in the Fund:
 - 1.** All amounts appropriated to it by the City Council. The annual impact of the appropriation on the City general fund is limited to two-tenths of one percent of the general fund without raising any new taxes or fees;
 - 2.** Any unspent money remaining in a certified candidate's publicly funded campaign account after the candidate is no longer a candidate for a covered office that is returned to the Fund as provided in Section 2.16.100;
 - 3.** Any public contribution plus interest returned to the Fund by a participating candidate who withdraws from participation as provided in Section 2.16.110;
 - 4.** All interest earned on money in the Fund;
 - 5.** Civil penalties and other monies collected under Sections 2.16.160 and .170; and
 - 6.** Voluntary donations made directly to the Fund.

2.16.030 Administrative Rules, Director's Duties and Authority.

(Amended by Ordinance No. 189336, effective January 2, 2019.) Before any administrative rules proposed by the Director may go into effect, the Director must submit the rules to Council for consideration and approval. The rules proposed by the Director must specify:

- A.** How and when documentation for allowable contributions from contributors must be submitted to the Director;

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- B.** The documents that must be filed with the Director for certification;
- C.** The allowable uses of money in a publicly funded campaign account; and
- D.** Other policies necessary to implement this Chapter, including but not limited to:
 - 1.** Contested elections involving special elections, recounts, vacancies, or withdrawals, including qualification, certification, and disbursement of Open and Accountable Elections Fund revenues and return of unspent revenues;
 - 2.** Obtaining allowable contributions and matchable contributions;
 - 3.** Certification as a certified candidate;
 - 4.** Collection of revenues for the Open and Accountable Elections Fund;
 - 5.** Distribution of Fund revenues to certified candidates;
 - 6.** Investigation and enforcement procedures for misuse of public funds;
 - 7.** Penalty matrix detailing penalties for potential violations of this Chapter;
 - 8.** Return of Fund disbursements, penalties, and other monies to the Fund;
 - 9.** Inspection of reports and documents for compliance with this Chapter; and
 - 10.** Investigation of alleged violations of Chapter 2.16.

2.16.040 Contribution and Expenditure Requirements for Participating and Certified Candidates.

- A.** Before accepting any allowable, seed money or in-kind contributions governed by this Chapter, a participating candidate must establish a publicly funded campaign account for the candidate for the purpose of receiving contributions and making expenditures in accordance with this Chapter.
- B.** Before accepting any allowable contribution governed by this Chapter on which a participating candidate intends to rely for certification under Section 2.16.050 and seek a public contribution match, a participating candidate must:
 - 1.** File a notice of intent with the Director after the primary election matching period begins and before the filing deadline for the primary election for the covered office. For a special nominating election, filing deadlines for the notice of intent will be set that seek to provide adequate time for candidates to qualify for public contribution matching; and

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- 2.** Attend mandatory training provided by the City. The candidate's treasurer must also attend the training.
- C.** A participating candidate may accept up to \$5,000 total in seed money contributions before filing a notice of intent. A participating candidate may not accept seed money after filing a notice of intent. Certified candidates may not accept seed money contributions.
- D.** Participating and certified candidates may accept in-kind contributions valued at no more than \$20,000 for the primary election period or special nominating election period and no more than \$20,000 for the general election period or special runoff election period. The contribution of paid time for a supervisor of volunteers does not count toward the \$20,000 limit on in-kind contributions for purposes of this Chapter. However, a participating candidate must provide documentation to the Director for such a contribution and it may be reportable as an in-kind contribution under state law.
- E.** During an election cycle, participating and certified candidates may only accept allowable contributions, public contribution matching from the City, and seed money and in-kind contributions allowed by this Chapter.
- F.** Participating and certified candidates may not accept allowable contributions from any one individual totaling more than \$250 in the primary election period and \$250 in the general election period, except as provided in Section 2.16.150.
- G.** From the date the primary election period begins until filing a notice of intent, a participating candidate may not collect any contributions other than allowable, seed and in-kind contributions allowed by this Chapter and may only make expenditures from such contributions. After filing a notice of intent, participating and certified candidates may not make expenditures from funds other than public contribution matching and allowable, seed money or in-kind contributions, as allowed by this Chapter.
- H.** Participating and certified candidates must deposit all allowable contributions, public contribution matching and seed money contributions received into the candidate's publicly funded campaign account. Participating and certified candidates must deliver to the Director documentation, as specified by administrative rule, for each allowable contribution, seed money contribution, and in-kind contribution.
- I.** A participating or certified candidate may retain a preexisting campaign committee or political activities committee as long as the campaign committee or political activities committee does not accept contributions or make expenditures during the election cycle for which the candidate is seeking a covered office, other than a transfer of seed money to the candidate, consistent with Subsection 2.16.040 C.

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- J.** Seed money loans from the candidate or candidate's spouse must be repaid with contributions that are not eligible for public contribution matching or for which public contribution matching is not requested.
- K.** The total contributions a participating or certified candidate may collect during the primary election period or special nominating election period, consisting of allowable contributions, public contributions, seed money and in-kind contributions, cannot exceed:
 - 1.** \$380,000 for a candidate for Mayor; and
 - 2.** \$250,000 for a candidate for Commissioner or Auditor.
- L.** The total contributions a participating or certified candidate may collect during the general election period or special runoff election period, consisting of allowable contributions, public contributions, seed money and in-kind contributions, cannot exceed:
 - 1.** \$570,000 for a candidate for Mayor; and
 - 2.** \$300,000 for a candidate for Commissioner or Auditor.

2.16.050 Requirements for Certification.

- A.** In addition to the requirements of Section 2.16.040 and the limitations in Section 2.16.120, to qualify as a certified candidate:
 - 1.** After filing a notice of intent, a candidate for Mayor must collect an aggregate total of at least \$5,000 in allowable contributions from at least 500 matchable donors.
 - 2.** After filing a notice of intent, a candidate for Commissioner or Auditor must collect an aggregate total of at least \$2,500 in allowable contributions from at least 250 matchable donors.
 - 3.** The participating candidate must have filed for office by petition as provided in Code Section 2.08.080.
- B.** A participating candidate must apply to the Director for certification not later than 28 days before the end of the primary election matching period, or for a special nominating election, 28 days before the election.

2.16.060 Director Determination.

- A.** The Director must certify a participating candidate if the Director finds that the election for the covered office is a contested election, the candidate has met the requirements of Sections 2.16.040, .050 and .120, the candidate has received the

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required aggregate total dollars of allowable contributions from the required number of matching donors for the office and the candidate has submitted all information required by this Code or by administrative rule.

- B.** Before certification, the participating candidate must submit at least the following information to the Director, along with other information as may be required by administrative rule:
 - 1.** A declaration from the candidate agreeing to follow the regulations governing the use of public contribution matching, allowable contributions, seed money and in-kind contributions; and
 - 2.** A campaign finance report that includes:
 - a.** A list of each allowable contribution received;
 - b.** A list of each seed money and in-kind contribution received;
 - c.** A list of each expenditure made by the candidate during the primary election matching period up to the time of filing; and
 - d.** Other documentation required by administrative rule.
- C.** The Director must make a certification determination no later than 10 business days after receiving information from the participating candidate necessary to determine compliance with the requirements of Subsections 2.16.060 A. and B. and Sections 2.16.040, .050 and .120. However, if the covered office is not a contested election at the time the participating candidate applies for certification, the Director will hold the application in abeyance until either the covered office becomes a contested election, in which case the Director will make a certification decision within 10 business days, or the filing deadline for the covered office expires, in which case the Director shall deny certification. Certification decisions may be challenged as provided in Section 2.16.170.
- D.** A candidate may submit only one application for certification for any election.
- E.** If the Director certifies a candidate, the Director will authorize an initial disbursement of a public contribution to the candidate's publicly funded campaign account.

2.16.070 Distribution of Public Contribution.

- A.** Public contributions from the Fund will be distributed only in a contested election. The Director must distribute a public contribution from the Fund to each certified candidate in a contested election as follows:

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1. For a certified candidate for a covered office, the public contribution matching must equal:
 - a. \$6 for each dollar of the first \$50 of allowable contributions in aggregate from a matchable donor made after the candidate files a notice of intent;
 - b. No match for allowable contributions after the first \$50 in aggregate contributed by a matchable donor.
 2. The total public contribution payable to a certified candidate for a primary election or special nominating election may not exceed \$304,000 for a candidate for Mayor and \$200,000 for a candidate for Commissioner or Auditor. The total public contribution payable to a certified candidate for a general election or special runoff election may not exceed \$456,000 for a candidate for Mayor and \$240,000 for a candidate for Commissioner or Auditor.
- B.** The Director must not distribute public contribution matching from the Fund to a certified candidate for:
1. Seed money contributions;
 2. In-kind contributions;
 3. Allowable contributions from matchable donors made before the candidate files a notice of intent;
 4. Allowable contributions from donors who are not matchable donors; or
 5. Allowable contributions from matchable donors whose donations to another candidate for the same contested election during the same election period have resulted in a request for public contribution matching for that other candidate.
- C.** Public contributions from the Fund will be distributed on at least four dates in addition to the initial distribution to each certified candidate upon certification during the primary election period or special nominating election period and on at least four dates during the general election period or special runoff election period. The final distribution for each election period will be 14 days before the election.
- D.** A certified candidate may collect allowable contributions, including allowable contributions from matchable donors for which the candidate may seek public contribution matching for the primary or special nominating election, until the end of the primary election matching period. A certified candidate may continue to collect allowable contributions, consistent with Sections 2.16.040 and 2.16.120, between the date the primary election matching period ends until the end of the

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primary election period or special nominating election period, but allowable contributions from matchable donors collected during this time will only be eligible for public contribution matching for the general or special runoff election if the candidate qualifies for the general or special runoff election, as provided in Subsection 2.16.070 E.

- E.** Certified candidates in the primary election or special nominating election who are nominated to the general election or special runoff election ballot in the same election cycle are eligible for public contributions as provided in this Section.
 - 1.** Certified candidates who reasonably expect to qualify for the general or special runoff election ballot may begin collecting allowable contributions for the general election or special runoff election on the first day of the general election matching period.
 - 2.** After certification of the results of the primary or special nominating election, a certified candidate who qualifies for the general or special runoff ballot may use unspent funds in their publicly funded campaign account and seek public contribution matching for allowable contributions collected from matchable donors during the general election matching period.
 - 3.** A certified candidate may continue to collect allowable contributions, consistent with Section 2.16.040, from the end of the general election matching period until the end of the general election period or special runoff election period, but the contributions will not be eligible for public contribution matching.
- F.** A certified candidate must submit documentation, as specified by administrative rule, for each allowable contribution from a matchable donor to the Director to receive public contribution matching. The Director must deposit the appropriate public contribution into a certified candidate's publicly funded campaign account on the next distribution date after the Director authorizes the public contribution matching.

2.16.080 Use of Contributions.

(Amended by Ordinance No. 189531, effective June 28, 2019.)

- A.** A participating or certified candidate may only use the seed money, in-kind and allowable contributions and the public contribution matching for direct allowed campaign purposes related to the candidate's campaign for nomination or election to the covered office for which they are eligible to be or have qualified as a candidate. Guidelines regarding direct allowed campaign expenditures may be established by administrative rule.
- B.** Public contributions distributed to a participating candidate and qualifying, seed money and in-kind contributions may not be:

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1. Used to make any expenditures for personal use prohibited by ORS Chapter 260 and Oregon Administrative Rules;
 2. Contributed to, or for the purpose of supporting or opposing, any other candidate, political committee or measure;
 3. Used to make independent expenditures supporting or opposing any candidate, political committee or measure;
 4. Used in connection with the nomination or election of a participating candidate to any office or at any election other than the office or election for which the contributions were given;
 5. Used to pay any loans, debts, fines or penalties, except for penalties permitted or required by administrative rule to be paid from the publicly funded campaign account;
 6. Used to pay for consulting services to an individual, unless the individual is providing bona fide services to the candidate and is compensated at fair market value;
 7. Used for out of state travel;
 8. Certain vehicle-related expenses, including vehicle purchases, leases, rental, insurance, repairs or fuel. Vehicle mileage reimbursement for campaign purposes is allowed, using the standard rate used by the City for mileage reimbursement;
 9. Attorney, accountant and other professional service fees in conjunction with appealing penalties or decertification;
 10. Used for salary or payment, other than reimbursable expenses, to a family member;
 11. Used for gifts, not including campaign brochures, buttons, signs or other printed campaign material;
 12. Used to make payments in cash; or
 13. Used in a manner inconsistent with administrative rules.
- C. Public contributions may not be used for penalties or election night and post-election parties; however, allowable contributions, seed money and in-kind contributions may be used for such events.

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- D.** Contributions to civic and non-profit organizations from a participating candidate's publicly funded account are permitted only if the payment is for the purpose of attending a specific campaign event open to the public.
- E.** A complaint alleging an impermissible receipt or use of funds by a participating candidate must be filed with the Director.
- F.** A participating candidate must provide the Director with reasonable access to the financial records of the candidate's publicly funded campaign account, upon request.

2.16.090 Adequate Funds.

- A.** If the Director determines that the amount deposited in the Fund will be insufficient at any point during the election cycle, the Director shall request the additional amount the Director estimates will be necessary from the City Council, subject to the annual appropriation limit detailed in Section 2.16.020.
- B.** If the total amount available for distribution in the Fund is insufficient to meet the allocations required by this Chapter, the Director must reduce each public contribution to a certified candidate by the same percentage of the total public contribution.

2.16.100 Return of Public Contributions.

- A.** Within 15 days after the results of the primary election or special nominating election are certified, a certified candidate who is elected or is not certified to be on the ballot for the general election or special runoff election must return unspent money in the candidate's publicly funded campaign account to the Fund in proportion to the percentage of public to private contributions collected by the candidate, excluding in-kind contributions.
- B.** Within 15 days after the results of the general election or special runoff election are certified, all participating candidates must return unspent money in the candidates' publicly funded campaign accounts to the Fund in proportion to the percentage of public to private contributions collected by the candidate, excluding in-kind contributions.

2.16.110 Withdrawal.

(Amended by Ordinance No. 188853, effective March 8, 2018.)

- A.** A participating candidate may withdraw an application for a public contribution any time before the public contribution is received by the candidate's publicly funded campaign account.
- B.** A certified candidate may withdraw from participation if the candidate:

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1. Files a statement of withdrawal with the Director on a form prescribed by the Commission; and
2. Repays to the Fund any remaining funds in their account up to the full amount of the public contribution received, together with the applicable interest established by administrative rule.

2.16.120 Participating and Certified Candidate Restrictions.

(Amended by Ordinance No. 189336, effective January 2, 2019.) A participating or certified candidate must not:

- A. Accept a contribution, other than seed money or in-kind contributions as permitted by this Chapter, from any group or organization, including a political action committee, a corporation, a labor organization, or a State or local central committee of a political party;
- B. Accept one or more contributions from an individual totaling more than \$250 during the primary election period or special nominating election period and \$250 during the general election period or special runoff election period, other than seed money or in-kind contributions as permitted by this Chapter, except as provided in Section 2.16.150;
- C. Make an allowable contribution from the candidate's personal funds to the candidate's principal campaign committee.
- D. Accept seed money or in-kind contributions in excess of the amounts established in Section 2.16.040.
- E. Expend funds to benefit or advocate for another candidate;
- F. Accept a loan from anyone for campaign purposes, other than a loan from the candidate or candidate's spouse within seed money limitations; or
- G. Transfer funds:
 1. To the candidate's publicly funded campaign account from any other campaign finance entity established for the candidate; and
 2. From the candidate's publicly funded campaign account to any other campaign finance entity.
- H. Solicit for or direct contributions to other campaign finance entities to support their own election.

2.16.130 Open and Accountable Elections Commission.

(Amended by Ordinance Nos. 189078, 189336 and 189531, effective June 28, 2019.)

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A. Duties. The Open and Accountable Elections Commission is hereby created. The Commission shall:

1. Provide assistance to the Director and Council in the development and implementation of the Open and Accountable Elections Fund. The Commission may make recommendations to the Director regarding administrative rules necessary to the effective administration of the code.
2. Make recommendations on adjustments to matching ratios, adjustments to contribution limits and other regulations to improve operation of public campaign finance.
3. At the request of the Director, advise the Director on administrative judgments, recommended policy changes, administrative rule development, and operation of the Open and Accountable Elections Fund.
4. Recommend to the Director for appointment hearings officers or an entity to review cases and make determinations under Section 2.16.160.
5. Adopt such operating policies and procedures as necessary to carry out its duties.
6. Prepare and submit to the Council a biennial report which shall contain an overview and evaluation of the Campaign Finance Fund during the previous election period.

B. Membership. The Open and Accountable Elections Commission shall consist of nine members who have demonstrated an interest in campaign finance funding and, insofar as possible, represent diverse interests and diverse communities. The Director shall solicit applications from the Office of Community & Civic Life and the general public in order to recommend nominees to Council for appointment.

C. Appointments and Terms.

1. Open and Accountable Elections Commission members shall be appointed by Council and serve 4 year terms starting May 1 of odd-numbered years, except that the initial appointments shall be as follows.
 - a. Four of the initial appointees will serve terms from January 1, 2019 to April 30, 2021; and
 - b. Five of the initial appointees will serve terms from January 1, 2019 to April 30, 2023.
2. Members of the Commission are limited to a maximum of two full terms, except that members serving an initial term of less than 4 years may serve two subsequent 4 year terms. If a position is vacated during a term, it shall

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be filled for the unexpired term. Council may replace any member of the Commission for due cause, including but not limited to malfeasance, incapacity, conflict of interest or neglect of duties.

D. Meetings, Officers and Subcommittees.

1. The Open and Accountable Elections Commission shall meet at least four times per year and may meet more often as otherwise necessary to conduct its business. Meetings shall be conducted in accordance with rules of procedure adopted by the Commission. Five members shall constitute a quorum. A quorum shall be necessary to make decisions that represent the position of the Commission and to conduct any other Commission responsibilities. The election of officers shall take place at the first meeting of each calendar year.
2. The officers of the Commission shall consist of a chairperson and a vice-chairperson. The chairperson shall be responsible for conducting the meetings of the committee. The vice-chairperson shall act as chair when the chairperson is not available.
3. The Commission may form subcommittees comprised of Commission members which are authorized to act on behalf of the Commission for an assigned purpose.

E. Attendance. Members of the Open and Accountable Elections Commission are expected to attend each meeting of the Commission. Council may replace any member who accrues unexcused absences from three or more consecutive meetings or more than 50 percent of the meetings in any year.

F. Compensation. Open and Accountable Elections Commission members shall serve without compensation.

2.16.140 Additional Reporting.

(Amended by Ordinance No. 189336, effective January 2, 2019.)

- A. All candidates and political committees, including non-participating candidates, must report contributions and expenditure transactions electronically in the ORESTAR system in compliance with state law.
- B. Participating and certified candidates must file additional contribution and expenditure reports to the Director as the Director deems necessary to make certification and public contribution matching decisions in a timely manner, as established by administrative rule. For the purposes of Subsection 2.16.140 B., the Director is the City's election officer.

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- C. In a contested election in which there is at least one participating or certified candidate, beginning on the 180th day before the election and ending on the 42nd day before the election, participating and non-participating candidates shall report contribution and expenditure transactions to the Director within 14 days.
- D. In a contested election in which there is at least one participating or certified candidate, beginning on the 180th day before the election and ending on the 42nd day before the election, persons or political committees making an independent expenditure in an amount of \$1,000 or more, or independent expenditures in an aggregate of \$1,000 or more, supporting or opposing a candidate or candidates for nomination or election to City office shall report such expenditures to the Director within 14 days.

2.16.150 Removal of Certain Contribution Limits.

If contributions to a non-participating candidate exceed the total contribution amounts in Subsection 2.16.040 K. for a primary election period or special nominating election period or the amounts in Subsection 2.16.040 L. for a general election period or special runoff election period, then any participating candidates for the same covered office may:

- A. Exceed the total contribution amounts in Subsection 2.16.040 K. or L. for the election period in which the non-participating candidate exceeds those amounts; and
- B. Accept up to \$500 in aggregate in allowable contributions from an individual during the relevant election period, notwithstanding the \$250 limit in Subsections 2.16.010 A., 2.16.040 F. and 2.16.120 B.

2.16.160 Penalties, Revocation of Certification and Repayment of Funds.

(Amended by Ordinance No. 189531, effective June 28, 2019.)

- A. Civil Penalties.
 - 1. The Director may impose a civil penalty as provided in this Section, in addition to any other remedies that are provided by this Code or other law, for:
 - a. Violation of any provision of this chapter by a participating or certified candidate; or
 - b. Failure to timely file a non-participating candidate or independent expenditure report or to include information required by Section 2.16.140.
 - 2. The City may establish a penalty matrix by administrative rule detailing civil penalties for potential violations of this chapter. A civil penalty imposed under this section shall not exceed \$10,000 for any violation except as otherwise provided in this Section. Limits on penalties imposed under

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this Section do not include interest. Penalties are subject to interest at a rate of 12 percent of the total amount per annum.

3. The Director shall send a notice of proposed penalty to any candidate, person or political committee against whom the Director is imposing a civil penalty.
 - a. The notice shall describe the proposed penalty and outline the procedures for requesting a penalty hearing.
 - b. The notice shall be sent by both certified and regular mail.
 - c. If a penalty hearing is not requested, the proposed penalty shall become final on the date specified in the notice, which date shall be the first day following the last day to file a request for a hearing.
4. If a civil penalty has been imposed under this Section against a candidate or the principal campaign committee of a candidate, the candidate shall be personally liable for the amount to be paid under this Section.
5. If a civil penalty has been imposed under this Section against a political committee other than a principal campaign committee, the directors of the political committee shall be jointly and severally liable for any amount to be paid under this Section.
6. Penalties may be paid from any private source and must be reported as an in-kind contribution unless paid by the candidate or publicly funded campaign account. A penalty may not be paid from a candidate's publicly funded campaign account unless permitted by the administrative rules. Penalties for violating reporting requirements may be paid in excess of contribution limits in this Chapter only if paid by the candidate's treasurer.
7. Civil penalties may be paid at any time after receiving the notice of proposed penalty, but are due immediately after the penalty has become final.
8. Penalties imposed under this Section are subject to interest at a rate of 12 percent of the total amount per annum.
9. All moneys received under this Section for violations of any provision of this Chapter shall be paid and credited to the Fund.
10. At the request of the Director, the City Attorney may seek civil penalties and enforcement of any provision of this Chapter, in addition to any other remedies provided by this Code or other law, in Circuit Court or other appropriate venue.

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B. Revocation of Certification.

- 1.** The certification of a participating or certified candidate against whom a civil penalty has been imposed for violation of Section 2.16.080 shall be revoked by the Director and the candidate shall not be eligible to receive public contributions from the Fund during the primary and general election periods, or special nominating and special runoff period during which the penalty is imposed. However, revocation of a candidate's certification is permissive, not mandatory, if all of the following conditions are met:
 - a.** The candidate has been found to have committed only one violation of Section 2.16.080; and
 - b.** It is the candidate's first violation of Section 2.16.080.
- 2.** If it is determined that a participating candidate violated any other provision of this Chapter during the primary election matching period or after certification, the Director has the authority to revoke the candidate's certification.

C. Repayment of Funds.

- 1.** A participating candidate against whom a civil penalty has been imposed for violation of Section 2.16.080 shall return to the Director an amount of money equal to all revenues distributed to the candidate from the Fund after the date the candidate was certified, plus interest on the total amount of revenues received at a rate of 12 percent per annum, in addition to the penalty and interest on the penalty.
- 2.** The Director shall seek immediate recovery of public contributions for any violation of this Chapter.

2.16.170 Hearings.

(Amended by Ordinance Nos. 189336 and 189531, effective June 28, 2019.)

- A.** Purpose. The purpose of this Section is to provide persons or political committees adversely affected by administrative determinations made under this Chapter with a timely, effective, and impartial appeal and review of the determination by a Hearings Officer or entity, to be recommended by the Open and Accountable Elections Commission and appointed by the Director.
- B.** The Director may contract with an entity, including but not limited to a vendor or a government body, to conduct hearings on behalf of the Program.
- C.** The Hearings Officer or entity conducting hearings may delay a hearing to 21 days after the request for the hearing is filed or 3 weeks prior to the relevant election, whichever is sooner.

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D. Types of Hearings.

1. Certification Hearings. A candidate who has received a determination denying certification or an opponent of a candidate who has been granted certification may challenge a certification decision with a written request for reconsideration as outlined in Subsection 2.16.170 E. and, if still dissatisfied, a written request for a hearing as outlined in Subsection 2.16.170 D.
2. Matching Fund Hearings. A candidate who has received a determination granting or denying public contribution matching or an opponent of a candidate who has been granted public contribution matching may challenge the public contribution matching decision by filing a written request for reconsideration as outlined in Subsection 2.16.170 E. and, if still dissatisfied, a written request for a hearing as outlined in Subsection 2.16.170 D.
3. Penalty Hearings. A candidate, person or political committee who has received a notice of proposed penalty from the Director may challenge the proposed penalty by filing a written request for reconsideration as outlined in Subsection 2.16.170 E. and, if still dissatisfied, a written request for a hearing as outlined in Subsection 2.16.170 D.

E. Requests for Hearings.

1. The written request for a hearing shall be filed not later than:
 - a. 7 days after the mailing of the certification reconsideration decision or
 - b. 7 days after the mailing of the proposed penalty reconsideration decision.
 - c. 7 days after the mailing of the notification of the matching reconsideration decision:
 - (1) For an opponent of the candidate who requested the public contributions, 7 calendar days after the mailing of the notification of the reconsideration decision.
 - (2) For an opponent of the candidate who requested the public contributions, 7 calendar days after the mailing information about the matching determination from the Director, which will be provided upon request.
2. The request shall be filed pursuant to forms and procedures published on the Program website. The written request shall contain either a copy of, or

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a full and complete description of, the decision or determination appealed and a statement of grounds upon which it is contended that the decision or determination is invalid, unauthorized, or otherwise improper, together with such other information as the Director may require by rule.

3. No person or political committee other than those described in Subsection 2.16.170 C. may be a party to any hearing conducted under this Section.

F. Request for reconsideration.

1. The written request for reconsideration must be filed with the Director not later than:
 - a. For certification determination, within 7 calendar days after the date of determination by the Director.
 - b. For a proposed penalty, within 7 calendar days after the date the Director imposes the penalty.
 - c. For a matching determination,
 - (1) For the candidate who requested the public contribution, within 7 calendar days of the determination by the Director.
 - (2) For the opponent of the candidate who requested the public contribution or a member of the public, within 7 calendar days after the date of the determination, which is available upon written request filed with the Director.
 - d. The Director must provide a final response to the request for reconsideration within 10 business days of receiving the request.

G. Conduct of Hearings.

1. As provided in Section 2.16.130, the Open and Accountable Elections Commission shall recommend to the Director for appointment a panel of hearings officers, or an outside entity to perform the hearings function, to review cases and make determinations under this Section.
2. The Director shall designate and appoint hearings officers or an entity, including but not limited to a vendor or another government body, based upon the recommendations of the Open and Accountable Elections Commission.
3. Written requests for hearings shall be filed within the deadlines established in Subsection 2.16.170 D. A hearing must be held within the timelines established in Subsection 2.16.170 F.4.

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4. The date set for hearings under this Section shall be:
 - a. Not later than 7 days after the request for a certification or public contribution matching hearing is filed as outlined in Subsections 2.16.170 D.1.a. and c.; or
 - b. Not more than 14 days after the request for a penalty hearing is filed as outlined in Subsection 2.16.170 D.1.b.

5. Notice.
 - a. In the case of certification hearings requested under Subsection 2.16.170 D.1.a.:
 - (1) Notice of receipt of a request for a hearing, together with a copy of the request, shall be given to all other candidates for the same office. The notice shall be sent not later than one business day after the request is filed.
 - (2) Notice of the hearing, together with a copy of the request for a hearing, shall be given to the Person who requested the hearing and all other candidates for the same office. The notice shall be sent not later than one business day after the date is set for the hearing. The notice shall specify the time, date, and place set for the hearing.
 - (3) The notices required in Subsections 2.16.170 F.5.a.(1) and (2) may be combined.
 - b. In the case of penalty hearings requested under Subsection 2.16.170 D.1.b., notice shall be given of the hearing to the person or political committee who requested the hearing. The notice shall be sent not later than one business day after the date is set for the hearing under Subsection 2.16.170 F.4. The notice shall specify the time, date, and place set for the hearing.
 - c. Notices may be given by any method or combination of methods which, under the circumstances, is reasonably likely to apprise the parties of the hearing. Notice may be given by United States mail, phone, e-mail or other method authorized by rule. If notice is given by mail, such notice shall be deemed given and received three days (Sundays and holidays not included) after the notice is deposited in the United States mail. The failure of any Person to receive actual notice of the proceeding shall not invalidate the hearing or any determination, decision, or order of the hearings officer.

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6. The hearings shall be conducted in accordance with the provisions of Chapter 22.10, except as otherwise provided in this Section.

H. Order of the Hearings Officer.

1. The hearings officer shall issue an order not later than 5 business days after a certification public contribution matching or penalty hearing.
2. In the case of a certification hearing, the hearings officer may uphold or revoke the certification.
3. In the case of a public contribution matching hearing, the hearings officer may uphold or revoke public contribution matching, or modify a public contribution matching decision by revoking some or all public contribution matching or granting additional public contribution matching.
4. In the case of a penalty hearing, the hearings officer may uphold, revoke or modify the penalty.
5. The order of the hearings officer is a final decision of the City.
6. Judicial review of an order made under this Section shall be as provided in Title 22.

I. Return of Funds and Payment of Cost of Hearing.

1. If the certification of a candidate is revoked following a hearing under this Section, the candidate shall return to the Director an amount of money equal to all revenues distributed to the candidate from the Open and Accountable Elections Fund after the date the candidate was certified, plus interest on the total amount of revenues received at a rate of 12 percent per annum, in addition to the penalty and interest on the penalty.
2. If public contribution matching is revoked, the candidate shall return to the Director an amount of money equal to the amount of revoked public contribution matching distributed to the candidate from the Open and Accountable Elections Fund, plus interest on the total amount of public contribution matching received at a rate of 12 percent per annum.
3. If the hearings officer or a court finds that a request for a hearing under this Section was made frivolously or to cause delay or hardship, the hearings officer or the court may require the person who filed the request for a hearing to pay costs of the hearings officer, court and opposing parties, and attorney fees of the opposing parties, if any.

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2.16.180 Implementation.

(Amended by Ordinance Nos. 189336 and 189531, effective June 28, 2019.) This Chapter applies to elections after November 1, 2019.

2.16.190 Program Management.

(Added by Ordinance No. 188853; amended by Ordinance Nos. 189336 and 189531, effective June 28, 2019.) The Commissioner of Public Utilities shall provide oversight to the Open and Accountable Elections Program until December 31, 2020. November 30, 2020 the Open and Accountable Elections Commission will make a recommendation regarding where the program should be housed to the Mayor and City Council.

**CHAPTER 3.15 - OFFICE OF MANAGEMENT
AND FINANCE**

(Chapter replaced by Ordinance No. 181483;
amended by Ordinance No. 184539, effective May
20, 2011.)

Sections:

- 3.15.010 Organization.
- 3.15.020 Bureau of Internal Business Services.
- 3.15.030 Business Operations Division.
- 3.15.040 Bureau of Revenue and Financial Services.
- 3.15.050 Bureau of Human Resources.
- 3.15.070 Bureau of Technology Services.
- 3.15.080 Enterprise Business Solution Division.

3.15.010 Organization.

(Amended by Ordinance Nos. 185807, 186746 and 187060, effective March 25, 2015.)

- A.** The Office of Management and Finance shall be under the direction and control of the Chief Administrative Officer (CAO) and shall include such other employees as Council may provide. The CAO shall report to the Mayor, but shall serve the entire Council, including providing information and advice to elected officials. The Office of Management and Finance is responsible for providing and coordinating administrative services of the City in support of the operational needs of City bureaus, and other duties as assigned. Administrative services include all those functions that provide products, services and support to City employees and programs that in turn provide direct services to the public. These services include, but are not limited to, the following: accounting, debt management, treasury management, payroll, grant administration, license, tax and fee collection, risk management, facilities and property management, fleet management, human resources and personnel services including employee training and education, technology services, printing and distribution, and procurement services.
- B.** The Office of Management and Finance consists of the Office of the CAO, the Bureau of Internal Business Services, the Bureau of Revenue and Financial Services, the Bureau of Human Resources, and the Bureau of Technology Services.
- C.** The CAO shall be responsible for the overall coordination of the administrative services functions of the City. The CAO shall be authorized to:
 - 1.** Formulate, approve and issue administrative rules and systems for providing City administrative services.

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2. Implement and monitor administrative rules and systems for providing City administrative services.
3. Determine if any administrative service should be provided by City staff or outside vendors. Bureaus shall use the services of the Office of Management and Finance unless otherwise authorized by the CAO or directed by the City Council.
4. Determine the classifications, duties and reporting relationships for positions responsible for centralized administrative services including, but not limited to, human resources, procurement and technology services.
5. Recommend alternatives to Council for providing administrative services.
6. At Council direction, provide administrative services to any other governmental or private agency.

D. The CAO's duties include, but are not limited to:

1. Evaluate the delivery of City administrative services; initiate improvements; and periodically report to Council on services and initiatives.
2. Provide the City Council with an annual workplan to improve city administrative services. The CAO will periodically meet with City Council to report on efforts to continually evaluate and improve all city administrative services, including those contained in the annual workplan.
3. Advise the Council and provide staff support to citywide projects and oversight committees including, but not limited to, technology oversight committees.
4. Participate with the City Budget Director, Mayor and City Council on City budget decisions, and ensure that information necessary to prepare the financial forecast is available to the City Budget Office.

E. The Office of the CAO shall be comprised of the Business Operations Division, the Enterprise Business Solution Division, a Policy Team, Spectator Facilities management, and Citywide projects assigned to the CAO.

3.15.020 Bureau of Internal Business Services.

(Amended by Ordinance Nos. 187060, 187984, 188280 and 189452, effective May 10, 2019.)

A. The Bureau of Internal Business Services shall be supervised by a Director who shall report to the CAO. The Bureau of Internal Business Services consists of

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CityFleet, Facilities Services, Printing and Distribution Services and Risk Management. The Bureau of Internal Business Services provides facilities, fleet, printing and distribution and risk management services for the City; manages and maintains the Portland Oregon™ sign and all associated intellectual property; and any other duties assigned by the CAO. The Bureau of Internal Business Services shall be responsible for the CityFleet Operating Fund (PCC 5.04.180), the Facilities Services Operating Fund (PCC 5.04.185), the Printing and Distribution Services Operating Fund (PCC 5.04.200), the Insurance and Claims Operating Fund (PCC 5.04.230), the Worker's Compensation Self Insurance Operating Fund (PCC 5.04.240) and other assigned funds.

- B.** The Bureau of Internal Business Services Director shall be authorized to:
1. Determine the City's equipment or leasing needs and determine appropriate methods of funding and financing such needs.
 2. Execute real property agreements including, but not limited to, easements, permits, licenses and leases, and amendments or renewals of such real property agreements.
 3. Execute intellectual property license agreements for use of the Portland Oregon™ sign. Develop, adopt and maintain an Acceptable Use policy and fee schedule for licensing of the Portland Oregon™ sign. Maintain, protect, and enforce the City's intellectual property rights in the Portland Oregon™ sign.
 4. Coordinate advance payments for building rentals. In cases where building space has been or shall be rented by the City on lease or on a month-to-month basis and the owner requires advance payment of rentals or a security deposit, the Accounting Division hereby is authorized to audit and allow such advance payment of rentals or security deposit, provided that advance payments of rentals shall be for a period of not to exceed 31 days.
 5. Provide oversight of operations, maintenance, management, planning and capital improvements and acquisition for the City and for real properties over which the Office of Management and Finance has assigned or delegated facilities management responsibilities. In carrying out these responsibilities, the Director of the Bureau of Internal Business Services will strive to maintain an environment that promotes orderly administrative and business operations, and to take reasonable and prudent actions to protect the health, welfare and safety of all persons at City Property over which Office of Management and Finance has responsibilities, by enforcing Rules of Conduct at City Property and City Property Exclusions in accordance with Chapter 3.18.

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- 6.** Has responsibilities over the following City Property:

 - a.** Portland City Hall located at 1221 SW Fourth Avenue;
 - b.** Portland Building located at 1120 SW Fifth Avenue;
 - c.** 1900 Building located at 1900 SW Fourth Avenue;
 - d.** Leasehold premises used by the City and managed by the Office of Management and Finance;
 - e.** Real property which the Office of Management and Finance manages under intra-bureau, interagency or intergovernmental agreement(s); and,
 - f.** City owned real property not specifically assigned to another bureau for property management.

- C.** The Commissioner-in-Charge of the Office of Management and Finance is authorized to request the City Attorney to proceed in court as necessary to enforce the provisions of any agreement authorized by Section 3.15.020.

- D.** CityFleet shall be supervised by a Fleet Manager who shall report to the Bureau of Internal Business Services Director. CityFleet is responsible for managing all City vehicles and equipment, owned leased or rented by the City. The Fleet Manager shall provide fleet management services as required by the CAO including, but not limited to:

 - 1.** Maintain an inventory of all city-owned, leased, or rented motorized vehicles and equipment, licensed trailers, and wheel-mounted equipment. This does not include fire fighting apparatus.
 - 2.** Operate the City's maintenance and repair facilities now existing or in the future established for maintenance or repair of the above described fleet equipment.
 - 3.** Assist with identifying City vehicle and equipment needs.
 - 4.** Manage the assignment of fleet vehicles and equipment.
 - 5.** Assist in the development of fuel and resource conservation plans.
 - 6.** In cooperation with the Procurement Services Division, purchase, lease or rent vehicles and equipment as defined above. Any proposed lease transactions shall first be reviewed and approved by the City's Debt Manager.

Section 2-509. These notices may include posted notices in public areas; or, electronic postings or links through Internet web sites, including the City web site. Nothing in this section is to be construed as repealing any other provisions of contract, ordinance or law.

3.77.170 Reports.

(Amended by Ordinance No. 188842, effective March 30, 2018.) The Ombudsman may from time to time and shall annually report the Office of the Ombudsman's activities to the Auditor and City Council, or any of its committees, to the public and, in the Ombudsman's discretion, to agencies.

3.77.180 Reserved.

3.77.190 Duty to Cooperate.

(Amended by Ordinance No. 188842, effective March 30, 2018.) City employees shall cooperate with the Ombudsman in the exercise of their powers, and shall not mislead or attempt to mislead an Ombudsman's inquiry.

3.77.200 Ombudsman Immunities.

(Amended by Ordinance No. 188842, effective March 30, 2018.) To the extent allowable by law, the Ombudsman and staff shall not be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to any matter involving the exercise of their official duties except as may be necessary to enforce this Chapter and City Charter Section 2-509.

3.77.210 Reprisals Prohibited.

No person who files a complaint or participates in any investigation or proceeding pursuant to this chapter shall be subject to any penalties, sanctions or restrictions in connection with his or her employment or be denied any right, privilege, or benefit because of such action.

3.77.220 Relationship to Other Laws

The provisions of this Chapter are in addition to and do not in any manner limit or affect any other provisions of law under which any remedy or right of appeal is provided for any person, or any procedure is provided for the inquiry into or investigation of any matter. The powers conferred on the Ombudsman may be exercised notwithstanding any provision of law to the effect that any administrative action shall be final or unappealable.

3.77.230 Effective Date

This Act shall take effect on July 1, 2001.

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**CHAPTER 3.78 - ACQUISITION OF COUNTY
PROPERTY FOR PARK PURPOSES**

Sections:

- 3.78.010 Authorization for Payment.
- 3.78.020 Title Reports.
- 3.78.030 Clearing of Title.
- 3.78.040 Retaining Property with Cloud on Title.

3.78.010 Authorization for Payment.

(Amended by Ordinance Nos. 173369 and 189452, effective May 10, 2019.) In all cases, past, present or future, in which an ordinance provides for the acquisition of park property from Multnomah County and where Multnomah County does not furnish an abstract or title insurance, the Accounting Division is hereby authorized to draw and deliver a check in favor of Multnomah County for the amount to be paid for the deed from the county unless such ordinance indicates specifically a purpose to disregard this Chapter and thereupon the Accounting Division shall submit the matter to the City Attorney.

3.78.020 Title Reports.

The City Attorney hereby is authorized to obtain a policy of title insurance covering any particular parcel or parcels of property purchased in the past or in the future from Multnomah County for park and playground purposes. The expense of such title reports shall be chargeable to the public recreational areas fund.

3.78.030 Clearing of Title.

The City Attorney hereby is authorized to initiate and prosecute whatever legal action is necessary in his opinion to clear the title to any property covered by this Chapter and in any case, past, present or future, where he deems it necessary. Any expense incident thereto shall be chargeable to the public recreational areas fund.

3.78.040 Retaining Property with Cloud on Title.

Authority is hereby granted to accept and retain any property covered by this Chapter that has cloud on the title when and if the City Attorney renders an opinion that such cloud on title is not be deemed in imminent hazard.

CHAPTER 3.80 - SPECIAL PERMITS

Sections:

3.80.010 Operations to Cease Upon Expiration of Permit.

3.80.020 Use of Park Property for Private Gardening Purposes.

3.80.010 Operations to Cease Upon Expiration of Permit.

It is unlawful for any person, who has been granted a special permit, whether under any special code or not, to continue to operate under the terms of the permit after the date on which the special permit, by its terms, expires. All persons to whom such a special permit has been granted by the Council shall come within the terms of this provision and comply herewith immediately after the expiration of the special permit by ceasing the operations allowed under the terms of the special permit.

3.80.020 Use of Park Property for Private Gardening Purposes.

Park property not needed by the City for development may be used by private parties for gardening purposes by obtaining a special permit. The bureau of parks is authorized to issue revocable permits for such purpose and shall impose such conditions as are necessary and advisable to protect the interests of the City.

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**CHAPTER 3.82 - OFFICER AND EMPLOYEE
BONDS**

Sections:

- 3.82.010 Exceptions.
- 3.82.020 Bond of the City Treasurer.
- 3.82.030 City Auditor's Bond.

3.82.010 Exceptions.

All officers and employees, including the City Auditor, but not including the Mayor and City Commissioners, shall furnish a bond or bonds protecting the City against dishonesty, which bond or bonds shall be in the amount of \$10,000 per employee, with a further bond or bonds written as excess in the amount of \$40,000 per employee. Such bond or bonds shall run to the City, and the premium shall be paid by the City.

3.82.020 Bond of the City Treasurer.

The City Treasurer shall furnish a bond conditioned upon the faithful performance of his duties in the sum of \$100,000, which bond shall run to the City and the premium shall be paid by the City.

3.82.030 City Auditor's Bond.

The Auditor of the City shall furnish, in addition to the honesty bond provided above, a faithful performance bond in the sum of \$50,000, conditioned upon the faithful performance of his duties, which bond shall run to the City and the premium shall be paid by the City.

**CHAPTER 3.84 - CITY OWNED MOTOR
VEHICLE ACCIDENT REPORTS**

Sections:

- 3.84.010 Filing of Accident Report.
- 3.84.020 Form of Report.
- 3.84.030 Repair Shop Report.
- 3.84.040 Repair.
- 3.84.050 Billing of Charges.

3.84.010 Filing of Accident Report.

(Amended by Ordinance No. 165594, effective July 8, 1992.) In addition to the requirements of ORS 813, accident reports shall be filed:

- A. Whenever any motor vehicle belonging to the City, whether being operated by a City employee or not, becomes involved in an accident resulting in injury or death to any person or damage to the City vehicle or property of another, the operator of the City vehicle or the person to whom the vehicle is assigned or chargeable, shall, not later than the next normal day of business following the date of the accident, forward a complete written report of such accident, in triplicate, to the Bureau of Property Control upon forms furnished by the City. The Property Control Officer shall forward one copy of every report so filed, to the office of the City Attorney not later than the next normal day of business following the day of the filing;
- B. Whenever the original report and duplicate is insufficient in the opinion of the Property Control Officer of the City Attorney, supplemental reports of accidents may be required of the person or persons chargeable therefor;
- C. Whenever the driver of a vehicle involved in an accident is injured thereby so as to be incapable of making a required accident report and there was another City employee occupant in the vehicle at the time of the accident capable of making a report, such occupant shall make or cause the report to be made.

3.84.020 Form of Report.

The Bureau of Property Control shall prepare or otherwise provide, and upon request supply to the various departments and bureaus of the City, forms for accident reports required in Section 3.84.010. The report shall call for sufficiently detailed information to disclose with reference to an accident involving a City owned motor vehicle, the cause, conditions then existing, and the persons and property involved.

3.84.030 Repair Shop Report.

The person in charge of the bureau repair shop to which is brought any motor vehicle which shows evidence of having been involved in an accident, shall report in writing to the Bureau of Property Control not later than the next normal day of business after such motor vehicle

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is received, giving the City property number of such vehicle, department, and a general description of the damage.

3.84.040 Repair.

Every City owned motor vehicle damaged as defined in the subdivision (1) of Section 3.84.010 shall be removed to the municipal shop for repairs as soon as conveniently possible following the accident, but in no event more than 7 days thereafter; provided, however:

- A. That no vehicle shall be repaired without prior authorization of the Commissioner In Charge of the bureau to which the vehicle is assigned, or his authorized representative, except in the event of emergency whereupon the said Commissioner shall be notified within 72 hours of all such work done; and
- B. In no event shall any vehicle be repaired by other than a City owned and operated repair shop unless and until the Purchasing Agent of the City shall have first obtained at least three independent estimates of cost of repair, and in such event the repair work shall be awarded to the lowest responsible bidder.

3.84.050 Billing of Charges.

(Amended by Ordinance No. 189452, effective May 10, 2019.) No request for billing of charges for repair of motor vehicles damaged as defined in this Chapter shall be forwarded to the Office of Management and Finance as in Section 5.48.040 provided, until the validity thereof based upon determination of liability shall have first been approved by the City Attorney.

**CHAPTER 3.124 - PORTLAND BUREAU OF
EMERGENCY MANAGEMENT**

(Chapter replaced by Ordinance No. 184740;
Amended by Ordinance No. 185304, effective June
1, 2012.)

Sections:

- 3.124.010 Definitions.
- 3.124.020 Portland Bureau of Emergency Management.
- 3.124.030 Purpose.
- 3.124.040 Organization.
- 3.124.050 Director's Powers and Duties.
- 3.124.060 Staff and Delegation.
- 3.124.070 Neighborhood Emergency Team Program.
- 3.124.080 Neighborhood Emergency Teams.
- 3.124.090 Neighborhood Emergency Team Leaders.

3.124.010 Definitions.

(Amended by Ordinance Nos. 185304 and 189462, effective May 17, 2019.) The following definitions apply to Chapters 3.124 through 3.126:

- A.** “Comprehensive Emergency Management Plan (CEMP)” means a written document that describes the City’s overall emergency management plan. A CEMP specifies the purpose, organization, responsibilities and facilities of the agencies and officials of the City in the mitigation of, preparation for, response to, and recovery from emergencies and disasters.
- B.** “Director” means the director of the Portland Bureau of Emergency Management.
- C.** “Emergency” means any natural, technological or human-made, event or circumstance causing or threatening: widespread loss of life, injury to persons or property, human suffering or financial loss, including but not limited to fire, explosion, flood, severe weather, landslides or mud slides, drought, earthquake, volcanic activity, tsunamis or other oceanic phenomena, spills or releases of oil or hazardous material, contamination, utility or transportation emergencies, disease, blight, infestation, civil disturbance, riot, sabotage, acts of terrorism and war.
- D.** “Emergency Coordination Center (ECC)” means the centralized location where local officials gather during an emergency to coordinate emergency response activities and implement direction from the Mayor.
- E.** “Emergency Management” means an approach to prevent, protect against, respond to, recover from, and mitigate the effects of incidents.

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- F.** “Emergency Notices” means information that is disseminated primarily in anticipation of or during an emergency. In addition to providing situational information to the public, it frequently provides directive actions required to be taken by the general public.
- G.** “Emergency Plan” means an ongoing plan for responding to a wide variety of potential hazards.
- H.** “Incident” means an occurrence, natural or human-made, that requires a response to protect life or property in an emergency.
- I.** “National Incident Management System” (NIMS) means the Federal Government’s standardized framework of doctrines, concepts, principles, terminology, and organizational processes for emergency management.
- J.** “Continuity of Operations” (COOP) Plan means a plan that describes how a bureau will continue to perform its essential functions following an event that disrupts normal operations.

3.124.020 Portland Bureau of Emergency Management.

(Amended by Ordinance Nos. 185304 and 189462, effective May 17, 2019.) There is established by the City Council the Portland Bureau of Emergency Management (PBEM).

3.124.030 Purpose.

(Amended by Ordinance No. 185304, effective June 1, 2012.) The purpose of PBEM is to centralize leadership and coordination of emergency management.

3.124.040 Organization.

(Amended by Ordinance Nos. 185304 and 189462, effective May 17, 2019). The Portland Bureau of Emergency Management shall consist of the Director and such other employees as the Council may provide. The Director shall be immediately responsible to the Mayor or its commissioner-in-charge if other than the Mayor, and, thereafter, to the City Council.

3.124.050 Director's Powers and Duties.

(Amended by Ordinance No. 185304, effective June 1, 2012.) The Director of the Portland Bureau of Emergency Management’s duties and powers include, but are not limited to the following:

- A.** Overall administrative authority for the Office;
- B.** Serve as principal strategic advisor to the Mayor concerning emergency management;
- C.** Implement policy directives of the City Council and the Disaster Policy Council and enforce the schedules and plans approved by them;

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- D.** Manage the Emergency Coordination Center (ECC), establishing the overall structure, roles, responsibilities and direction for the operation of the ECC and ensuring that the ECC is appropriately sited, staffed, equipped, and maintained. The Director may reassign employees to ECC duties as required;
- E.** Maintain written emergency plans, including all chapters, annexes and appendices of the Comprehensive Emergency Management Plan (CEMP) and annually submit a report with any recommendations for revisions;
- F.** Maintain records documenting compliance with requirements of federal and state emergency management programs, including NIMS. When a bureau other than PBEM possesses such records, the bureau shall immediately produce them upon the request of the Director;
- G.** Develop and implement training and exercise programs for responders that test the effectiveness of the CEMP and other emergency management plans;
- H.** Develop and implement processes, procedures, and systems for communicating emergency notices to the public and responders about incidents;
- I.** Develop and implement programs to educate the public about emergency preparedness, including volunteer programs, and train citizens to assist in emergencies;
- J.** Evaluate the effectiveness of the City's response to an emergency event.

3.124.060 Staff and Delegation.

(Amended by Ordinance Nos. 185304 and 189462, effective May 17, 2019).

- A.** The Director may appoint an Operations Manager who is accountable to the Director and may appoint other personnel necessary to carry out the provisions of this Chapter, when in keeping with the adopted budget for PBEM or specially funded projects.
- B.** The Director may delegate to staff members any of the Director's duties.
- C.** In the event of an emergency, the line of succession for the PBEM is: the succession plan described in the Bureau's COOP plan.
- D.** When a succession occurs, all duties and responsibilities of the Director are transferred to the successor and any delegations remain in place unless withdrawn by the new Director.

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3.124.070 Neighborhood Emergency Team Program.

The purpose of the Neighborhood Emergency Team Program is to prepare neighborhoods for self-sufficiency during an emergency by providing individuals with information, training, and exercises related to emergency preparedness and response.

3.124.080 Neighborhood Emergency Teams.

- A.** As part of the Neighborhood Emergency Team Program, the Director is authorized to:
 - 1.** Create Neighborhood Emergency Teams (NET) and define the qualifications for membership therein;
 - 2.** Develop written processes and procedures governing the conduct of members;
 - 3.** Conduct or cause to be conducted such inquiries or investigations into the fitness of an individual to serve as a NET member that the Director believes are necessary and appropriate;
 - 4.** Conduct or approve of ongoing training for NET members;
 - 5.** Designate certain NET members as team leaders for the purpose of supervision;
 - 6.** Dismiss or remove NET members.
- B.** When acting as agents of the City, NET members are entitled to defense and indemnification pursuant to ORS 30.285.

3.124.090 Neighborhood Emergency Team Leaders.

- A.** All NET members shall be immediately responsible to a team leader and thereafter the Director. The Director may dismiss or remove a NET Leader.
- B.** NET leaders may designate one assistant for each five NET members or fraction thereof for purposes of maintaining adequate supervision of NET members during training or deployment.
- C.** NET leaders are responsible for the organization, ongoing training, communication with and operational safety of the NET members assigned to their teams.
- D.** NET leaders shall attend regularly scheduled meetings for the purposes of training and communicating with NET members.

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- E.** NET leaders shall evaluate the performance of NET members and may recommend to the Director the dismissal or removal of NET members.

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**CHAPTER 3.125 - DISASTER POLICY
COUNCIL**

(Chapter replaced by Ordinance No. 184740,
effective July 13, 2011.)

Sections:

- 3.125.010 Disaster Policy Council.
- 3.125.020 Duties.
- 3.125.030 Membership.
- 3.125.040 Procedures.
- 3.125.050 Staff Support to Disaster Policy Council.

3.125.010 Disaster Policy Council.

The Disaster Policy Council (DPC) is hereby created for the purpose of promoting interbureau cooperation in furtherance of the City's integrated emergency management goals.

3.125.020 Duties.

(Amended by Ordinance Nos. 185304 and 189462, effective May 17, 2019.) The DPC's duties include, but are not limited to, the following:

- A. During an emergency, advise the Mayor on policy matters pertaining to management of the emergency;
- B. Approve strategic, response and work plans developed by the Portland Bureau of Emergency Management and the Emergency Management Steering Committee defining the City's emergency management program goals and priorities;
- C. Monitor individual bureau progress on work plan tasks, strategic plan tasks, and response plan updates. The Mayor, in consultation with the DPC, may compel bureaus to create and complete plans and updates;
- D. Convene meetings no less than twice a year whenever:
 - 1. The President of the City Council changes
 - 2. Requested by the Mayor.
- E. Keep records of meetings and decisions.

3.125.030 Membership.

(Amended by Ordinance Nos. 185304, 186729 and 189462, effective May 17, 2019.) The DPC shall consist of the following members:

- A. The Mayor, who shall be Chair;

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- B.** Commissioner serving as President of the City Council, who shall be Vice Chair;
- C.** If the Mayor or the President of the Council is not the Commissioner-in-Charge of the Portland Bureau of Emergency Management, the Commissioner-in-Charge of the Portland Bureau of Emergency Management or his or her designee, unless it would create a quorum of the City Council;
- D.** Chief Administrative Officer;
- E.** City Attorney;
- F.** City Auditor;
- G.** Director, Portland Bureau of Emergency Management;
- H.** Chief of Portland Fire & Rescue;
- I.** Chief of Portland Police Bureau;
- J.** Director, Bureau of Emergency Communications;
- K.** Administrator, Portland Water Bureau;
- L.** Director, Bureau of Transportation;
- M.** Director, Human Resources;
- N.** Director, Bureau of Environmental Services;
- O.** Director, Portland Parks and Recreation;
- P.** Director, Bureau of Development Services;
- Q.** Director, Joint Office of Homeless Services
- R.** Director, Bureau of Revenue and Financial Services
- S.** Director, Bureau of Technology Services
- T.** If the Mayor is unavailable to Chair the DPC, the duties shall be performed and authority exercised by the first of the City officials in the order of membership listed in Subsections A.-S. above who is able and available.

3.125.040 Procedures.

When the DPC is required to approve plans under subsection 3.125.020 C., the decision making process shall be by consensus. The consensus shall be determined by the Chair.

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3.125.050 Staff Support to Disaster Policy Council.

(Amended by Ordinance No. 185304, effective June 1, 2012.) The Portland Bureau of Emergency Management shall provide staff support to the DPC, including recording and communicating its decisions.

**CHAPTER 3.126 - EMERGENCY
MANAGEMENT STEERING COMMITTEE**

(Chapter replaced by Ordinance No. 184740,
effective July 13, 2011.)

Sections:

- 3.126.010 Emergency Management Steering Committee.
- 3.126.020 Duties.
- 3.126.030 Membership.
- 3.126.040 Staff Support to the Emergency Management Steering Committee.

3.126.010 Emergency Management Steering Committee.

(Amended by Ordinance No. 189462, effective May 17, 2019.) The Emergency Management Steering Committee (EMSC) is hereby created for the purpose of assisting the Portland Bureau of Emergency Management in developing emergency management policies and procedures for incidents requiring significant interbureau coordination.

3.126.020 Duties.

(Amended by Ordinance No. 185304, effective June 1, 2012.) The EMSC's duties include, but are not limited to, the following:

- A. Assign lead author responsibility to specific bureaus for the development of emergency plans, including annexes and appendices to the CEMP, and approve schedules for plan completion, plan exercise, review and revision;
- B. Develop strategic, response, and work plans in coordination with the Portland Bureau of Emergency Management defining the City's emergency program goals and priorities;
- C. Devise bureau-specific protocols for mobilizing resources to respond to emergencies;
- D. Assess individual Bureau compliance with emergency plans;
- E. Keep records of decisions;
- F. Convene meetings at least monthly and at other times as requested by the Director;
- G. Make periodic reports to the Disaster Policy Council so that the DPC can fulfill its duty under PCC 3.125.020.

3.126.030 Membership.

(Amended by Ordinance Nos. 185304, 189078 and 189462, effective May 17, 2019.) The EMSC shall consist of qualified staff from the following Bureaus:

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- A. Water Bureau;
- B. Portland Fire & Rescue;
- C. Portland Police Bureau;
- D. Bureau of Environmental Services;
- E. Portland Parks & Recreation;
- F. Bureau of Transportation;
- G. Bureau of Emergency Communications;
- H. Portland Bureau of Emergency Management;
- I. Bureau of Development Services;
- J. Bureau of Technology Services;
- K. Office of Community & Civic Life;
- L. Bureau of Human Resources;
- M. Joint Office of Homeless Services; and
- N. Bureau of Revenue and Financial Services.

3.126.040 Staff Support to the Emergency Management Steering Committee.
(Amended by Ordinance No. 185304, effective June 1, 2012.) The Portland Bureau of Emergency Management shall provide staff support to the EMSC.

**CHAPTER 3.127 - BUREAU OF PORTLAND
FIRE AND POLICE DISABILITY AND
RETIREMENT**

(Chapter added by Ordinance No. 180690, effective
December 20, 2006.)

Sections:

- 3.127.010 Bureau of Portland Fire and Police Disability and Retirement.
- 3.127.020 Purpose.
- 3.127.030 Organization.
- 3.127.040 Director's Powers and Duties.
- 3.127.050 Staff and Delegation.

3.127.010 Bureau of Portland Fire and Police Disability and Retirement.

In conjunction with Chapter 5 of the Charter of the City of Portland, there is established by the City Council, the Bureau of Portland Fire and Police Disability and Retirement as a part of the Mayor's portfolio and charged with the implementation of Chapter 5 of the Charter.

3.127.020 Purpose.

The purpose of this office is to administer Chapter 5 of the Charter of the City of Portland. This purpose may be accomplished by direction from the Board of Trustees of the Fire and Police Disability and Retirement Fund ("FPDR") and in accordance with the provisions of Chapter 5 of the Charter of the City of Portland.

3.127.030 Organization.

(Amended by Ordinance No. 180917, effective May 26, 2007.) The Bureau of Portland Fire and Police Disability and Retirement shall be directly responsible to its Board of Trustees and to the Mayor. Pursuant to Chapter 5 of the Charter, the FPDR Board shall have the powers listed in Section 5-202 of the Charter. Other bureaus may provide FPDR with necessary information and assistance in accordance with Chapter 5 of the Charter and include, but are not limited to, Portland Fire & Rescue, the Bureau of Police, and the Bureau of Human Resources.

3.127.040 Administrator's Powers and Duties.

The Administrator of the Fire and Police Disability and Retirement Fund shall:

- A. Be the Director of the Bureau of Portland Fire and Police Disability and Retirement, in accordance with Charter Chapter 5 Section 5-202;
- B. Be responsible for administering the terms of the FPDR plan;

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- C.** Serve as the principle administrator of the FPDR plan and have the power to initially approve or deny claims filed with the FPDR and to subsequently suspend, reduce or terminate benefits as provided in Charter Chapter 5;
- D.** Lead and direct the activities of the staff of the FPDR;
- E.** Oversee and direct other agents or advisers of the FPDR including actuaries and attorneys;
- F.** Be responsible for integrating disability, retirement, and return-to-work programs with other bureaus within the City where applicable; and
- G.** Review and propose amendments as necessary to the FPDR to conform to changes in federal or state law and, as appropriate, provide Council with the documentation necessary for its review and approval of the same.

3.127.050 Staff and Delegation.

The Administrator may delegate to his or her staff members any of the Administrator's duties when the Administrator is not available or able to perform those duties.

**CHAPTER 3.128 - OFFICE OF EQUITY AND
HUMAN RIGHTS**

(Chapter replaced by Ordinance No. 184880,
effective September 21, 2011.)

Sections:

- 3.128.010 Creation and Organization.
- 3.128.020 Purpose.
- 3.128.030 Director's Powers and Duties.
- 3.128.040 Administrative Rulemaking Procedures.

3.128.010 Creation and Organization.

There is established the Office of Equity and Human Rights. The Office of Equity and Human Rights shall consist of the Director and such other employees as the Council may provide. The Director shall report to the Commissioner in Charge.

3.128.020 Purpose.

The purpose of the Office of Equity and Human Rights is to:

- A. Promote equity and reduce disparities within City government;
- B. Provide guidance, education and technical assistance to all bureaus as they develop sustainable methods to build capacity in achieving equitable outcomes and service;
- C. Work with community partners to promote equity and inclusion within Portland and throughout the region, producing measurable improvements and disparity reductions;
- D. Support human rights and opportunities for everyone to achieve their full potential; and
- E. Work to resolve issues rooted in bias and discrimination, through research, education, and interventions.

3.128.030 Director's Powers and Duties.

(Amended by Ordinance No. 186898, effective November 19, 2014.) The duties of the Director of the Office of Equity and Human Rights include, but are not limited to:

- A. Overall administration of the Office and supervision of its staff;
- B. Implementing the policy directives of the City Council and the Commissioner in Charge, and proposing policies and practices to achieve the purpose of the Office, and adopt administrative rules, procedures and forms to assist in implementing City policies;

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- C. Developing an annual work plan to organize and prioritize the work of the Office;
- D. Working with the Human Rights Commission, the Portland Commission on Disability and all other City bureaus, offices, boards and commissions, as well as regional partners in government, business and the community, to increase equitable outcomes and reduce disparities;
- E. Recommending implementation strategies, accountability mechanisms, evaluation standards, and specific actions to the City Council that will achieve the goals of the Portland Plan Equity initiative, and other equity and human rights policies adopted by City Council;
- F. Providing reports to Council and the community annually and as requested.

3.128.040 Administrative Rulemaking Procedures.

(Added by Ordinance No. 186898, effective November 19, 2014.)

- A. Purpose. The Director has been delegated the authority to adopt and administer administrative rules appropriate to perform the duties set forth in Section 3.128.030. Administrative rules shall be adopted according to the procedures in this Section.
- B. Adopting Rules.
 - 1. Prior to the adoption or amendment of a permanent rule, the Director shall:
 - a. Give notice of the proposed rule at least 15 days prior to the effective date of the rule to City Commissioners, Bureau Directors and other parties of interest. The notice shall include 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.
 - b. During the comment and review process, the Director will analyze written comments, engage stakeholders and solicit legal review. The Director may either adopt the proposed rule, modify it or reject it.
 - c. If the Director makes a substantial modification to the proposed rule, the Director may provide additional time for review and comment prior to adoption.
 - d. Unless otherwise stated, all rules will be effective upon adoption by the Director. Permanent rules shall be filed in the Portland Policy Documents repository.

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- e. Upon consultation with the Commissioner in Charge, the Director may adopt an interim rule without prior notice upon a finding that a failure to act promptly will result in prejudice to the City's interest. Interim rules will be effective for a period of no longer than 180 days. No later than 15 days after adoption, notice of the interim rule shall be given to City Commissioners, Bureau Directors and other parties of interest as identified by the Director.
- 2. All administrative rules shall be posted on the Bureau's website.
 - 3. The Director may repeal any adopted rules upon consultation with the Commissioner in Charge. Notice of repeal will be given to City Commissioners, Bureau Directors and other parties of interest.

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**CHAPTER 3.129 - HUMAN RIGHTS
COMMISSION**

(Chapter added by Ordinance No. 181670; effective
March 19, 2008.)

Sections:

- 3.129.010 Staffing and Membership.
- 3.129.020 Mission.
- 3.129.030 Jurisdiction.

3.129.010 Staffing and Membership.

(Amended by Ordinance No. 184880, effective September 21, 2011.) There is established in the City of Portland a Human Rights Commission. The Commission shall be staffed by the Office of Equity and Human Rights. The Commission shall consist of 11 to 15 members. All members shall serve without compensation. Appointments are for staggered terms of three years. No member may serve more than two consecutive three year terms. When a vacancy occurs, a Human Rights Commission workgroup – after consultation with the Commissioner in Charge of the Office of Equity and Human Rights – nominates, the Mayor appoints, and the Council confirms, a member to fill the vacancy. This same process shall be used when an interim vacancy occurs to appoint a member to fill the balance of the unexpired term. Members shall be appointed by the Mayor so as to provide representation from a reasonably broad spectrum of the community, including without limitation the following factors: 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. Members are encouraged to establish constructive relationships with each member of Council, the City Auditor and other elected officials. The Mayor may remove a member from the Commission at any time, with the recommendation of the Commission and subject to approval by the Council.

3.129.020 Mission.

(Amended by Ordinance No. 184880, effective September 21, 2011.) The Human Rights Commission shall work to eliminate discrimination and bigotry, to strengthen intergroup relationships and to foster greater understanding, inclusion and justice for those who live, work, study, worship, travel and play in the City of Portland. In doing so, the Human Rights Commission shall be guided by the principles embodied in the United Nations Universal Declaration of Human Rights and by the Portland Plan Equity initiative. The Human Rights Commission shall report at least annually to the Council on the activities of the Human Rights Commission (to include any subcommittees or task forces as may be established) on the progress of the Commission and any recommendations to the Council for further action.

3.129.030 Jurisdiction.

The jurisdiction of the Commission will include all practices and incidents occurring in the City of Portland which affect people who live, work, study, worship, travel or play in the City. The Commission shall have jurisdiction to address such practices and incidents through education, research, advocacy and/or intervention, but shall not have civil rights enforcement authority.

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**CHAPTER 3.130 - ADMINISTRATIVE
APPEALS**

(Chapter added by Ordinance No. 187151; effective
September 1, 2015.)

Sections:

- 3.130.010 Definitions.
3.130.020 Timely and Adequate Notification of Right to Appeal Required.

3.130.010 Definitions.

For the purpose of this Chapter:

- A. “Administrative Act” means a final action, decision, determination, or order of Council, a bureau, department, or office. Administrative acts do not include legislative acts of Council, any City employment action, decision, determination, or order, or any action, decision, determination, or order applying Title 33 of the Code.
- B. “Administrative Appeal” means appeals of administrative acts by appellants when the right to appeal is provided by Code or rule, and the Code or rule requires the appeal to be decided by a bureau, department, office, board, hearings officer, or Council acting in its quasi-judicial capacity.
- C. “Appellant” includes any person given the right to appeal an administrative act by Code or a rule. As used in this Chapter, “appellant” does not include prospective, current, or former City employees contesting any administrative act related to their employment, employment benefits, application for employment, termination of employment, or internal complaint arising out of or connected with their employment.
- D. “Rule” means an administrative rule or bureau policy, as each term is defined in Section 1.07.020.
- E. "Timely" means that written notice is provided to the appellant in accordance with the time period specified in the Code or rule providing for the right of appeal. If the applicable Code or rule does not specify a time period, “timely” means that written notice is provided as soon as practicable after the right to request an administrative appeal is triggered but no later than:
 - 1. Three business days after the right to an administrative appeal is triggered, if the period during which the appellant may request an administrative appeal is less than 15 days; or

2. Ten business days after the right to an administrative appeal is triggered, if the period during which the appellant may request an administrative appeal is 15 days or more.

3.130.020 Timely and Adequate Notification of Right to Appeal Required.

- A. Timely and Adequate Notification Required. When there is a right to appeal an administrative act through an administrative appeal, the bureau, department or office must provide timely notice to appellant in accordance with Subsection 3.130.020 B.
- B. Form and Content of the Notice. An adequate notice must:
 1. Be in writing;
 2. Provide a short, plain statement describing the underlying administrative act and the basis for the administrative act, including citation to the applicable Code provision or rule;
 3. Explain any right to request an administrative appeal, including:
 - a. citation of the applicable Code provision or rule providing the right to appeal;
 - b. the time limit for requesting an administrative appeal, specifying calendar or business days;
 - c. the method for requesting an administrative appeal, including a City address and phone number;
 - d. the cost, if any, for requesting an administrative appeal, including accepted payment methods and whether there is a low-income fee waiver; and
 - e. disclosure of whether effect of administrative act will be stayed pending resolution of the requested administrative appeal.
- C. A bureau, department or office may adopt a rule specifying when and how notice of the right to request an administrative appeal will be provided so long as it is consistent with Subsections A and B of this Section 3.130.020.

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**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.

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.

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- 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.

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**CHAPTER 3.132 - COMMUNITY
INVOLVEMENT COMMITTEE FOR
LEGISLATIVE PROJECTS UNDER THE
COMPREHENSIVE PLAN.**

(Chapter added by Ordinance No. 188177, effective
January 1, 2018.)

Sections:

- 3.132.010 Purpose.
3.132.020 Membership, Meetings, and Organization.

3.132.010 Purpose.

The Community Involvement Committee (CIC), an independent advisory body, is charged with reviewing, commenting and advising City staff on the community involvement elements of legislative projects that implement Portland's Comprehensive Plan. The Committee will:

- A. Recommend changes to and assessments of ongoing and project-specific community involvement practices to bring them closer into alignment with the Comprehensive Plan Community Involvement goals and policies.
- B. Approve and update the Community Engagement Manual over time to reflect emerging best practices.

3.132.020 Membership, Meetings, and Organization.

The Community Involvement Committee members shall be appointed by the Commissioner-in-Charge of the Bureau of Planning and Sustainability and confirmed by the City Council. The Committee will consist of at least 5 and no more than 12 members. The appointed membership shall be broadly representative of geographic areas and interests and from a reasonably broad spectrum of lived experience, particularly in under-served and under-represented communities. 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.

- A. **Appointments and Terms.** The Commissioner-in-Charge of the Bureau of Planning and Sustainability shall appoint members of the Community Involvement Committee. Appointment to the Community Involvement Committee shall be for a three-year term, renewable for a second term. If a position is vacated during a term, the Commissioner-in-Charge of the Bureau shall appoint a member to serve for the unexpired term. Members appointed to the Community Involvement Committee serve at the pleasure of the Commissioner-in-Charge of the Bureau of Planning and Sustainability. Members of the Committee may be dismissed at the discretion of the Commissioner-in-Charge.

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- B.** Meetings, Officers, and Subcommittees.
- 1.** The Community Involvement Committee shall meet at least five times yearly and as otherwise necessary to conduct its business. Meetings shall be conducted in accordance with bylaws adopted by the Director of the Bureau of Planning and Sustainability.
 - 2.** The Community Involvement Committee may divide its members into subcommittees which are authorized to act on behalf of the committee for an assigned purpose, such as gathering information.
- C.** Attendance. Members of the Community Involvement Committee are expected to attend each meeting of the committee. The Commissioner-in-Charge may replace any member who accrues unexcused absences from two or more consecutive meetings or more than 50 percent of the meetings in any year.
- D.** Compensation. Community Involvement Committee members shall serve without compensation.

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ADMINISTRATION**

**CHAPTER 3.133 - RENTAL SERVICES
COMMISSION (RSC)**

(Chapter added by Ordinance No. 188633, effective
October 4, 2017.)

Sections:

- 3.133.010 Rental Services Commission Established.
- 3.133.020 Mission.
- 3.133.030 Duties.
- 3.133.040 Membership.
- 3.133.050 Meetings.
- 3.133.060 Quorum.
- 3.133.070 Chairperson.
- 3.133.080 Committees.
- 3.133.090 Staffing.
- 3.133.100 Cooperation.

3.133.010 Rental Services Commission Established.

There is established in the City of Portland, the Rental Services Commission (RSC). The RSC is designated as the primary public forum for discussion of landlord-tenant housing regulation and programs in the City of Portland.

3.133.020 Mission.

The mission of the RSC is to advise the Director of the Portland Housing Bureau (PHB), the Housing Commissioner, and the Portland City Council on issues related to landlord-tenant housing regulation and programs, and to provide a forum for public input on the rental housing market.

3.133.030 Duties.

The RSC is delegated to carry out the following functions:

A. Landlord-Tenant Policy Initiatives

1. Advise PHB on landlord-tenant policy issues and initiatives
2. Provide feedback and recommendations on landlord-tenant policy initiatives and policy changes

B. Landlord-Tenant Regulation and Programs

1. Advise PHB on landlord-tenant regulation and programs
2. Monitor PHB landlord-tenant regulation and programs

**TITLE 3
ADMINISTRATION**

3. Advise PHB on the effectiveness of landlord-tenant regulation and programs.
 4. Recommend improvements to PHB's landlord-tenant regulation and programs
 5. Recommend annual performance goals for PHB's landlord-tenant regulation and programs
- C. Budget
1. Advise the Portland Housing Advisory Commission (PHAC), the Housing Commissioner, and City Council on the budget for PHB's landlord-tenant regulation and programs
 2. Provide feedback on landlord-tenant funding priorities
- D. Community Involvement
1. Provide an inclusive forum for the community's discussion of its landlord-tenant housing needs and priorities
 2. Assist PHB in strengthening community partnerships

3.133.040 Membership.

- A. The RSC shall consist of at least 7 members and no more than 13 members.
- B. The Housing Commissioner shall appoint all members.
- C. The Housing Commissioner may designate a staff representative to serve as a non-voting ex officio member.
- D. Membership appointment shall take into account the socio-economic, gender, racial, ethnic, cultural, and geographic diversity of the City of Portland.
- E. Membership appointment shall achieve a balanced citizen-based perspective encompassing knowledge of fair housing, rent-regulated and market-rate rental housing, landlord-tenant law, property management, renter-owner advocacy, rental housing access, and rental housing health & safety.
- F. Members shall not simultaneously serve on the PHAC and the RSC.
- G. For the initial appointments to the RSC, the following terms will apply: five to seven members shall be appointed for a term of 2 years; and six to eight members for a term of 3 years.

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- H.** All subsequent appointments to the RSC shall be for terms of 2 years.
- I.** Members shall be eligible to renew their appointment at the discretion of the Housing Commissioner.
- J.** The Housing Commissioner may rescind the appointment of a member if the duties and responsibilities of appointment are not being fulfilled.
- K.** Members shall serve without compensation.
- L.** PHB may approve the reimbursement of reasonable expenses of the appointed members that are incurred while a member is fulfilling authorized duties of the RSC.
- M.** The RSC shall adopt necessary bylaws and rules of procedure for the governance of its proceedings.

3.133.050 Meetings.

The RSC will hold regularly scheduled meetings at least every 2 months, at a schedule established by the RSC.

3.133.060 Quorum.

Quorum shall be defined as one-half plus one of all appointed members. A quorum shall be necessary for the RSC to take any action. Actions of the RSC shall be passed upon a majority vote of the members present.

3.133.070 Chairperson.

A chairperson shall be selected from the appointed members by the Housing Commissioner.

3.133.080 Committees.

- A.** The RSC will have the following standing committees, whose membership shall be determined by the Chairperson and the Housing Commissioner:
 - 1.** Executive Committee
 - 2.** Bylaws and Rules Committee
- B.** The RSC may create non-standing committees and task forces to address issues within the parameters of the RSC's duties and responsibilities.

3.133.090 Staffing.

PHB staff shall be provided for the ongoing functions of the RSC. PHB shall provide notice of RSC meetings to liaison staff representing the other key implementing and policy agencies in the local rental housing delivery system.

3.133.100 Cooperation.

All city boards, bureaus, and agencies of any kind shall cooperate with the RSC and shall provide information at the RSC's request.

**TITLE 3
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**CHAPTER 3.134 - OFFICE OF THE
PORTLAND CHILDREN'S LEVY**

(Chapter added by Ordinance No. 189192, effective
November 9, 2018.)

Sections:

- 3.134.010 Creation, Organization, and Purpose.
- 3.134.020 Director's Powers and Duties.
- 3.134.030 Duration and Dissolution.

3.134.010 Creation, Organization, and Purpose.

There is established the Office of the Portland Children's Levy. The Office of the Portland Children's Levy shall consist of the Director and such other employees as the Council may provide. The Director shall report to the Commissioner in Charge. The purpose of the Office of the Portland Children's Levy is to administer the Children's Investment Fund in accordance with the current measure enacted by voters of the City of Portland, Oregon.

3.134.020 Director's Powers and Duties.

The duties of the Director of the Office of the Portland Children's Levy include, but are not limited to:

- A. Overall administration of the Office and supervision of its staff;
- B. Implementing the policy directives of the City Council, the Commissioner in Charge, and the tax levy approved by voters to fund the Children's Investment Fund;
- C. Proposing policies and practices to achieve the purpose of the Office, and adopt procedures and forms to assist in implementing City policies.

3.134.030 Duration and Dissolution.

The Office of the Portland Children's Levy shall remain in existence so long as the voters renew the Children's Investment Fund and associated tax levy. In the event the tax levy is not renewed by voters, the Office may exist thereafter only for such reasonable time as is necessary for the orderly closing of affairs of the Children's Investment Fund.

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(Title added by Ordinance No. 130672, effective May 15, 1970.)

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AUTHORITY TO OBLIGATE THE CITY**

(Chapter repealed by Ordinance Nos. 174509 and
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- 5.04.540 Housing Property Fund.
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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 Nos. 173369 and 189452, effective May 10, 2019.) 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 Accounting Division on behalf of the Mayor and the Auditor is 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 Accounting Division on behalf of the Mayor and the Auditor is 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:

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All monies received from charges arising out of the operation of Oaks Pioneer Park Museum, under contract or otherwise, shall be deposited with the City Treasurer. The City 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 Accounting Division on behalf of the Mayor and Auditor is authorized to draw warrants on this account when requisitions are presented and approved by the Commissioner In Charge of the Bureau of Parks.

- H.** Drake Property Account. Until such time as the Council may determine, this account shall receive all rentals and related revenues derived from the property on the east side of the Willamette River and north of the Sellwood Bridge known as the Drake Property which was purchased by the City under Ordinance No. 128587, passed February 20, 1969, for the Willamette Parkway System. Expenditures from this account other than those required in connection with rentals derived from the property, shall be limited to the improvement and expansion of the property. This account shall be administered by the Commissioner In Charge of the Bureau of Parks.
- I.** Portland Shipbuilding Property Account. Until such time as the Council may determine, this account shall receive all rentals and related revenues derived from the property on the west side of the Willamette River at the foot of S.W. Nebraska Street known as the Portland Shipbuilding Property, which was purchased by the City under Ordinance No. 128623; passed February 26, 1969. Expenditures from this account other than those required in connection with rentals derived from the property, shall be limited to the improvement and expansion of the property. This account shall be administered by the Commissioner In Charge of the Bureau of Parks.
- J.** Officer Friendly Account. (Repealed by Ordinance No. 135666, effective December 6, 1972.)
- K.** Willamette Oaks Park Account. Until such time as the Council may determine, this account shall receive all rentals and related revenues derived from the property in Willamette Oaks Park purchased by the City from Leonard and Ruth Steele under authority of Ordinance NO. 130097; passed November 19, 1969, for the Willamette Parkway System (Lots 1,2 and 42 Willamette Oaks Park Addition). Expenditures from this account other than those required in connection with rentals derived from the property, shall be limited to the improvement and expansion of the property. This account shall be administered by the Commissioner In Charge of the Bureau of Parks.

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- L. Portland Zoo Hospitalization and Research Account. (Repealed by Ordinance No. 150375, effective September 11, 1980.)

5.04.030 Trustees' Fund.

(Amended by Ordinance No. 189413, effective March 6, 2019.) There is hereby created a Trustees' Fund which shall be credited with all cash and securities deposited with the City Treasurer to protect the City against loss on account of certain obligations, and with all money and/or securities deposited with the City Treasurer pending information or accrual of time for its application. The City Treasurer shall receive into such fund installment payments on municipal assessments against real property, including payments which are too small to be entered on the Lien Docket as a credit, it being provided that a payment shall be too small for such entry when it is less than one-third of the total amount to be paid as shown on the open lien docket. When such deposits in the Trustees' Fund make an amount sufficient for entry the City Treasurer shall make application thereof as a payment on such assessment, make a proper entry thereof in its books, and the Revenue Division shall make a proper entry thereof in its books. The amounts deposited in the Trustees' Fund shall be applied as provided in the receipt showing the terms of deposit. The City Treasurer shall upon receiving a deposit under the provisions of this Section issue a receipt therefor, a copy of which shall be filed with the Revenue Division and be credited to the Trustees' Fund. No cash or collateral securities shall be returned by the City Treasurer without written approval of the Revenue Division. The City Treasurer upon returning cash or collateral securities shall take a receipt from the depositor in duplicate, the original of which shall be filed with the Revenue Division, who is hereby authorized to credit the City Treasurer with the amount of the receipt. In cases where deposits are made by persons interested in local improvements no refund shall be made unless the contemplated improvement is not made or the owner of the property for account of which the deposit was made promptly pays or bonds the assessment. If the improvement is made and the owner fails to pay and/or bond the assessment within twenty (20) days after its entry in the open lien docket the deposit shall be applied to a payment pro tanto of the assessment and the City Treasurer and Revenue Division shall make proper book entries thereof.

5.04.040 Parking Meter Fund.

The Parking Meter Fund is hereby created and the Treasurer of the City is hereby directed to deposit to the credit of the fund all fees or money received on account of collections from present or future installations of parking meters. All disbursements from such fund shall be in conformance to regular budget procedure.

Whenever the City Treasurer shall deem it advisable to dispose of slugs and tokens received in collections from the City's parking meters and which are not lawful monies of the United States, he shall sell, cash, redeem or destroy the slugs and tokens and shall deposit all sums so realized to the credit of the Parking Meter Fund.

5.04.050 Golf Fund.

A fund to be known and designated as the Golf Fund is hereby created. All revenues derived from the operation of the municipal golf links shall be credited to the Golf Fund,

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and all disbursements from the fund shall be in conformance with regular budget procedure.

5.04.070 Bonded Debt Interest and Sinking Fund.

The Bonded Debt Interest and Sinking Fund is hereby created to which shall be credited the proceeds from the tax levy of the City for interest on bonded indebtedness of the City and the tax levy to provide for the purchase of securities as an investment and/or payment of redemptions of the bonded indebtedness of the City together with such other receipts as may be realized in connection with the administration of the bonded debt of the City but not limited to interest on investments. Expenditures from the fund shall be for the payment of the principal and interest on bonded debt of the City to be paid from ad valorem taxes and for any other expenditures authorized to be paid from tax levies for general obligation bonds of the City.

5.04.140 Parking Facilities Fund.

The Parking Facilities Fund is hereby created into which shall be deposited all fees, rentals and charges received by the City from the operation of the off-street parking facility at S.W. 2nd Avenue and Jefferson Street and from which expenses of operation and maintenance of the facility shall be paid all in accordance with Ordinance No. 128235, passed December 18, 1968.

5.04.150 Parking Facilities Bond Redemption Fund.

The Parking Facilities Bond Redemption Fund is hereby created into which shall be paid the accrued interest from the sale of the bonds, plus an amount capitalized from bond principal which will in the aggregate together with interest to be received from investments provide for the interest payments on the revenue bonds due August 1, 1969, February and August 1, 1970, and February 1, 1971, the net revenues of the Parking Facilities Fund and amounts from net parking meter revenues required for the reserve amount, if any; and from which shall be paid the principal of and the interest on the outstanding revenue bonds, and the principle, interest and premium, if any, on any revenue bonds issued on a parity therewith, all in accordance with Ordinance No. 128235, passed December 18, 1968.

5.04.160 Sewage Disposal Fund.

(Repealed by Ordinance No. 160515, effective March 28, 1988.) See Sections 5.04.400 - 460.

5.04.165 Countercyclical Fund.

(Repealed by Ordinance No. 150375, effective September 11, 1980.)

5.04.170 Revenue Sharing Fund.

(Added by Ordinance No. 135516, effective November 2, 1972.) The Revenue Sharing Fund is hereby created for the receipt and expenditure of monies received from the federal government under the State and Local Fiscal Assistance Act of 1972. Into this Fund shall be deposited all payments received from the federal government under the Act, interest

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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 Act.

5.04.175 State Revenue Sharing Fund.

(Added by Ordinance No. 145065, effective January 19, 1978.) The State Revenue Sharing Fund is hereby created for the receipt and expenditure of monies received from the State of Oregon under Senate Bill 11 (Engrossed) effective July 27, 1977. All payments received from the State of Oregon under this Act, interest earned thereon while in this Fund and any other monies which are appropriate revenues of this Fund shall be deposited to this Fund. The monies shall be expended only for purposes authorized under this Act.

5.04.180 CityFleet Operating Fund.

(Added by Ordinance No. 161018, amended by Ordinance Nos. 163837, 176003, 178797 and 181483, effective January 18, 2008.)

- A. The CityFleet Operating Fund is hereby created as an internal service fund within the Office of Management and Finance described in Chapter 3.15 of this Code. The major operating funds for this Fund shall be generated by Interagency Agreements with the City bureaus and others using the services. Other receipts of the Fund shall include service charges to users, interest earned by the Fund and any other monies which are appropriate revenues. Expenditures from the Fund shall be in accordance with appropriations made by the Council.
- B. Short-term loans from the General Fund to the CityFleet Operating Fund, which are to be repaid in the same fiscal year in which the loan is made, are hereby authorized without interest to provide temporary working capital, as needed, provided that each loan is first approved in writing by the Commissioner of Finance and Administration.

5.04.185 Facilities Services Operating Fund.

(Added by Ordinance No. 163837; amended by Ordinance Nos. 176003 and 181483, effective January 18, 2008.)

- A. The Facilities Services Operating Fund is hereby created (by Ordinance 163156, June 27, 1990) as an internal service fund within the Office of Management and Finance described in Chapter 3.15 of this Code. The major operating funds for this Fund shall be generated by Interagency Agreements with the City bureaus and others using the services. Receipts of the Fund shall include proceeds of these Interagency Agreements, service charges to users, interest earned by the Fund, and any other monies which are appropriate revenues. Fees shall be collected and deposited into this Fund for all property management related services involving leases, and for the purchase and sale of City owned real property. Expenditures from the Fund shall be in accordance with appropriations made by the Council.

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- B.** The costs of repair, maintenance, taxes or any other expense incurred in providing any property management services, shall be the responsibility of the bureau or agency using or responsible for the property. All net revenues (defined as revenue, less all appropriate expenses) from rents, leases or sales shall accrue to the bureau or agency using or responsible for the property.
- C.** Any property that is not specifically used or the responsibility of any bureau or agency is defined as “unassigned property,” and shall be the responsibility of the Office of Management and Finance (General Fund). Net revenue for these properties shall be considered total revenue from the rent and sale of all these properties, less total expenses for all these properties. Any net revenue from these properties, shall be transferred to the General Fund at the end of each fiscal year.
- D.** Any property acquired by the City from any source shall be inventoried with the Office of Management and Finance.
- E.** Short-term loans from the General Fund to the Facilities Services Operating Fund, which are to be repaid in the same fiscal year in which the loan is made, are hereby authorized to provide temporary working capital, as needed, provided that each loan is first approved in writing by the Commissioner of Finance and Administration.

5.04.190 Communications Service Operating Fund.
(Repealed by Ordinance No. 181483, effective January 18, 2008.)

5.04.200 Printing and Distribution Services Operating Fund.
(Added by Ordinance No. 161018; amended by Ordinance Nos. 163837, 176003 and 181483, effective January 18, 2008.)

- A.** The Printing and Distribution Services Operating Fund is an internal service fund within the Office of Management and Finance described in Chapter 3.15 of this Code. The major operating funds for this Fund shall be generated by Interagency Agreements with the City bureaus and others using the services. Other receipts of the Fund shall include service charges to users, interest earned by the Fund and any other monies which are appropriate revenues. Expenditures from the Fund shall be made in accordance with appropriations made by the Council.
- B.** Short-term loans from the General Fund to the Printing and Distribution Services Operating Fund, which are to be repaid in the same fiscal year in which the loan is made, are hereby authorized to provide temporary working capital, as needed, provided that each loan is first approved in writing by the Commissioner of Finance and Administration.

5.04.210 Improvement Warrant Sinking Fund.
(Added by Ordinance No. 139574, effective March 13, 1975.) The Improvement Warrant Sinking Fund is hereby created. Funds obtained from the issuance of general obligation

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improvement warrants issued pursuant to statute and authorized by the Council shall be placed in this Fund and expended only for payments duly authorized for the construction of public improvements. 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 improvement with respect to which such general obligation improvement warrants are issued, shall be placed in the fund to be applied to the call and payment of such warrants as rapidly as funds are available as provided by statute.

5.04.220 Economic Development Trust Fund.

(Added by Ordinance No. 140900, effective November 20, 1975.) The Economic Development Trust Fund is hereby established for receipt and accountability for the assets of the Trust for economic development in the model cities neighborhood established by the agreement between the City and MEDIA authorized by Ordinance No. 132652, passed May 6, 1971. The City succeeded the Metropolitan Economic Development Industrial Alliance as trustee, and this Fund shall be administered by the City in accordance with the terms of the trust, set forth in the agreement and by Resolution No. 31575, adopted May 28, 1975.

This Fund shall receive the assets turned over to the City by MEDIA and shall also receive principal and interest on loans receivable, interest on invested capital, proceeds from sale of investments and any other income of the Trust. Expenditures shall be in accordance with appropriations made by the Council for purposes of the Trust.

5.04.230 Insurance and Claims Operating Fund.

(Added by Ordinance No. 142290; amended by Ordinance Nos. 150375, 176003 and 181483, effective January 18, 2008.)

- A. The Insurance and Claims Operating Fund is hereby created as an internal service fund under the Office of Management and Finance, described in Chapter 3.15 of this Code. Receipts of the Fund shall include service charges to user funds for administrative and legal expenses, insurance premiums and loss reserves, interest earned by the Fund and any other monies which are appropriate revenues. Expenditures from the Fund shall be in accordance with the appropriations made by the Council.
- B. Expenditures and encumbrances shall be limited to the balance in the Fund at the time and to purposes for which there is an appropriation or other source of reimbursement authorized at the time.

5.04.240 Workers' Compensation Self Insurance Operating Fund.

(Added by Ordinance No. 144762; amended by Ordinance Nos. 150375, 176003 and 181483, effective January 18, 2008.) The Workers' Compensation Self Insurance Operating Fund is hereby created as an internal service fund under the Office of Management and Finance described in Chapter 3.15 of this Code. Receipts of the Fund shall include service charges to user funds for administrative and legal expenses, insurance premiums, expected and unanticipated loss reserves, interest earned by the Fund and any

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other monies which are appropriate revenues. Expenditures from the Fund shall be made in accordance with appropriations made by the Council. Expenditures and encumbrances shall be limited to the balance in the Fund at the time and to purposes for which there is an appropriation or other source of reimbursement authorized at the time.

5.04.250 System Development Charge Sinking Fund.

(Added by Ordinance No. 147298, effective February 28, 1979.) The System Development Charge Sinking Fund is hereby created. Funds obtained from the issuance of General Obligation Bancroft Bonds issued pursuant to statute and authorized by the City Council for this purpose shall be placed in this Fund and expended only for payments duly authorized for construction or expansion of systems development. All proceeds from the collection of Bonded Assessments, realized from System Development Charge Assessments with respect to such General Obligation Bancroft Bonds are issued, shall be placed in the fund to be applied to the call and payment of General Obligation Bancroft Bonds pursuant to the call schedule set forth in the offer and as provided by statute.

5.04.270 Washington County Water Supply Construction Fund.

(Added by Ordinance No. 148968, effective January 26, 1980.) The Washington County Water Supply Construction Fund is hereby created. Contributions from other water purveyors and the City of Portland and receipts obtained from the issuance of general obligation bonds, payable from water revenues, issued for the purpose of constructing a water supply line to Washington County shall be placed in this fund and expended only for duly authorized payments for the oversizing of the southeast Water Supply Line and the Washington County Water Supply Line. Upon completion of the supply line to Washington County and after all liabilities for the construction thereof have been satisfied, any balance remaining in this Fund shall be transferred to the Washington County Water Supply Bonded Debt Service Sinking Fund and this Fund shall be discontinued.

5.04.280 Washington County Water Supply Bonded Debt Service Sinking Fund.

(Added by Ordinance No. 148986, effective January 26, 1980.) The Washington County Water Supply Bonded Debt Service Sinking Fund is hereby created. Water revenues in the form of contributions from other water purveyors and the City of Portland shall be placed in this Fund and expended only for duly authorized payments of principal and interest for bonds issued for the purpose of constructing a water supply line to Washington County. Upon payment of all principal and interest of said bond issue, any balance remaining in this Fund shall be returned, on a prorated basis, to the contributors and this Fund shall be discontinued.

5.04.290 Water Growth Impact Charge Trust Fund.

(Added by Ordinance No. 153288, effective May 26, 1982.) The Water Growth Impact Charge Trust Fund is hereby created. Revenues received by the City for growth impact charges from other water purveyors shall be placed in this Fund and expended only for duly authorized payments for expansion of the total water system capacity. Should this Fund become unnecessary, due to changes in the water sales contracts with other water purveyors, any remaining funds at that time shall be paid to the Water Fund.

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5.04.300 Bull Run Fund.

(Added by Ordinance No. 156178; effective July 21, 1984.) The Bull Run Fund is hereby created. Receipts received by the City resulting from the sale of items promoting the City water system, such as, but not limited to, bottled water, posters and books, shall be placed in this Fund and expended only for duly authorized payments to directly promote or advertise the City water system to attract development within the City. Should this Fund become unnecessary for any reason, any remaining money remaining in this Fund at the time it is discontinued shall be paid to the Water Fund.

5.04.310 St. Johns Landfill End Use Plan Fund.

(Added by Ordinance No. 160973, effective July 23, 1988.) The St. Johns Landfill End Use Plan Fund is hereby created. Revenues received by the City from the Metropolitan Service District which are designated for implementation of the St. Johns Landfill End Use Plan per Section 9 of the City-Metro Agreement adopted by Ordinance No. 158522 and other contributions and revenues designated for implementation of the End Use Plan shall be placed in this Fund. Monies from this Fund, including interest earned by the Fund, shall be expended only for duly authorized payments to cover the costs of implementing the St. Johns Landfill End Use Plan. Should this Fund become unnecessary any monies remaining in this Fund shall be paid to the Refuse Disposal Fund.

5.04.320 Sewer Revolving Loan Fund.

(Added by Ordinance No. 166407, effective April 7, 1993.) The Sewer Revolving Loan Fund is hereby made a part of the Code of the City of Portland, Oregon, for the receipt of monies derived from transfers made to the Fund from the Sewer System Operating Fund, and monies derived from the re-payment of loans made to properties participating in the Private Plumbing Revolving Loan Program. Monies from this Fund, including interest earned by the Fund, shall be used for making loans to certain owners of single-family residential property located in the Mid-Multnomah County Sewer System Project, and shall be expended only for duly authorized payments to cover the costs of implementing the Private Plumbing Revolving Loan Program. Money in the Sewer Revolving Loan Fund may be commingled with other City money for investment purposes. Should this Fund become unnecessary any monies remaining in this Fund shall be paid to the Sewer System Construction Fund.

5.04.330 Environmental Remediation Fund.

(Added by Ordinance No. 167121, effective November 17, 1993.) The Environmental Remediation Fund is hereby made a part of the Code of the City of Portland, Oregon, for the receipt of monies derived from the sale of Revenue Bonds, remediation charges and transfers made to the Fund from the Refuse Disposal Fund; and from which all expenditures relating to the System shall be made. Monies from this Fund, including interest earned by the Fund, shall be used for specifically identified remediation projects and debt service. Money in the Environmental Remediation Fund may be commingled with other City money for investment purposes. Should this Fund become unnecessary any monies remaining in this Fund shall be paid to the Refuse Disposal Fund.

5.04.400 Sewer System Operating Fund.

(Added by Ordinance No. 160515, effective March 28, 1988.) The Sewer System Operating Fund is hereby made a part of the Code of the City of Portland, Oregon, for the receipt and expenditure of monies associated with operation and maintenance of the sewer system, including sanitary and drainage services. Monies in the Sewer System Operating Fund may be transferred to the Sewer System Debt Redemption Fund, the Sewer System Construction Fund, or the Sewer System Rate Stabilization Fund. Money in the Sewer System Operating fund may be commingled with other City money for investment purposes.

5.04.410 Sewer System Construction Fund.

(Added by Ordinance No. 160515, effective March 28, 1988.) The Sewer System Construction Fund is hereby made a part of the Code of the City of Portland, Oregon, for the receipt and expenditure of monies associated with construction of sewerage facilities, including sanitary and drainage facilities. Money in the Sewer System Construction Fund may be commingled with other City money for investment purposes.

5.04.420 Sewer System Debt Redemption Fund.

(Added by Ordinance No. 160515, effective March 28, 1988.) The Sewer System Debt Redemption Fund is hereby made a part of the Code of the City of Portland, Oregon, for the receipt and expenditure of monies associated with the retirement of debt incurred by the sewer system. Money in the Sewer System Debt Redemption Fund may be commingled with other City money for investment purposes.

5.04.430 Sewer System Debt Proceeds Fund.

(Added by Ordinance No. 160515, effective March 28, 1988.) The Sewer System Debt Proceeds Fund is hereby made a part of the Code of the City of Portland, Oregon, for the receipt of monies derived from the issuance of Sewer System debt. Monies in the Sewer System Debt Proceeds Fund shall be transferred to the Sewer System Construction Fund for expenditure and to the Sewer System Operating Fund for reimbursement of costs associated with the issuance of debt and to the Sewer System Debt Redemption Fund for the retirement of debt. Money in the Sewer System Debt Proceeds Fund may be commingled with other City money for investment purposes.

5.04.440 Sewer System Rate Stabilization Fund.

(Added by Ordinance No. 160515, effective March 28, 1988.) The Sewer System Rate Stabilization Fund is hereby made a part of the Code of the City of Portland, Oregon, for the receipt of monies transferred from the Sewer System Operating Fund. Monies in the Sewer System Rate Stabilization Fund shall be transferred to the Sewer System Operating Fund for expenditure. Money in the Sewer System Rate Stabilization Fund may be commingled with other City money for investment purposes.

5.04.450 Sewer System Safety Net Fund.

(Added by Ordinance No. 160515, effective March 28, 1988.) The Sewer System Safety Net Fund is hereby made a part of the Code of the City of Portland, Oregon, for the receipt

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of monies derived from loans made to the Fund from the State Assessment Deferral Revolving Loan Fund, and monies derived from the payment of deferred assessments by properties participating in the Sewer Safety Net Program. Monies in the Sewer System Safety Net Fund shall be paid to the Local Improvement District Construction Fund for payment of sewer assessments for properties participating in the Sewer Safety Net Program, and shall be used to retire loans received from the State Assessment Deferral Revolving Loan Fund.

5.04.460 Use of Sewage Disposal Fund.

(Added by Ordinance No. 160515, effective March 28, 1988.) The funds described in Portland City Code Sections 5.04.400 through 5.04.450 shall in the aggregate constitute the Sewage Disposal Fund, and shall be used for only those Sewage Disposal Fund purposes authorized by the Charter of the City of Portland, Oregon. If any of the funds associated with operation, maintenance, construction or debt management of the Sewer System become unnecessary or for any reason are dissolved and discontinued, then any remaining balances in that fund or funds shall be transferred to the Sewer System Operating Fund. If the Sewer System Operating Fund is dissolved and discontinued, then any remaining balances in that fund shall be transferred to the City's General Fund. However, in no case shall any funds be transferred to the City's General Fund until all outstanding debt of the sewer system is repaid according to terms and conditions of related bond and note ordinances.

5.04.470 Portland Police Fitness Room Trustee Account.

(Added by Ordinance No. 168683, effective April 12, 1995.) The Portland Police Fitness Room Trust Account is hereby created. Into this fund shall be deposited monies received from fitness room membership dues (through payroll deduction), the City of Portland and other contributors. Disbursements shall be made upon a requisition request from a Police Bureau's Fitness Room Committee with signature approval by either the Chief of Police or an Assistant Chief. Monies from this fund by either the Chief of Police or an Assistant Chief. Monies from this fund shall be used for maintenance and repairs of equipment, equipment replacement, and new fitness room equipment.

5.04.480 Property Management License Fund.

(Added by Ordinance No. 170223, effective July 1, 1996.) The Property Management License Fund is hereby made a part of the Code of the City of Portland, Oregon, for the receipt of any revenues derived from assessments levied under the former downtown Economic Improvement District created by Ordinance No. 164665, together with all revenues generated by the Downtown Property Management License program (City Code Chapter 6.06.) Monies derived from proceeds of the Downtown Property Management License program and delinquent Economic Improvement District assessments, as well as from interest earned on that money, shall be spent only for the services described in Section 6.06.010 of the Code of the City of Portland and for any costs of the City's administration of the Downtown Property Management License program.

5.04.490 Graffiti Nuisance Abatement Trust Fund.

(Added by Ordinance No. 172612; amended by Ordinance Nos. 172810 and 189078, effective July 18, 2018.) There is hereby created a City of Portland graffiti nuisance abatement trust fund. Any donations in support of graffiti abatement will be placed into the fund, together with any monies received in connection with voluntary nuisance abatement consent forms. Expenditures from this fund may occur upon the approval of any two of the following: (1) the Mayor; (2) the Commissioner-in-Charge of the Office of Community & Civic Life; and (3) the Graffiti Abatement Manager. Such expenditures shall be limited to: the payment of the cost of removal of graffiti; the purchase, acquisition, operation and maintenance of graffiti removal equipment and supplies; the costs of administering the graffiti nuisance abatement ordinance; and such other public purposes as may be approved by the City Council.

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.

5.04.515 Recreational Cannabis Tax Fund.

(Added by Resolution No. 37217 (approved at November 8, 2016 election); amended by Ordinance No. 189004, effective July 1, 2018.) The Recreational Cannabis Tax Fund is hereby created. The purpose of the Fund is to receive gross revenues received from the Recreational Cannabis Tax, to provide funding for the purposes identified in Section 6.07.145 of this Code and costs related to the administration of the tax. Except for those established purposes, in no case shall revenues be transferred from the Recreational Cannabis Tax 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

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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.

5.04.540 Housing Property Fund.

(Added by Ordinance No. 188175, effective December 21, 2016.) The Housing Property Fund is hereby created in order to record the transactions of resources and requirements resulting from the acquisition, development, and operation of property by the Portland Housing Bureau. Except to further these established purposes, in no case shall any funds be transferred from the Housing Property Fund to the City's General Fund, or any other fund, for any other purpose.

5.04.550 Housing Capital Fund.

(Added by Ordinance No. 188353, effective April 26, 2017.) The Housing Capital Fund is hereby created to track the transactions related to the capital construction of affordable housing projects by the Portland Housing Bureau, primarily related to the sale and use of General Obligation bond proceeds.

5.04.560 Portland Clean Energy Community Benefits Fund.

(Added by Ordinance No. 189390, effective February 21, 2019.) The Portland Clean Energy Community Benefits Fund is hereby created to track the transactions related to financing programs funded by the Clean Energy Surcharge (CES) approved by Portland voters through Ballot Measure 26-201 in November 2018 and codified in Portland City Code Chapter 7.02 and Chapter 7.07.

A separate Climate Transportation Investment subfund shall be established to deposit any proceeds deemed to constitute revenues described in Article IX, section 3a, of the Oregon Constitution.

5.04.570 Affordable Housing Development Fund.

(Added by Ordinance No. 189487, effective May 8, 2019.) The Affordable Housing Development Fund is hereby created to track the transactions related to the funding of

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affordable housing projects, primarily from proceeds from General Obligation Bonds approved under measure 26-179 and resources provided by other governmental entities.

5.04.580 Fire Capital Fund.

(Added by Ordinance No. 189560, effective June 12, 2019.) The Fire Capital Fund is hereby created to support the repair, replacement, and renewal of Portland Fire & Rescue's capital assets, including facilities, apparatus, and equipment.

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

Sections:

- 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.
- 5.08.040 When Bureau of Human Resources to Draw Checks.
- 5.08.060 Safety Glasses.
- 5.08.070 Clothing Allowance.
- 5.08.075 Year Defined.
- 5.08.105 Reimbursement to Employees in Educational Programs Authorized by Council.
- 5.08.110 Bus Fare for Meter Readers.
- 5.08.120 Payment of Salaries and Wages at Other than Times Specified.
- 5.08.130 Salaries Chargeable to More than One Fund.
- 5.08.140 Salary Deductions.
- 5.08.150 State Tax Street Fund.
- 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, 180917 and 189452; effective May 10, 2019.)

- 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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- B.** Such biweekly time reports shall contain a statement of each applicable employee of the hours on duty, including overtime which has been approved by the Commissioner In Charge, or the Auditor as to the Auditor's Office; and the hours of duty, including vacation, holidays, sick leave, compensatory time off; and other leaves of absence with pay. A notation shall also be made of the number of days absent because of injury in the line of duty. A notation shall also be made of sick leave used or disability or pension benefits paid as a result of an injury by a third party.
- C.** In addition to the above, the biweekly time reports covering a member of Portland Fire & Rescue assigned to a 56-hour week shall carry a notation as to the number of regular duty hours worked in excess of the average of 112 hours biweekly. Such excess hours shall be accumulated and credited to those normal work periods that do not provide for an average biweekly accumulation of 112 hours.
- D.** The biweekly time reports shall be transmitted not later than the Friday following each pay period; provided, if the Thursday or Friday is a holiday, an additional day shall be allowed.
- E.** In the event of error or omission requiring payroll adjustment as a result of any provision of a labor agreement such as failure to notify an employee of a change of shift schedule, assignment to duty of an employee not entitled to such assignment under contractual requirements, or other error or omission which can appropriately be adjusted by an adjustment on the biweekly time report, the biweekly time report shall carry a notation concerning the error or omission which is the basis of such adjustment.

5.08.030 Computing Daily and Hourly Rates of Pay.

(Amended by Ordinance No. 180917, effective May 26, 2007.) The daily rate for all employees except those of Portland Fire & Rescue assigned to a 56-hour week shall be determined by dividing the biweekly rate by the number 10 and the hourly rate by dividing such daily rate by 8. The daily rate for the employees of Portland Fire & Rescue assigned to a 56-hour week shall be determined by dividing the biweekly rate by the number 14 and the hourly rate shall be determined by dividing such daily rate by 8.

5.08.040 When Bureau of Human Resources to Draw Checks.

(Amended by Ordinance Nos. 136887, 160146, 173369 and 189452, effective May 10, 2019.) When the biweekly time report shall have been approved by the head of the appropriation unit as being correct and by the Personnel Director that the employees were employed according to law, then the Bureau of Human Resources shall prepare the payroll records and draw and deliver checks not later than the second Friday following the end of each pay period or at such time as required by applicable federal or state law in accordance with Chapter 5.08.120 of the City Code in payment of salaries of officers and employees for payroll so certified; provided, that where such Friday is a holiday, checks shall be delivered the day previous.

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5.08.050 Allowance for Use of Private Automobile.

(Repealed by Ordinance No. 175485, effective July 1, 2001.)

5.08.060 Safety Glasses.

Safety glasses shall be worn by employees working in an area where a continuous eye hazard exists, subject to the conditions set forth in this Section.

- A. The Employee Relations Office shall investigate units in which there may be continuous eye hazards and shall report the findings, and make recommendations to the Commissioner of Finance. The Commissioner of Finance, subject to the approval of the Commissioner In Charge of the unit concerned shall authorize a safety glasses program for a unit or for employees within a unit who may perform duty which is a continuous hazard to the eyes;
- B. Safety glasses with safety frames and uncorrected lenses (planos) will be supplied by the City without cost to the employee. Employees who need corrective lenses will obtain the prescription for their lenses at their own expense from a doctor of their own choosing. In addition, such employees will also bear the cost of the ground lenses and frames. However, if corrective lenses and frames are obtained through the City, the City will allow as a credit the amount which the City pays for planos with standard safety frames;
- C. Payment for corrective lenses and frames will be made to the supplier by the City, which in turn will collect such cost from the employee, less the allowance for planos with standard frames. Such collections shall be turned over to the City Treasurer to be credited to the appropriate revenue account;
- D. The expenditure of City funds for safety glasses shall be limited to those units where a continuous eye hazard exists;
- E. Corrective glasses will be property of the employee. Planos will be the property of the City. Replacement of broken glasses will be made on the same basis as the originals were obtained;
- F. Once issued, safety glasses are to be worn at all times while in the hazardous work area as a condition of employment.

5.08.070 Clothing Allowance.

(Amended by Ordinance Nos. 131329, 141241 and 180917, effective May 26, 2007.) Each employee of the Bureau of Police or Portland Fire & Rescue who is to receive an annual clothing allowance as provided in Section 3.20.170 or Section 3.22.100 shall be paid such clothing allowance as follows:

- A. The clothing allowance shall be at the rates specified in the current contracts with the Portland Fire Fighters Association Local 43 IAFF and the Portland Police Association.

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- B.** The clothing allowance shall be payable on or after July 1 of each year from funds budgeted for this purpose. Eligibility for such payment and the amount of the payment for each eligible employee shall be dependent on the assignment of the employee and the duration of such assignment during the previous fiscal year.
- C.** An employee who has served for less than a full year in a position for which a clothing allowance is authorized shall receive an allowance prorated for the number of full calendar months served. For the purpose of this Section, time served shall not include leave without pay, nor time on sick leave and/or disability benefits in excess of a total of 30 days during the fiscal year.
- D.** An eligible employee who separates from the City service shall receive a prorated allowance at the time of separation. The rate of such payment shall be the same as that paid during the fiscal year of separation.

5.08.075 Year Defined.

“Year” means the fiscal year, from July 1 to June 30 inclusive, as established by ORS 294.095 and 293.605, unless otherwise expressly indicated in this Code.

5.08.090 Travel Expenses.

(Repealed by Ordinance No. 175485, effective July 1, 2001.)

5.08.095 Miscellaneous Expenses.

(Repealed by Ordinance No. 175485, effective July 1, 2001.)

5.08.100 Rules For Travel and Miscellaneous Expenses.

(Repealed by Ordinance No. 176302, effective April 5, 2002.)

5.08.105 Reimbursement to Employees in Educational Programs Authorized by the Council.

(Added by Ordinance No. 133632; Amended by Ordinance No. 189452, effective May 10, 2019.) Whenever the Council has authorized an off-duty educational program for employees on an individual basis to improve professional skills and has provided for reimbursing the employee for specific expenditures upon the employee’s successful completion of a course in accordance with the requirements for the program, reimbursement will be made upon requisition to the Accounting Division approved by the City Personnel Officer. For employees on a General Fund payroll, the reimbursement shall be charged to the General Fund. Reimbursement for an employee on a special fund payroll shall be charged to that special fund.

5.08.110 Bus Fare for Meter Readers.

Meter readers of the Bureau of Water Works shall be paid additional compensation over and above their salary as an allowance for bus fare while traveling in the line of duty if such bus fare has not been paid directly by the Bureau of Water Works. The additional compensation to be paid each meter reader shall be at the rate of \$17.50 per month, which

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shall be prorated for any part of a month in which the employee has not been required to pay his own bus fare.

5.08.120 Payment of Salaries and Wages at Other Than Times Specified.

(Amended by Ordinance No. 189452, effective May 10, 2019.) Whenever it becomes necessary to pay for labor or overtime at other than the specified times indicated by this Chapter, time reports shall be certified as soon as may be required and transmitted to the Bureau of Human Resources for payment.

5.08.130 Salaries Chargeable to More Than One Fund.

(Amended by Ordinance No. 173369, effective May 12, 1999.) When the payroll of any bureau or department is made up of persons whose salaries are chargeable to more than one fund, such salaries may be paid by checks drawn on one such fund in the manner provided for regular payrolls provided that in such cases the bureau or department head shall draw an interdepartmental bill at the end of each month, charging the appropriation of the proper fund and crediting the revenue of the fund from which payment was made.

5.08.140 Salary Deductions.

(Replaced by Ordinance No. 172205; amended by 172562, 173326, 176426, 177833, 179023, 179643, 181483, 182887, 184215, 184257, 184399, 185028, 185536 and 186272, effective October 2, 2013.)

A. Salary and wage deductions, other than Public Employees Retirement System, Worker's Compensation Self-Insurance and assignments or garnishments prescribed by law or authorized by an employee, shall be made on the biweekly payrolls. Only the employee may authorize voluntary deductions or changes in exemptions for tax withholding purposes. Each authorization bearing the signature of the employee shall be kept on file by the Office of Management and Finance.

1. Federal Income and Withholding Tax
2. Social Security and Medicare
3. State Income and Withholding Tax
4. Savings Bonds-City Treasurer
5. Workers' compensation Self-Insurance
6. Public Employees Retirement System
7. PACE Credit Union
8. MULTCO Employees Credit Union
9. IBEW Credit Union

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10. ING Financial Advisors, LLC
11. PACE Credit Union-Deferred Compensation
12. ICMA-Deferred Compensation
13. ITT Hartford-Deferred Compensation
14. Nationwide Retirement Solutions
15. Portland Police Commanding Officers Association-PPCOA
16. Portland Metropolitan Employees Union, DCTU, Local 189
17. Painters and Allied Trade Union, Local 10
18. International Brotherhood of Electrical Workers, Local 48
19. Willamette Lodge, IAMAW, Local 63
20. Operating Engineers, Local 701
21. United Association of Plumbing & Pipe Fitting, Local 290
22. Auto Mechanics, Mt. Hood Lodge, Local 105
23. Municipal Employees Union, Local 483
24. Portland Police Association
25. Fire Fighter Association, Local 43
26. City of Portland Professional Employees Association, COPPEA
27. City Treasurer Trustee Fund for Benefit of Portland Police Contributions Committee-Police Special Contributions
28. Portland Police Beneficiary Association
29. Portland Police Historical Society
30. Portland Police Athletic Association
31. Fire & Police Insurance Association
32. Fire & Police Disability and Retirement Fund

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33. Nationwide Auto Insurance
34. Family Cancer Plan Insurance Company
35. Kaiser Health Plan
36. Standard Insurance
37. Portland Building Fitness Center
38. Maintenance Bureau Fitness Center
39. Parking Patrol's Fitness Center
40. Portland Police Fitness Room Trustee Fund
41. C-Tran Employee Transit Program
42. Portland Police Relocation Loan Program Repayment Fund.
43. Z-Man Scholarship Foundation.
44. Portland Police Association Cover Foundation.
45. Police Activities League of Greater Portland.
46. Jeff Morris Fire & Life Safety Foundation.
47. Boys & Girls Clubs of Portland Metropolitan Area.
48. Oregon 529 College Savings Plan.
49. Portland Police Honor Guard.

B. Each entity or agency authorized by Subsection A. to receive money through the use of the payroll deduction system, except those agencies or entities referred to in Subsection C., shall pay to the City a fee of 50 cents for each payroll deduction that is made from an employee's paycheck.

C. The entities or agencies whose names are preceded by the numbers described herein shall not be required to pay the fee described in Subsection B.: 1., 2., 3., 4., 5., 6., 10., 11., 12., 13., 14., 15., 16., 17., 18., 19., 20., 21., 22., 23., 24., 25., 26., 31., 32., 35., 36., 43., 44., 45., 46., 47., 48. and 49.

5.08.150 State Tax Street Fund.

Whenever salaries chargeable to the State Tax Street Fund are paid on payrolls charged to the General Fund, the Commissioner of Public Works may at the beginning of each month,

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estimate the amount of service to be charged during the ensuing month and transfer such amount from the State Tax Street Fund to the General Fund by departmental bill. At the end of each month, when the exact amount chargeable to the State Tax Street Fund is determined the amount transferred must be correct by departmental bill.

5.08.160 Delivery of Checks payable to Deceased Persons.

(Amended by Ordinance Nos. 133986, 173369 and 189452, effective May 10, 2019.)

Delivery of checks payable to any person employed by the City, or payable to any person receiving disability or retirement benefits from the City, shall be made in the following manner upon the death of such person:

- A.** Where the person's estate is admitted to probate in any county in Oregon, delivery shall be made to the representative thereof after the Bureau of Human Resources has been furnished a certified copy of letters testamentary or letters of administration;
- B.** Where the person's estate is admitted to probate outside this state, delivery shall be made as provided in Subdivision A of this Section, except that the Bureau of Human Resources shall first notify the Department of Revenue of the total amount to be paid. Delivery of checks shall not be made less than 30 days after notice to the department of revenue and 90 days after death;
- C.** Where the person's estate is not probated, and the heir or next of kin making claim for checks is a resident of Oregon, delivery shall be made to that heir or next of kin after that individual has furnished the Bureau of Human Resources a hold harmless agreement as provided in Section 5.08.170;
- D.** Where the person's estate is not probated, and the heir or next of kin making claim for checks is not a resident of Oregon, delivery shall be made to that heir or next of kin after that individual has furnished the Bureau of Human Resources a hold harmless agreement as provided in Section 5.08.170, and if the amounts total more than \$200, a bond, underwritten by a surety authorized to do business in this State, to defend and indemnify the City, its officers, agents and employees against any claim, suit, action or judgment arising out of the delivery or payment of the checks;
- E.** Checks payable to deceased employees, or to persons entitled to disability or retirement benefits prior to their death, shall be drawn in the usual course of business only, and shall be delivered by the Bureau of Human Resources as provided by this Section, without further action of Council;
- F.** The Bureau of Human Resources shall attach to each check issued under this Section an authorization for transfer in the following form:

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**AUTHORIZATION FOR CHECK TRANSFER
KNOW ALL PEOPLE BY THESE PRESENTS**

That (name of applicant) has applied for transfer of Check No. dated 20. . . . , payable to (name of payee), deceased, as (Heir, next of kin, executor or administrator of the estate), that pursuant to Title 5 of the Code of the City of Portland, as amended, I am authorized to deliver said check to (name of applicant) and the Treasurer of the City of Portland is directed to cash the same upon. endorsement thereof.

PLEASE DO NOT DETACH

.....

Chief Human Resources Officer of the City of Portland

The Bureau of Human Resources shall furnish the City Treasurer a copy of all authorizations for transfers issued, and the City Treasurer shall honor all checks described in the authorizations for transfer when endorsed by the applicant named therein.

5.08.170 Hold Harmless Agreements.

(Amended by Ordinance Nos. 173369 and 189452, effective May 10, 2019.) Hold harmless agreements required by subdivisions C and D of Section 5.08.160 shall be in the following form:

HOLD HARMLESS AGREEMENT

WHEREAS there was due and owing by the City of Portland, Oregon, to who died, 20. . . . , the sum of \$representing and the Bureau of Human Resources of the City of Portland holds said sum in the form of checks drawn payable to the said deceased; and

WHEREAS there will be no probate of the decedent's estate and I, as (heir, next of kin) of the deceased, have applied to the Bureau of Human Resources of the City of Portland for delivery of these checks according to the provisions of Title 5 of the Portland City Code, as amended, whereby the Bureau of Human Resources may deliver these checks to me, as, (heir, next of kin) only upon condition that I first release and discharge the City of Portland, its officers, agents and employees from all liability with respect to delivery of these checks and payment thereof, and agree to defend and indemnify the City of Portland, its officers, agents and employees therefrom;

NOW, THEREFORE, in consideration of the payment to me of said sum, I hereby release and discharge the City of Portland, its officers, agents and employees from all liability arising from or consequent upon the payment to me of said sum and I hereby assume and agree to and with said City, its officers, agents and employees that I will defend and indemnify them against any claim, suit, action or judgment in consequence of the delivery of checks for, or payment of, said sum.

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IN WITNESS WHEREOF, I have hereunto set my hand and seal this . . . day of ,
20. . . .

.....(SEAL)
.....

Address

WITNESS:

.....
.....

Address

Approved as to form:

.....
City Attorney

5.08.180 Effect of Death upon Assignments and Levies.
(Amended by Ordinance No. 189452, effective May 10, 2019.)

- A.** The Bureau of Human Resources shall recognize no power of Attorney or assignment of wages, salary, disability or retirement benefits, reimbursement of expenses or contributions, or any other monies owing a person by virtue of past or present employment with the City, after the death of that person, notwithstanding Section 5.12.030.

- B.** If the Bureau of Human Resources receives notice of garnishment (except from the Oregon Department of Revenue) or an order for payment of money into any federal or state court in Oregon, which notice or order applies to wages, salary or other monies due an employee of the City, and the employee is deceased or dies at any time before return is made thereon, the Bureau of Human Resources shall hold all monies pending further order of court and shall immediately notify the City Attorney of the notice or order and of the employee’s death. Upon receipt of this notice the City Attorney shall file a supplemental pleading in the case wherein the garnishment or levy was undertaken, to advise the court of the employee’s death and to obtain an order of court as to what disposition should be made of the monies held by the Bureau of Human Resources. The procedure authorized herein shall be followed notwithstanding Section 5.12.050.

- C.** The Bureau of Human Resources shall make a return upon any notice of levy issued by the United States Treasury Department and any notice of garnishment issued by the Oregon Department of Revenue, of wages, salary or other monies due an employee of the City, if the employee is living at the time the notice is served. If the employee is deceased at the time the notice is served, the Bureau of Human Resources shall:
 - 1.** Make payment as provided in Section 5.08.160, advising the recipient thereof, in writing, of the existence of the tax lien; and

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2. Notify the taxing authority, in writing, of the fact and date of the employee's death, the date and amount of the payment, the name and address of the recipient thereof, and the recipient's relationship to the deceased. The procedure authorized herein shall be followed notwithstanding Section 5.12.050.

**CHAPTER 5.09 - DEFERRED
COMPENSATION PLAN**

(Chapter added by Ordinance No. 176183, effective
January 1, 2002.)

Sections:

5.09.005	Title.
5.09.010	Definitions.
5.09.020	Purpose.
5.09.030	Administration.
5.09.035	Education.
5.09.040	Participation in the Plan.
5.09.050	Compensation Deferral.
5.09.055	Catch-up Provisions.
5.09.056	Excess Deferrals.
5.09.060	Deferred Compensation Records.
5.09.070	Payment Options.
5.09.080	Distribution of Benefits Generally.
5.09.090	Qualified Domestic Relations Orders (QDRO).
5.09.100	Determination of Benefits Upon Death.
5.09.120	Unforeseeable Emergency.
5.09.130	Non-Assignability.
5.09.140	Amendment and Termination.
5.09.150	Transfers from other Code Section 457 (b) Plans.
5.09.155	Rollovers to Plan.
5.09.156	Rollovers From the Plan.
5.09.157	Purchase of Service Credits.
5.09.160	Unclaimed Assets.
5.09.170	Disclaimers.

5.09.005 Title.

(Amended by Ordinance Nos. 179417, 182168, 185726, 186746 and 187574, effective February 10, 2016.)

- A.** The City of Portland, Oregon (City), maintains a deferred compensation plan authorized by Section 457 of the Internal Revenue Code of 1986, as amended (“IRC”) that was originally adopted by City Council on December 17, 1981 and became effective January 1, 1982.

- B.** Name of Plan. This Plan shall be known as the City of Portland Governmental 457(b) Plan.

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- C. Effective Date. The effective date of this Plan, as amended, shall be February 10, 2016.
- D. Service Providers. As of August 11, 2005, the service providers offered by the Plan are:
 - 1. Voya Retirement Insurance and Annuity Company
 - 2. Advantis Credit Union

5.09.010 Definitions.

(Amended by Ordinance Nos. 179417, 182168, 183900, 185726, 186746 and 187574, effective February 10, 2016.) As used in this Chapter, unless the context otherwise requires:

- A. **“Account”** means the bookkeeping account or accounts maintained for each Participant reflecting the cumulative amount of the Participant's Deferred Compensation, including any income, gains or losses attributable to the investment of the Participant's Deferred Compensation, and further reflecting any distributions to the Participant or the Participant's Beneficiary and any fees or expense charged against such Participant's Deferred Compensation, which are maintained by the Participant's Investment Providers. Account also includes the Participant's Roth Account, and appropriate rollover accounts under Sections 5.09.150 and 5.09.155 that must be segregated.
- B. **“Acknowledgement”** means the document that highlights some of the terms of the Plan and contains the Participant's acknowledgement and understanding of the terms of the Plan.
- C. **“Beneficiary”** means the person(s) designated by the Participant to receive any benefits payable under the plan in the event of the Participant's death. The term Beneficiary may also include the Participant's estate.
- D. **“Beneficiary Designation”** means a document specifying the Beneficiary/Beneficiaries who is/are to receive any part of the Participant's Account in the event of the Participant's death.
- E. **“Committee”** means the Deferred Compensation Committee which makes recommendations for Council to approve regarding plan design, Service Providers, and consultative support on behalf of the Plan.
- F. **“Compensation”** means the total annual remuneration for employment payable by the City that would be included in the Federal gross income of the Participant but for the Participant's election to participate in the Plan.

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- G.** “**Deferred Compensation**” means the amount of Compensation otherwise payable to the Participant that the Participant and the City mutually agree shall be deferred in accordance with the provisions of the Plan.
- H.** “**Employee**” means an elected official of the City, or a full-time or part-time City Employee who is eligible for benefits offered by the City or a benefit eligible employee of the Portland Development Commission. Independent contractors and leased employees are not eligible.
- I.** “**Includable Compensation**” means the remuneration for service performed for the City which is currently includable in gross income (such amount will not include any amounts excluded from gross income pursuant to this Chapter). Severance pay is excluded. Pay for unused vacation, comp time, and holiday pay is included if deferred prior to a severance from employment and pursuant to this Chapter.
- J.** “**Normal Retirement Age**” means age 70-1/2 or that age selected in writing by a Participant in accordance with this Subsection. A Participant’s Normal Retirement Age determines the period during which a Participant may defer those amounts described in Subsection 5.09.050 C. Once a Participant has to any extent utilized the “catch up” provisions of Subsection 5.09.050 C., the Participant’s Normal Retirement Age may not be changed. As an alternative to age 70-1/2, a Participant may, at any time prior to Severance from Employment or prior to utilization of the “catch up” provisions of Subsection 5.09.050 C., designate his or her Normal Retirement Age to be any of the following:
- 1.** Any age which is:
 - a.** Not earlier than the earliest age at which the Participant has the right to retire and receive immediate and unreduced retirement benefits from the pension plan of which the Participant is a member (i.e., the Fire and Police Disability, Retirement and Death Benefit Plan for fire fighters and police officers who are members of that Plan and the Public Employee's Retirement System (PERS) for all other Participants); and
 - b.** Not later than the date the Participant attains age 70-1/2.
- K.** “**Participant**” means any Employee who fulfills the eligibility and enrollment requirements of this Chapter.
- L.** “**Participating Employer**” means the Portland Development Commission (PDC), or any entity that has adopted the City of Portland Governmental 457(b) Plan, and is legally related to the City of Portland. For employees of a “Participating Employer”, wherever this Chapter references the “City” with respect to the

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employment relationship, services performed and compensation paid, the term “City” shall also mean the “Participating Employer”.

- M.** “**Participation Agreement**” means an agreement between the City and a Participant, on a form prescribed by the City, that provides for the deferral of Compensation due a Participant to a future date for service currently rendered by the Participant to the City.
- N.** “**Plan**” means the program established by this Chapter which has as its purposes the deferral of Compensation to Participants using pre and/or post tax deferrals.
- O.** “**Plan Administrator**” means the Bureau of Human Resources Director, or his or her designee, who prepares and provides documents, materials and support services required to administer the Plan on behalf of Participants.
- P.** “**Plan Year**” means a calendar year.
- Q.** “**Records**” means the materials and forms maintained in files for each Participant in the Deferred Compensation Plan.
- R.** “**Roth Account**” means the portion of the Participant Account established and maintained by the Administrator for each Participant with respect to his or her Roth Deferrals including any amounts transferred into the Plan.
- S.** “**Roth Deferrals**” means Deferred Compensation which is designated irrevocably as a Roth Deferral by the Participant at the time the deferral election is made, and which is included in the Participant’s taxable income at the time the Participant would have received such amount in Compensation. All Roth Deferrals will be made in compliance with Internal Revenue Code Section 402A.
- T.** “**Service Providers**” means the financial institutions that have contracts with the City to provide investment services to Participants consistent with the terms of the Plan.
- U.** “**Severance from Employment**” means the severance of the Participant’s employment with the City. A Participant shall be deemed to have severed his or her employment with the City when, in accordance with the established practices of the City, the employment relationship is considered to be terminated.
- V.**
 - 1.** “**Unforeseeable Emergency**” means severe financial hardship to the Participant resulting from

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- a. a sudden and unexpected illness or accident of the Participant or of a dependent (as defined in IRC Section 152a) of the Participant, or a designated beneficiary,
 - b. loss of the Participant's property due to casualty, or
 - c. the need to pay for the funeral expenses of the participant's spouse or dependent (defined in IRC Section 152(a),) or
 - d. other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant.
2. The circumstances that will constitute an Unforeseeable Emergency will depend upon the facts of each case, but, in any case, payment may not be made to the extent that such hardship is or may be relieved;
- a. Through reimbursement or compensation by insurance or otherwise;
 - b. By liquidation of the Participant's assets to the extent the liquidation of such assets would not itself cause severe financial hardship; or
 - c. By cessation of deferrals under this Chapter.

Examples of what are not considered to be unforeseeable emergencies include the need to send a Participant's child to college or the desire to purchase a home.

- W. “Withdrawal Agreement”** means an agreement between the City and a Participant on a form prescribed by the City that allows the Participant to elect and change the manner in which the value of the Participant’s Account is paid.

5.09.020 Purpose.

(Amended by Ordinance No. 182168, effective October 3, 2008.) The purpose of this Chapter is to establish a program that has as its purpose the deferral of Compensation to eligible Employees and the deferral of income taxation on the Deferred Compensation. The program established by this Chapter is limited to the terms contained in the Chapter, and as such no other plan provisions are to be implied or assumed, even if such provisions would be permissible under the IRC. Except as specifically set forth otherwise, in the event the terms or provisions of any Component Plan, summary or description of this Plan or of any other instrument are interpreted as being in conflict with the provisions of this Plan, the provisions of this Plan shall be controlling.

5.09.030 Administration.

(Amended by Ordinance Nos. 176426, 179417, 182168, 185341, 185726, 186746 and 187574, effective February 10, 2016.) This Chapter shall be administered by the Bureau of Human Resources Director, or his or her designee, with the assistance of the Deferred Compensation Committee. The Committee shall consist of the Chief Administrative

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Officer of the Office of Management and Finance, the Director of the Bureau of Human Resources, and the City Treasurer or their respective designees. The Committee shall study all matters connected with providing a deferred compensation plan on the best basis possible with relation both to the welfare of the Participants and the City. The Committee shall have authority to devise specifications for deferred compensation plans, advertise for responses and bids, and analyze responses. The Bureau of Human Resources Director, or his or her designee, at the direction of the Committee, is authorized to negotiate and execute all contracts, including contracts with Service Providers. The terms of any contract with the Plan may authorize the assessment of fees to be charged against Service Providers or other contractors that may be necessary to fund the administration of the Plan. The Bureau of Human Resources Director, or his or her designee, at the direction of the Committee, is further authorized to prepare and provide any other documents, materials and support services that may be required to administer the Plan. The Committee members may participate in the Plan established herein if otherwise eligible, but shall not be entitled to participate in decisions relating solely to their own participation.

5.09.035 Education.

(Amended by Ordinance Nos. 186746 and 187574, effective February 10, 2016.) All promotional and City-sponsored employee marketing and education efforts relating to the Plan may be coordinated with other similar efforts sponsored by the Health and Financial Benefits Office within the Bureau of Human Resources. The Committee shall not offer investment advice to employees or plan Participants.

5.09.040 Participation in the Plan.

(Amended by Ordinance Nos. 179417, 182168, 183900, 185726, 186746 and 187574, effective February 10, 2016.)

- A.** Eligibility. Employees shall be eligible to enroll as Participants in the Plan, as provided in this Section, on the first day of the month following the month in which they will have completed 30 days in a paid status. A Participant who terminates his or her employment with the City and then returns to City employment after the expiration of 12 calendar months following said termination date must comply with the eligibility waiting period applicable to such person upon his or her return before being eligible to participate in the Plan again. A Participant's right to participate and to have his or her salary reduced in connection with the Plan shall cease in the event the Participant takes a leave of absence without pay, but any such Participant may continue full participation in the Plan upon returning to pay status with the City. A Participant's right to participate and to have his or her salary reduced in connection with the Plan shall cease while the Participant is receiving distributions in accordance with, and subject to, the restrictions of Sections 5.09.070, 5.09.080, 5.09.090, and 5.09.100.
- B.** Enrollment in the Plan. An eligible Employee may become a Participant and defer Compensation not yet earned by executing a Participation Agreement, and submitting it to the Bureau of Human Resources, Health and Financial Benefits

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Office in an acceptable format. Compensation will be deferred for any calendar month only if a Participation Agreement providing for such deferral has been entered into by the 15th of the preceding month.

- C.** The Participation Agreement shall be in a format provided by the City, which shall include the following:
1. The Participant's name;
 2. The dollar amount or percent of Compensation to be deferred;
 3. Other relevant statements necessary and appropriate for carrying out the purposes of this Chapter; and
 4. The investment or deposit preference shall be made in a format provided by the City.
- D.** When an eligible Employee executes a Participation Agreement, an Acknowledgement and a Beneficiary Designation shall also be completed. A Participant may change the Beneficiary Designation at any time by completing a new Beneficiary Designation and submitting it to the Bureau of Human Resources, Health and Financial Benefits Office. A change of Beneficiary Designation shall become effective on the date received by the Bureau of Human Resources, Health and Financial Benefits Office, and must be received prior to the date of death.
- E.** The City, upon the request of an eligible Employee, will reduce each pay period the salary of the eligible Employee by an amount of money designated by that Employee in the Employee's Participation Agreement. The City shall pay that amount to the Service Provider designated in the Employee's Participation Agreement.
- F.** Once per month, a Participant may modify his or her Participation Agreement as to the amount of Compensation not yet earned to be deferred during each Plan Year. Any modification as to the amount of Compensation to be deferred by a Participant must be submitted in a format provided by the City, and received by the Bureau of Human Resources, Health and Financial Benefits Office, by the 15th of the month prior to the month in which said modification is to become effective.
- G.** A Participant may revoke the Participation Agreement at any time with respect to any pay period by submitting notification in a format provided by the City, which must be received by the Bureau of Human Resources, Health and Financial Benefits Office, prior to the date upon which the Participant desires the revocation to be effective.

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- H.** Prior to severance from employment with the City, a Participant may make a special election to be processed within their final paycheck of their vacation, comp, and/or holiday pay-out. A Participant must submit a Participation Agreement before they sever employment and before the amount is available to the employee. The election can be made as a dollar or percentage amount. This election will only apply once on the final paycheck issued. The maximum deferral limits shall apply in accordance with Sections 5.09.050 and 5.09.055. If not previously elected during the calendar year, the participant may elect the 3-year catch-up provision pursuant to Section 5.09.055.
- I.** A Participant who has severed his or her employment or who has revoked the Participation Agreement may again participate in the Plan, provided that he or she is eligible, by submitting a new Participation Agreement.
- J.** For purposes of Plan administration, a revocation of a Participation Agreement will be considered a Participation Agreement modification. The most recent Participation Agreement shall be controlling with respect to all accounts, including amounts deferred under prior agreements.
- K.** Automatic Enrollment in the Plan.

 - 1.** Collective Bargaining Agreements requiring Automatic Enrollment.

 - a.** If the City and a labor organization representing a unit of City employees agree in collective bargaining, the Eligible Employees in such bargaining unit will be automatically deemed to have executed a Participation Agreement. With respect to then currently Eligible Employees such deemed executed Participation Agreement will be effective commencing with the payroll period designated in such collective bargaining agreement. If no payroll period is designated in the collective bargaining agreement, the Participation Agreement will be effective the first payroll period after the effective date of such collective bargaining agreement.
 - b.** New Eligible Employees who are covered by such a collective bargaining agreement will be automatically deemed to have executed a Participation Agreement effective for the first payroll period in which they could complete a Participation Agreement, unless another date is specified in the applicable collective bargaining agreement.
 - c.** Notwithstanding the preceding in this Section, the deemed executed Participation Agreement will not be effective prior to the time described in the required notice described in Subsection 5.09.040 K. 2.

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2. Advance Notice. An Eligible Employee will be provided the required advance notice of automatic enrollment pursuant to IRC Section 414(w), including the amount of contributions that will be made, the employee's right to elect to not have automatic contributions made, a description of how the contributions will be invested, and when such contributions may be distributed. The notice shall be provided within a reasonable period before each Plan Year or before such other time when the automatic provision will first become applicable to an Eligible Employee.
 - a. Opting Out of Automatic Enrollment. A Participant shall have the right to opt out of automatic enrollment at any time by completing a Participation Agreement or by providing notice of the election to not have any amount withheld from his or her Compensation.
 - b. Deferral Amount. The amount deferred from an Eligible Employee's Compensation shall be the amount specified in the applicable collective bargaining agreement, provided that the requirements of IRC Section 414(w) are satisfied, including the requirement that the percentage of pay deferred will be uniform for employees with the same years of employment, and the applicable minimum and maximum deferral percentages.

5.09.050 Compensation Deferral.

(Amended by Ordinance Nos. 182168, 186746 and 187574, effective February 10, 2016.)

- A. The amount of Compensation which may be deferred by a Participant shall be subject to the following limits:
 1. The minimum amount deferred shall not be less than \$10 per pay period per plan election;
 2. The maximum amount of Compensation which may be deferred during a plan year shall not exceed the lesser of the dollar amount provided under IRC sections 457(e)(15) and 415(d).

5.09.055 Catch-up Provisions

(Amended by Ordinance Nos. 179417, 182168, 186746 and 187574, effective February 10, 2016.)

- A. **Three year catch-up provision:** Notwithstanding the language of Subsection 5.09.050 A.2., during each of a Participant's last three (3) taxable years ending before the Participant attains Normal Retirement Age, the maximum amount deferred shall be the lesser of:

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1. the maximum allowed under Subsection 5.09.050 A. 2. for the current taxable year plus so much of the maximum established for purposes of Subsection 5.09.050 A.2. for prior taxable years as has not previously been deferred under Subsection 5.09.050 A.2.; or
2. Two times the applicable dollar amount under Subsection 5.09.050 A.2. above.

For the purposes of this section, a prior year shall be taken into account only if such year began after December 31, 1981, and the participant was eligible to participate in the plan during all or a portion of the year. For purposes of counting prior years, only years of service with the City may be considered. Participant may only make this election once with respect to any IRC section governmental 457(b) deferred compensation plan of the employer based on the Participant's basic defined benefit plan of the State.

- B. Age 50 catch-up provision:** All Participants who are eligible to make elective deferrals under the Plan and who have attained age 50 before the close of the calendar year shall be eligible to make catch-up contributions subject to the limitations of IRC Sections 414(v) and 414(v)(6)(c). Additional deferrals under this section of the Plan may be made except during the three (3) years prior to normal retirement age while utilizing the catch-up provision provided for in Subsection 5.09.055 A. of the Plan. Age 50 catch-up contributions will not be taken into account for purposes of determining a participant's underutilized amounts under the three year catch-up provision. The Participant must select the catch-up which results in the higher contribution amount. The amount shall be administered to reflect changes in accordance with the IRC Section 457(e)(15) and 415(d).
- C. Coordination with other plans.** If a Participant participates in more than one deferred compensation plan authorized under IRC Section 457, the maximum deferral under all such plans shall not exceed the applicable deferral limits described in Section 5.09.050, as adjusted by the Secretary of the Treasury (subject to modification by the catch-up limitations described in Section 5.09.055), which also shall apply to all IRC Section Governmental 457(b) Plans in which the Participant participates. If a Participant participates in a plan described in IRC Section 403 (b), 401 (k), 408 (k) or 501 C (18), amounts deferred by the Participant to such plan(s) and excluded from the Participant's gross income in any taxable year under such plan(s) shall not reduce the limitation described in Section 5.09.050 of this Section and the catch-up limitation described in Section 5.09.055.
- D. Uniform Service Provision.** This Plan shall be administered in accordance with Section 414(u) of the IRC for employees who return to work after absences from employment due to military service. Accordingly, notwithstanding the provisions of this section limiting the amount of compensation which may be deferred under the Plan, a Participant who is entitled to reemployment pursuant to the terms of the

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Uniformed Services Employment and Reemployment Act of 1994 (USERRA) may defer an additional amount under the Plan as provided in that Act for the years of his or her service in the uniformed services (as defined in USERRA). Any such deferrals will not be subject to the annual limits on deferrals set forth in this section in the year in which deferred, but shall be subject to the limits for the year to which such deferrals relate. This subsection shall apply retroactively to December 12, 1994.

5.09.056 Excess Deferrals.

(Added by Ordinance No. 179417; amended by Ordinance Nos. 182168 and 186746, effective August 6, 2014.) A Participant who participates in the Plan and another Governmental 457(b) Plan of another employer shall be responsible for complying with the deferral limits. In the event of an excess amount, the Participant shall notify the Plan Administrator so that the excess and the proportionate earnings on the excess as determined by the Plan Administrator in accordance with IRC Section 457 may be distributed as soon as practicable after the Plan Administrator determines that the amount is an excess deferral.

5.09.060 Deferred Compensation Records.

(Amended by Ordinance Nos. 182168, 186746 and 187574, effective February 10, 2016.)

- A. The City shall maintain records necessary and appropriate to the efficient administration of this Chapter, and such records shall be maintained by the City until a Participant or his or her designated Beneficiaries have received the payment of such amounts as they are entitled to receive under the terms of the applicable Withdrawal Agreement.
- B. All amounts of Compensation deferred pursuant to this Chapter, shall be held in a trust, custodial account or contract described in IRC Section 457(g). Any change in the net value of the assets of a Participant invested under the Plan shall result in a commensurate change in the total amount distributable to the Participant or the Beneficiary of the Participant and shall not result in any increase or decrease in the net worth of the City.
- C. As to those amounts held in trusts, notwithstanding any contrary provision of the Plan, in accordance with IRC Section 457(g), all amounts of compensation deferred pursuant to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in trust for the exclusive benefit of Participants and Beneficiaries under the Plan. Any trust under the Plan shall be established pursuant to a written agreement that constitutes a valid trust under the law of the State of Oregon. All amounts of compensation deferred under the Plan shall be transferred to a trust established under the Plan within a period that is not longer than is reasonable for the proper administration of the accounts of Participants.

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- D.** As to those amounts held in annuity contracts, notwithstanding any contrary provision of the Plan, including any annuity contract issued under the plan, in accordance with IRC Section 457(g), all amounts of compensation deferred pursuant to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in one or more annuity contracts, as defined in IRC Section 401(g), issued by an insurance company qualified to do business in the State of Oregon, for the exclusive benefit of Participants and Beneficiaries under the Plan. For this purpose, the term "annuity contract" does not include a life, health or accident, property, casualty, or liability insurance contract. All amounts of compensation deferred under the Plan shall be transferred to an annuity contract described in IRC Section 401(f) within a period that is not longer than is reasonable for the proper administration of the accounts of Participants.
- E.** As to those amounts held in custodial accounts, notwithstanding any contrary provision of the Plan, in accordance with IRC Section 457(g), all amounts of compensation deferred pursuant to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in one or more custodial accounts for the exclusive benefit of Participants and Beneficiaries under the Plan. For purposes of this paragraph, the custodian of any custodial account created pursuant to the Plan must be a bank as described in IRC Section 408(n), or a person who meets the nonbank trustee requirements of paragraphs (2)-(6) of Section 1.408-2(e) of the Income Tax Regulations relating to the use of nonbank trustees. All amounts of compensation deferred under the Plan shall be transferred to a custodial account described in IRC Section 401(f) within a period that is not longer than is reasonable for the proper administration of the accounts of Participants.
- F.** When a Participant agrees to participate in the Plan, the Participant may indicate his or her preference with respect to the investment or deposit option to be used in investing or depositing the Participant's deferred income.
- G.** If a Participant newly enrolls in the Plan using the Employee Self Service (ESS) system or the written EZ Enroll form, and does not otherwise designate an investment or deposit preference, the Participant will be defaulted into the Plan's Target Date Fund based on their year of birth.

5.09.070 Payment Options.

(Amended by Ordinance Nos. 186746 and 187574, effective February 10, 2016.)

- A.** Subject to the restrictions on the distribution of benefit payments appearing in Sections 5.09.080, 5.09.090, and 5.09.100, the options available to a Participant or Beneficiary for distributing the value of the Participant's Account are:

 - 1.** Lump Sum

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2. Substantially equal monthly, quarterly, semi- annual or annual installments until the Account is exhausted.
3. Substantially equal monthly, quarterly, semi- annual or annual payments for a designated period.
4. Periodic payments for the life of the Participant with continuation of the payments or a percentage of the payments for the lifetime of the Participant's spouse.
5. Payments equal to payments made by the issuer of a retirement annuity policy.
6. Such other option as the Participant chooses, and as authorized by this Plan.

5.09.080 Distribution of Benefits Generally.

(Amended by Ordinance Nos. 177367, 179417, 182168, 185341, 185726, 186746 and 187574, effective February 10, 2016.)

- A. With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2002, the Plan will apply the minimum distribution requirements of IRC Section 401(a)(9) in accordance with the regulations under IRC Section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. This amendment shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under IRC Section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.
- B. Distribution of a Participant's Account to a Participant or a Beneficiary shall be made in accordance with the manner and method of payments selected in the Withdrawal Agreement, which election may be changed by a Participant or Beneficiary, subject to the restrictions of the Plan.
- C. At the time distribution to a Participant commences, such distribution shall be made in a manner in which the Participant will receive a minimum portion of the amount payable with respect to the Participant during the life expectancy of the Participant (as determined as of the commencement of the distribution). Therefore, distributions to a Participant must be made in accordance with the distribution tables promulgated by the Secretary of the Treasury pursuant to IRC Section 457(d)(2)(B)(i)(I).
- D. A minimum amount shall be distributed during each calendar year. The required minimum distribution for each calendar year shall be determined by dividing the Account balance (as determined under Section 1.104(a)(9)-1, Q&A F-5 of the proposed Federal income tax regulations or any successor to such regulations) by

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the lesser of the applicable life expectancy (as determined under Q&A F-1A(d) of Section 1.104(a)(9)-1 of the proposed Federal income tax regulations or any successor to such regulations) or the applicable divisor (as determined under Q&A-4 of Section 1.104(a)(9)-2 of the proposed Federal income tax regulations or any successor to such regulations).

- E.** Notwithstanding the provisions of Subsection D., distribution of a Participant's Account may be made through an annuity contract that is purchased from an insurance company, with funds from the Participant's Account. Any annuity contract so purchased must satisfy the applicable minimum distribution requirements of Section 1.401(a)(9)-1 of the proposed Federal income tax regulations (and any successor regulations) and the applicable minimum distribution incidental benefit requirement of Section 1.401(a)(9)-2 of the Federal income tax regulations (and any successor regulations). In the event such an annuity contract is purchased, the amount of the annuity payments shall be determined under the annuity contract.
- F.** In no event shall the distribution of a Participant's Account commence earlier than:

 - 1. the calendar year in which the Participant attains his or her Normal Retirement Age as defined in Subsection 5.09.010 K.,
 - 2. the Participant's Severance from Employment, or
 - 3. when the Plan Administrator or designee approves a distribution pursuant to an Unforeseeable Emergency of a Participant.
- G.** Distribution of a Participant's Account to a Participant may commence no later than April 1 of the calendar year following the calendar year in which the Participant attains age 70-1/2 or actually severs from employment.
- H.** Notwithstanding Subsection 5.09.080 J., distributions of a Participant's Account shall cease if the Participant is re-employed by the City.
- I.** All distributions hereunder shall be made in accordance with the regulations under IRC Section 401(a)(9), including Section 1.401(a)(9)-2 of the Federal income tax regulations and such other provisions as are prescribed by the Commissioner of Internal Revenue. Accordingly, no distribution shall be made under any option that does not satisfy IRC Section 401(a)(9), including Section 401(a)(9)(G).
- J.** Participants may elect changes to election dates and/or payment amounts, except for selections made pursuant to Subsection 5.09.070 A.5.
- K.** Voluntary In-Service Distribution: Notwithstanding anything in this chapter to the contrary, a Participant who is an active employee of the City shall receive a

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distribution of the total amount payable to the Participant under the Plan if the following requirements are met:

1. the total amount payable to the Participant under the Plan does not exceed \$5,000 (or the dollar limit under IRC Section 411(a)(11), if greater),
 2. the Participant has not previously received an in-service distribution of the total amount payable to the Participant under the Plan pursuant to Subsection 5.09.080 I.
 3. no amount has been deferred under the Plan with respect to the Participant during the two-year period ending on the date of the in-service distribution; and
 4. the Participant elects to receive the distribution.
- L. Distribution of a Participant's Account shall commence no earlier than Severance from Employment.

5.09.090 Qualified Domestic Relations Orders (QDRO).

(Replaced by Ordinance No. 177367; amended by Ordinance Nos. 179417 and 182168, effective October 3, 2008.)

- A. Effective January 1, 2002, court ordered distributions in the form of QDROs are recognized and allowed by the Plan. The Plan or the Plan's designee shall adopt reasonable procedures to determine the qualified status of domestic relations orders and to administer the distributions hereunder. QDROs must be submitted in a form acceptable to the Plan or its designee, and may order Participant Plan assets be divided into a separate account for the benefit of an Alternate Payee. Distribution of those assets may be allowed as provided in Subsection 5.09.090 B. and C. All state and federal taxes on distributions from the Alternate Payee's account will be the responsibility of the Alternate Payee and not to the Plan Participant. The Alternate Payee's account shall be subject to the IRC and Regulations, state law, and the Plan.
- B. If administered by the Plan, the responsibility for the fees provided for under ORS 243.507 shall be apportioned to the Participant and the Alternate Payee based on the fraction of the plan assets received by the Participant and the Alternate Payee at the time the Alternate Payee's interest in the Plan is established. The apportioned fees shall be immediately paid to the Plan out of the distributions to the Participant and out of the distributions to the Alternate Payee until their respective obligations are paid.
- C. Any QDRO submitted to and accepted by the Plan or its designee may provide that an Alternate Payee may take an immediate distribution of some or all of the assets

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established in the separate account or make any distribution election from the payout options available to Plan Participants, or may elect to leave the separate account in the Plan, in which case, the Alternate Payee shall have the same rights as a participant under the Plan.

5.09.100 Determination of Benefits Upon Death

(Replaced by Ordinance No. 179417; amended by Ordinance Nos. 182168, 186746 and 187574, effective February 10, 2016.)

- A.** Upon the death of a Participant, Former Participant or Alternate Payee, the Plan Administrator shall direct that the deceased Participant's, Former Participant's or Alternate Payee's Participant Account, be distributed to the Beneficiary in accordance with the provision of this Section 5.09.100.
- B.** The designation of a Beneficiary shall be made in a manner that is satisfactory to the Plan Administrator. A Participant, Former Participant, or Alternate Payee may at any time revoke his or her designation of a Beneficiary or change his or her Beneficiary by submitting notice prior to the date of death of such revocation or change with the Plan Administrator. In the event no valid designation of Beneficiary exists at the time of the Participant's, Former Participant's, or Alternate Payee's death, the death benefit shall be payable to the Participant's, Former Participant's, or Alternate Payee's estate.
- C.** The Plan Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the Participant Account of a deceased Participant, Former Participant, Alternate Payee or Beneficiary, as the Plan Administrator may deem appropriate. The Plan Administrator's determination of death and of the right of any person to receive payment shall be conclusive.
- D.** Death benefits payable to a Beneficiary shall be made in a form as selected by the Beneficiary in accordance with the available options. In the event a Beneficiary fails to make an election as to a benefit distribution option, any benefit payable to such Beneficiary shall be distributed in a lump sum payment in accordance with IRC Section 401(a)(9) and any applicable State of Oregon law or statute. The terms of any annuity contract purchased and distributed by the Plan to a Beneficiary shall comply with the requirements of the Plan.
- E.** Notwithstanding any provision in the Plan to the contrary, distributions upon the death of a Participant or Former Participant, shall be made in accordance with the requirements in Subsections F. through J. and shall otherwise comply with IRC Section 401(a)(9) and the Regulations thereunder.
- F.** In accordance with the Beneficiary's election, if minimum payments under IRC Section 401(a)(9) have not begun upon the death of a Participant or Former

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Participant and the designated Beneficiary is not the Participant's surviving spouse, death benefit payments must:

1. begin to be distributed to the designated Beneficiary no later than the December 31 of the calendar year immediately following the calendar year of the Participant's or Former Participant's death payable over a period not to exceed the life expectancy of the Beneficiary; or
 2. be distributed no later than the December 31 of the calendar year containing the fifth anniversary of the Participant's or Former Participant's death.
- G.** In accordance with the Beneficiary's election, if the designated Beneficiary is the Participant's or Former Participant's surviving spouse and minimum payments under IRC Section 401(a)(9) have not begun upon the death of a Participant or Former Participant, minimum payments to the surviving spouse as the designated Beneficiary must begin by the later of:
1. December 31 of the calendar year immediately following the calendar year in which the Participant or Former Participant dies, or
 2. December 31 of the calendar year in which the Participant or Former Participant would have attained 70 ½.

The payments to the surviving spouse as the designated Beneficiary must be made over a period not to exceed the surviving spouse's life expectancy. Notwithstanding the foregoing, for purposes of this subsection, an Alternate Payee who is a spouse or former spouse will be treated as a Participant's or Former Participant's surviving spouse.

- H.** If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's or Former Participant's death, the Participant's or Former Participant's entire interest will be distributed according to State of Oregon law or statute by December 31 of the calendar year containing the fifth anniversary of the Participant's or Former Participant's death.
- I.** If the Participant or Former Participant dies on or after the date distributions begin and there is a designated Beneficiary, distributions shall be based on the longer of the remaining life expectancy of the Participant or Former Participant or the remaining life expectancy of the Participant's or Former Participant's designated Beneficiary.
- J.** Life expectancies calculations will be computed using the factors in the Single Life Table set forth in IRC Section 1.401(a)(9)-9, A-1, as follows:

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1. The Participant's or Former Participant's remaining life expectancy is calculated using the age of the Participant or Former Participant in the year of death, reduced by one for each subsequent year.
2. If the Participant's or Former Participant's surviving spouse is the Participant's or Former Participant's sole, primary designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's or Former Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
3. If the Participant's or Former Participant's surviving spouse is not the Participant's or Former Participant's sole, primary designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's or Former Participant's death, reduced by one for each subsequent year.
4. If the Participant or Former Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's or Former Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's or Former Participant's death is the quotient obtained by dividing the Participant Account by the Participant's or Former Participant's remaining life expectancy calculated using the age of the Participant or Former Participant in the year of death, reduced by one for each subsequent year.

5.09.110 Distribution Commencing After Death of Participant.

(Repealed by Ordinance No. 179417, effective August 11, 2005.)

5.09.120 Unforeseeable Emergency.

(Amended by Ordinance Nos. 179417, 182168 and 186746, effective August 6, 2014.) A Participant may apply on a form supplied by the Bureau of Human Resources Director, or his or her designee, for payment prior to Severance from Employment or Retirement from City employment but such applications may be granted only if the Participant is experiencing an Unforeseeable Emergency which would cause undue hardship if payment were denied. If the Bureau of Human Resources Director, or his or her designee, finds that a Participant is experiencing an Unforeseeable Emergency, he or she may approve an amount reasonably needed to satisfy the unforeseen emergency be made to the Participant. Payment will be made within 90 days of the date of such approval. Participants who request and are granted a hardship withdrawal from their deferred compensation account may not

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have their salaries reduced under the terms of this Chapter for a period of six (6) months following such hardship withdrawal. If the Bureau of Human Resources Director, or his or her designee, denies the application for payment, said denial shall be in writing. A Participant may appeal the decision to the Committee. An appeal must be in writing and received by the Plan Administrator within 30 days of the date of denial. The Committee shall issue a written decision within 90 days of receipt of the appeal by the Plan Administrator. Any decision of the Committee is final.

5.09.130 Non-Assignability.

(Amended by Ordinance Nos. 177367, 182168 and 186746, effective August 6, 2014.) Neither the Participant, nor the Participant's Beneficiary shall have any right to commute, sell, assign, transfer, or otherwise convey the right to receive any payment which may be due the Participant under the plan, which payments and rights thereto are expressly declared to be nonassignable and nontransferable. Nor shall any amounts deferred pursuant to this Chapter be subject to attachment, garnishment, or execution or be transferable by operation of law in the event of bankruptcy or insolvency unless otherwise required by law. The preceding paragraph prohibiting the assignment or alienation of benefits shall not apply to Qualified Domestic Relations Orders as set forth in Section 5.09.090 which may be issued pursuant to a court decree of annulment or dissolution of marriage or of separation, or the terms of any court order or court approved property settlement agreement incident to any court decree of annulment or dissolution of marriage or of separation which is determined by the Bureau of Human Resources Director or his or her designee to satisfy the requirements of ORS 243.507. The Bureau of Human Resources Director or his or her designee shall establish written procedures to determine whether the above described decrees or the property settlement agreements incident to such decrees satisfy ORS 243.507 and to administer distributions under such orders.

5.09.140 Amendment and Termination.

(Amended by Ordinance Nos. 182168 and 186746, effective August 6, 2014.)

- A.** The City may terminate the Plan provided for in this Chapter at any time. Upon such termination, the Participants in the Plan will be deemed to have withdrawn from the Plan as of the date of such termination and their full Compensation on a non-deferred basis will be thereupon restored. In the event the City terminates the plan, the value of all Accounts shall be distributed to the Participants or their Beneficiaries in accordance with the method of payment designated by the Participant on a Withdrawal Agreement.
- B.** The City may amend the provisions of this Plan at any time, provided, however, that all amendments are in compliance with the IRC and that no amendment shall affect the rights of any Participant or Beneficiary to the receipt of benefits accrued under the Plan prior to such amendment.

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5.09.150 Transfers from other Code Section 457(b) Plans.

(Amended by Ordinance Nos. 179417 and 182168, effective October 3, 2008.) This Plan shall accept for transfer those amounts of compensation previously deferred by a Participant pursuant to another eligible plan of deferred compensation maintained under IRC Section 457, by another employer.

5.09.155 Rollovers to the Plan.

(Replaced by Ordinance No. 182168; Amended by Ordinance Nos. 185726 and 186746, effective August 6, 2014.)

- A.** Amounts that are considered Eligible Rollover Distributions as defined in IRC Section 402(c)(4) may be rolled over by a Participant, from an Eligible Retirement Plan. The amounts rolled over from an Eligible Retirement Plan other than an IRC Section 457(b) plan maintained by an Employer shall be allocated to the Participant Non-457 Rollover Account. The amounts rolled over from another IRC Section 457(b) plan maintained by an Employer shall be allocated to the Participant 457 Rollover Account. Amounts in the Participant Non-457 Rollover Account shall be accounted for separately from amounts in the Participant 457 Rollover Account.
- B.** For purposes of this Section, the term “Participant” means the Participant, the Participant’s surviving spouse beneficiary or an Alternate Payee (who is a spouse or former spouse). “Eligible Retirement Plan” means any other IRC Section 457(b) plan maintained by an employer, an IRC Section 403(b) program, a IRC Section 401(a) plan, an individual retirement account as described in IRC Section 408(a), and an individual retirement annuity as described in IRC Section 408(b), and a Roth individual retirement account under IRC Section 408(a). For purposes of this Section, the term “amounts rolled over from an Eligible Retirement Plan” means:

 - 1.** amounts rolled to the Plan directly from another Eligible Retirement Plan on behalf of an Eligible Individual; and
 - 2.** Eligible Rollover Distributions as defined in IRC Section 402(c)(4) received by an Eligible Individual from another Eligible Retirement Plan that are rolled over by the Eligible Individual to the Plan within sixty (60) days, following his or her receipt thereof.
- C.** A Participant may choose to receive a distribution from his or her 457(b) Rollover Account and Participant Non-457(b) Rollover Account at any time, whether he or she is otherwise entitled to a distribution from the Plan.

5.09.156 Rollovers From the Plan.

(Added by Ordinance No. 182168, effective October 3, 2008.)

- A.** Notwithstanding any provision of the Plan to the contrary, a Participant who is entitled to a distribution under the Plan shall be permitted to elect to have any

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Eligible Rollover Distribution (as defined in IRC Section 402(c)(4)) paid directly to an Eligible Retirement Plan (as defined in Subsection 5.09.155 B.) specified by the Participant. The Participant shall, in the time and manner prescribed by the Employer, specify the amount to be rolled over and the Eligible Retirement Plan to receive such rollover. Any portion of a distribution which is not rolled over shall be distributed to the Participant.

- B.** The election described in Subsection A. also applies to the surviving spouse who is the designated Beneficiary of the Participant or a spouse or former spouse who is the Alternate Payee, provided that such spouse, former spouse or Alternate Payee directs the transfer of an Eligible Rollover Distribution (as defined in Subsection 5.09.155 B.) in which such spouse, former spouse or Alternate Payee is a participant. Effective for distributions made on or after May 16, 2008, a non-spouse beneficiary is permitted to make a direct rollover of death benefits to an inherited IRA.

5.09.157 Purchase of Service Credits.

(Added by Ordinance No. 179417; amended by Ordinance No. 182168, effective October 3, 2008.) Prior to Severance from Employment, a Participant may elect to allow the Plan to transfer assets from the Participant's account with the Plan to a designated government defined benefit plan for the purchase of permissible service credits pursuant to IRC Section 457(e) (17), provided, however, that the designated defined benefit plan will accept such a transfer of assets.

5.09.160 Unclaimed Assets.

In the event the Plan has assets of Participants or their Beneficiaries who, after the Participants' Severance from Employment, cannot be located so as to properly distribute assets to the Participant or Beneficiary under the terms of the Plan, the Plan Administrator shall make all reasonable efforts to locate said Participants and Beneficiaries. If after such efforts, the Participant or Beneficiary cannot be located, the Plan Administrator shall designate such assets as unclaimed property, and thereby abandoned, and shall transfer said assets to the State of Oregon according to the Uniform Disposition of Unclaimed Property pursuant to ORS 98.302, et seq., as amended, if such assets remain unclaimed for two years after said designation.

5.09.170 Disclaimers.

- A.** Neither the City nor the Committee shall be liable for the investment decisions made by Participants.
- B.** Neither the City nor the Committee manages the Participants' Accounts, and is therefore not responsible or liable for the performance and accuracy of Participant's Accounts.

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**CHAPTER 5.10 - CITY CHARITABLE
CAMPAIGN**

(Chapter replaced by Ordinance No. 188966,
effective May 30, 2018.)

Sections:

- 5.10.010 Definitions.
- 5.10.020 Charitable Campaign.
- 5.10.030 Charitable Campaign Advisory Committee.
- 5.10.040 Eligibility for Participation in Charitable Campaign.
- 5.10.050 Administration of Charitable Campaign.

5.10.010 Definitions.

- A. 'Charitable Organization' means:
 - 1. An entity organized and operated exclusively for tax-exempt purposes under Section 501(c)(3) of the Internal Revenue Code and registered as a charitable organization with the Oregon Attorney General as required by ORS 128.610 to 128.995; or, an entity that is a State or City created nonprofit that receives donations which may be deducted from taxable income as "charitable contributions" under Section 170(a) and (c) of the Internal Revenue Code;
 - 2. Charitable services must relate to the promotion of: public health, safety, and welfare; public education and literacy; environmental and natural resource protection, restoration, and conservation; prevention of cruelty to animals or children; civil or human rights; elimination of prejudice and discrimination; public arts and culture; relief of human suffering and poverty; public recreation; or providing community and civic improvement; and,
 - 3. Must be directed by a board of directors or a governing body whose members serve without compensation and have no financial conflict of interest.
- B. 'Umbrella Organization' means a Charitable Organization serving as an agent to at least nine member Charitable Organizations to which it disburses funds and has received authorization from these member Charitable Organizations to represent them in the annual Charitable Campaign, or any other Charitable Organization so designated by the City Council through a City ordinance.
- C. 'City-Partnered Nonprofit' means a Charitable Organization that:

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1. Has the principal mission of providing financial support to a City Bureau or a City program;
2. Engages in advocacy that benefits a City Bureau’s operational goals or missions; or
3. Has a recognized partnership with a City Bureau and that Bureau’s historic civic mission to benefit the Portland community.

The Commissioner in Charge of a Bureau, or designee [or Bureau Director in consultation with the Commissioner in Charge for the Bureau] will administratively determine whether a Charitable Organization meets the definition of “City-Partnered Nonprofit”. If determined to be a “City-Partnered Nonprofit”, the Charitable Organization may apply for participate in an annual Charitable Campaign without being an “Umbrella Organization”.

5.10.020 Charitable Campaign.

The purpose of the Charitable Campaign is to encourage and support voluntary charitable contributions by employees, by providing a consolidated opportunity for workplace giving through the ease of payroll deductions benefiting a wide range of Charitable Organizations. The campaign minimizes workplace disruption and reduces the administrative costs to the City and Charitable Organizations in charitable solicitation efforts. Except as provided by City ordinance, only Umbrella Organizations and City-Partnered Nonprofits may participate in the annual Charitable Campaign.

Except as otherwise permitted by City ordinance, no charitable solicitation of employees on City property or places of employment may occur without prior written approval of the Chief Administrative Officer (CAO) of the Office of Management and Finance (OMF) or CAO’s designee.

Participation in the Charitable Campaign shall not be construed as endorsement, support or advocacy of the beliefs or viewpoints of the participating Charitable Organizations.

5.10.030 Charitable Campaign Advisory Committee.

The Charitable Campaign Advisory Committee (“the Committee”) will consist of five members, each of whom will be a City employee serving without additional salary or compensation. Each City Council member shall appoint one of the five Committee members and any replacement members. The Committee shall report to the CAO, provide advice as needed and perform Charitable Campaign program tasks as may be assigned by the CAO, including but not limited to: developing and reviewing application forms for participation in each year’s Charitable Campaign; identifying Umbrella Organizations or Charitable Organizations for invitation to participate in the Charitable Campaign; and, developing the annual Charitable Campaign marketing plan.

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5.10.040 Eligibility for Participation in Charitable Campaign.

- A.** In addition to a timely completed application to the Committee, each Umbrella Organization or City-Partnered Nonprofit seeking eligibility to participate must provide the following information for itself and the Umbrella Charity's member Charitable Organizations:
- 1.** Documentation of Charitable Organization status and valid registration with the State of Oregon.
 - 2.** Equal opportunity and nondiscrimination policy pertaining to:
 - a.** Delivery of charitable services;
 - b.** Employment opportunities, actions and benefits; and,
 - c.** Membership on the organization's governing board; relating to race, color, religion, sex, age, disability, familial status, sexual orientation, national origin and other legally protected characteristics or status. The policy must certify that the Umbrella Organization and its member Charitable Organizations or City-Partnered Nonprofit have procedures and practices regarding equal opportunity and nondiscrimination that comply with federal, state and local laws including Portland City Code Title 23.
 - 3.** Statement of the charitable work performed, describing solicitation activities, operational history, and the geographic region or location where the work is done. The Umbrella Organization and each of its Charitable Organizations or City-Partnered Nonprofit must have at least one year of operational history.
 - 4.** Copies of the most recent financial report or statement certified by an independent public accountant, including the source and use of charitable contributions and fundraising activities, Form 990 filed with the Internal Revenue Services for the most recent fiscal year, and certification that each entity accounts for funds in accordance with generally accepted accounting principles. Computation of the percentage of total support and revenue spent on fundraising and administrative expenses must not exceed 25 percent of its unrestricted income. Contributions by City employees shall not constitute restricted income and must be used for the Charitable Organization's mission purpose.
 - 5.** Adopted budget for the current fiscal year.
 - 6.** Current articles of incorporation and by-laws, or other governing instruments.

7. Certification of compliance with provisions of this Code and all applicable laws.

B. The CAO or CAO's designee will make the final eligibility determination for each annual Charitable Campaign and will prepare an ordinance for City Council authorizing campaign participants for each year.

5.10.050 Administration of Charitable Campaign.

OMF has administrative responsibility for the Charitable Campaign and will provide administrative support to the Committee. City administrative costs associated with each annual Charitable Campaign will be paid by the participating Umbrella Organizations and City-Partnered Nonprofits in proportion to the total contributions received in the Charitable Campaign. OMF will provide each Umbrella Organization and City-Partnered Nonprofit with information on the total number of employees who pledged contributions and the total dollar amount of pledged contributions. The City will not be liable for any uncollectible pledges. Pledged contributions will be deducted as voluntary payroll deductions of the participating employees. Umbrella Organizations and City-Partnered Nonprofits are responsible for allocating funds to the applicable Charitable Organizations identified in employee pledges and providing written acknowledgement for donors to meet the requirements of the Internal Revenue Code. The CAO or CAO's designee is authorized to formulate, approve and issue policies, administrative rules, and supplemental regulations related to the management and administration of the Charitable Campaign.

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**CHAPTER 5.12 - ASSIGNMENT OR
GARNISHMENT OF SALARIES, WAGES OR
CLAIMS**

Sections:

- 5.12.010 Unlawful to Assign Salary or Wages.
- 5.12.020 Bureau of Human Resources Not to Recognize Assignment.
- 5.12.030 Exceptions.
- 5.12.040 Penalty.
- 5.12.050 Garnishments.

5.12.010 Unlawful to Assign Salary or Wages.

It is unlawful for any person or employee rendering services to the City and having a salary or wage claim against the City to make an assignment of the claim for salary or wages, whether earned or unearned, except as provided in Section 5.12.030.

5.12.020 Bureau of Human Resources Not to Recognize Assignment.

(Amended by Ordinance No. 189452, effective May 10, 2019.) The Bureau of Human Resources of the City is hereby directed not to recognize any assignment or attempted assignment of a salary or wage claim against the City, except as provided in Section 5.12.030.

5.12.030 Exceptions.

(Amended by Ordinance No. 189452, effective May 10, 2019.) The provisions of this Chapter are subject to the following exceptions:

- A. Any officer or employee may, with the approval of the Commissioner In Charge, or the Auditor as to employees of the Auditor's Office, assign their salary or wages to the Retail Credit Association of Portland, Oregon;
- B. Nothing contained herein shall prohibit a City employee from executing a power of Attorney to Portland Employees' Credit Union, an Oregon corporation, whereby the salary or wages, or any part thereof, of the employee is assigned to the corporation. The Bureau of Human Resources and the City Treasurer are hereby authorized to recognize all of the powers of Attorney to make on the payrolls any deductions required thereby, and to pay the Portland Employees' Credit Union any sums authorized by the powers of Attorney.
- C. Nothing contained herein shall prohibit a City employee from executing a power of Attorney to the Firemen's Relief Association of the Firemen's Beneficiary Association of Portland, an Oregon corporation, or to the Portland Police Beneficiary Association, an Oregon corporation, whereby the salary or wages, or any part thereof, of the employee is assigned to either of said corporations. The Bureau of Human Resources and the City Treasurer are hereby authorized to recognize all of the powers of Attorney.

5.12.040 Penalty.

Any officer or employee of the City who shall sell or assign, or attempt to sell or assign, any salary or wages in violation of the provisions of this Chapter shall thereby be deemed to have committed an act which is hereby declared sufficient cause for his removal.

5.12.050 Garnishments.

(Amended by Ordinance Nos. 146745, 154642, 155429 and 173369, effective May 12, 1999.) Whenever any salary, wage or credit in possession of the City, belonging or owed to any person, firm or corporation whatsoever is garnished or levied upon, subject to the City Attorney's approval of the original garnishment or levying documents, the Office of Fiscal Administration, Accounting Division, shall thereafter process such garnishments as follows:

- A.** With respect to the garnishment of City employees' salaries of wages, the amount of garnishment shall be deducted from the employees' salary or wages as a voluntary deduction through the computer process. The total amount of garnishment deducted for all employees whose wages are being garnished shall be transmitted to the Treasurer's Office account by an authorization notice accompanied by a Garnishment Report in the form of a deduction register. The Garnishment Report will document the name(s) of the payee(s) according to the Notice of Levies or Writs of Garnishment received. The Treasury Division will then draw one or more checks, depending on the number of levies or writs received for each employee, against such office account in favor of the payee designated on the Notice of Levy/Writ of Garnishment.
- B.** With respect to Notices of Levy or Writs of Garnishment not affecting the salary or wages of a City employee and any Notice of Levy or Writs of Garnishment received after the biweekly payroll cutoff, the procedure for processing such Notices of Levy/Writs of Garnishment shall be as stated in this Subsection. The Office of Fiscal Administration, Accounting Division, shall place upon any check issued for such salary, wages or credit and an endorsement:

 - 1.** Noting that such salary, wages or credit has been garnished or levied upon as the case may be, together with identification of such garnishment or levy;
 - 2.** Directing the payment of a certain sum upon such garnishment or levy;
 - 3.** Designating the person entitled to receive such sum; and
 - 4.** Directing the payment of the balance of money due on such warrant, if any, to the payee thereof.

The Office of Fiscal Administration, Accounting Division, shall then deliver such warrant to the Treasurer and the Treasurer shall deposit such warrant to the account of the City and draw one or more checks against such account in the amounts

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directed and in favor of the person or persons designated by the endorsement upon such warrant.

CHAPTER 5.16 - EMERGENCY CHECKS

Sections:

- 5.16.010 Issued When.
- 5.16.020 Extraordinary Circumstances Requiring Emergency Checks.

5.16.010 Issued When.

(Amended by Ordinance Nos. 168313, 169321 and 173369, effective May 12, 1999.)
Emergency checks are hereby authorized to be issued under special circumstances. Such emergency checks shall be for the following specified purposes:

- A. In payment of salaries or wages of employees when discharged or laid off;
- B. In payment of earned salaries or wages of employees compelled to leave the City by reason of death of a relative or other extraordinary circumstances;
- C. In payment of loans or for the purchase of bonds by the City Treasurer where interest charges can be stopped or saved to the City, or for the purchase of postage;
- D. In payment of commissions or assessments on property sold for the benefit of the Assessment Collection Fund;
- E. In payment of any obligation where interest penalty charges or discounts on current expenses can be saved to the City.

Emergency checks may be authorized by the Bureau Manager or designee for any of the aforementioned purposes and no other authorization is needed.

5.16.020 Extraordinary Circumstances Requiring Emergency Checks.

(Amended by Ordinance Nos. 136544, 169321, 173369 and 189452, effective May 10, 2019.) Should an extraordinary condition arise not otherwise provided for by this Chapter, the Commissioner-In-Charge of the department requesting the issuance of an emergency check, or any person in such department so authorized by the Commissioner-In-Charge in writing filed with the Accounting Division, shall present a signed requisition, accompanied by a statement in writing giving the reasons for so doing, which shall be authorization for issuance of an emergency check. The Commissioner-In-Charge, the Mayor and the Accounting Division shall approve emergency checks for extraordinary circumstances provided for in this Section.

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CHAPTER 5.20 - BUDGET PROCEDURE

Sections:

- 5.20.010 Budget Procedure.
5.20.020 Reimbursable Expenditures Account.

5.20.010 Budget Procedure.

(Amended by Ordinance Nos. 168428 and 181483, January 18, 2008.)

- A. The Commissioner of Finance and Administration is hereby designated to supervise the preparation of the budget document.
- B. The preliminary budget estimates of expenditures for the departments and bureaus for the ensuing year shall be prepared and submitted by the department heads as directed by the Commissioner of Finance and Administration.
- C. The Commissioner of Finance and Administration is hereby designated the Chair of the budget Committee.

5.20.020 Reimbursable Expenditures Account.

- A. Reimbursable expenditures account budgeted in the General Fund is limited to reimbursable projects which were not anticipated when the budget was prepared. An estimate of revenue in an equal amount is also budgeted in the Reimbursable Revenues Account. Expenditures for such a reimbursable project shall be charged to the function which will execute the project, and the appropriation for reimbursable expenditures will be provided by transfer from the Reimbursable Expenditure Account. Receipts for reimbursements shall be credited to an appropriate revenue account other than the Reimbursement Revenues Account. A memorandum credit only will be made in the Reimbursement Revenues Account.
- B. A transfer of appropriation shall not be made from the Reimbursable Expenditure Account if the proposed expenditure is already included in the budget of an appropriation other than reimbursable expenditures, either directly or indirectly, or if the reimbursement is already included in estimated revenues other than reimbursement revenues, either directly or indirectly. This appropriation shall not be used to increase the budget of a bureau or function when some item of estimated revenue is over-realized.
 - 1. A transfer of appropriation shall not be made until it has been determined by the Commissioner In Charge of the bureau affected or by the Commissioner of Finance and Administration for other budgets that a deposit has been made to cover the estimated cost of the project or that payment is assured.

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- C.** Transfers of appropriation for reimbursable projects may be made without special ordinance upon written authorization by the Commissioner of Finance and Administration and the Commissioner In Charge of the bureau affected. If no bureau is affected, then such transfer may be made upon written authorization of the commissioner of Finance and Administration.
- D.** If a reimbursable project is completed during the same year in which the transfer was made to set up the project and if there is a remaining balance of the appropriation transferred, the unused appropriation may be transferred back to the Reimbursable Expenditures Account without special ordinance on written authorization of the Commissioner of Finance and Administration.

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**CHAPTER 5.24 – REVENUE DIVISION’S
RECORDS AND REPORTS**

(Chapter amended by Ordinance No. 189413,
effective March 6, 2019.)

Sections:

5.24.010 Permanent Records to be Kept by Revenue Division.

5.24.020 Revenue Division to Report on Balance in Appropriation.

5.24.010 Permanent Records to be Kept by Revenue Division.

(Amended by Ordinance No. 189413, effective March 6, 2019.) The Revenue Division shall install and maintain suitable loose-leaf systems in keeping bonded lien accounts and other such bookkeeping accounts which are required to be kept by the provisions of the Charter. Such loose-leaf accounts shall be kept in lock binders and shall be placed in lock book form upon completion of the record of such account. Such loose-leaf system installed in binders shall be deemed a permanent record for all purposes required by the Charter of the City.

5.24.020 Revenue Division to Report on Balance in Appropriation.

(Amended by Ordinance No. 189413, effective March 6, 2019.) Each month the Revenue Division shall transmit to the head of each department a statement showing the unencumbered balance in each appropriation.

**CHAPTER 5.30 - COLLECTIONS AND
FORECLOSURE PROCESS**

(Chapter replaced by Ordinance No. 177246,
effective March 7, 2003.)

Sections:

- 5.30.010 Purpose.
- 5.30.020 Definitions.
- 5.30.030 Applicability and Foreclosure Options.
- 5.30.040 Authorities and Responsibilities.
- 5.30.050 Collection Process.
- 5.30.060 Adjustment of Open Lien Amounts.
- 5.30.070 Catch-up Payment Program.
- 5.30.080 Hardship Payment Program
- 5.30.090 Negotiation of Bonded Lien Payment Contracts.
- 5.30.100 Preparation of Foreclosure List.
- 5.30.110 Council Action on Foreclosure List.
- 5.30.120 Purchase of Property by the City.
- 5.30.130 Recording Notice of Foreclosure Sale.
- 5.30.140 Notice to Persons on Foreclosure List of Foreclosure Action.
- 5.30.150 Payment of Lien.
- 5.30.160 Presale and Sale Conditions.
- 5.30.170 Conduct of Foreclosure Sale.
- 5.30.180 Waste, Improvements to the Property, and Nuisance Abatement Procedures.
- 5.30.190 Certificate of Sale and Notice of Sale to Property Owner.
- 5.30.200 Entry of Collections and Sales.
- 5.30.210 Redemption.
- 5.30.220 Issuance of Deed.
- 5.30.230 Payment of Taxes.
- 5.30.240 Sale of Property Purchased by City.

5.30.010 Purpose.

This Chapter establishes a process for collecting delinquent liens and foreclosing delinquent liens on properties. The emphasis of the collection program will be to maintain good communication with property owners. However, the City bears responsibility for recovering its costs associated with collecting delinquent liens. Incentives and penalties are established to encourage payment. In addition, special payment plans are provided for persons having difficulties paying liens. Foreclosure should be used as a last resort in most circumstances, to protect the interests of bondholders and taxpayers of the City, and to recover costs incurred by the City in providing services.

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5.30.020 Definitions.

(Amended by Ordinance Nos. 187833 and 189413, effective March 6, 2019.) The terms used in this Chapter shall be defined as provided in this Section, unless the content requires otherwise.

- A. “Adjusted Prime Rate”** means the interest rate as calculated by the higher of either the prime interest rate set by the City’s bank on December 31st of the previous year plus 300 basis points (3%), or twelve percent (12%) per annum.
- B. “Bonded lien”** means a lien which has been financed under the provisions of state law, City Code or City Charter.
- C. “City lien docket”** means the official City record maintained by the Revenue Division for the entry of fees, charges, penalties or assessments as authorized by state law, City Code or City Charter. The fees, charges, penalties or assessments include, but are not limited to, costs related to the construction of economic or public improvements or for other improvements or purposes authorized by state law, systems development charges, costs of sidewalk repairs, costs of nuisance abatement, penalties assessed by the Code Hearings Officer and fees associated with code enforcement.
- D. “Collection costs”** means the costs associated with the collection of liens, including but not limited to staff, mailing costs, billing and rebilling fees.
- E. “Delinquent lien”** means a bonded lien that is unpaid more than 30 days after the installment payment due date, or an unbonded lien which has not been paid within 30 days after entry upon the city lien docket.
- F. “Foreclosure list”** means a list of properties for foreclosure sale. The list contains, at a minimum, a description of each lien and a description of the property on which the lien is assessed.
- G. “Foreclosure sale”** means the legal process of selling real property, which allows the City to foreclose and to dispose of a delinquent lien through notice and sale.
- H. “Lien”** means an entry upon the city lien docket in favor of the City of fees, charges, penalties or assessments as authorized by state law, City Code or City Charter.
- I. “Open lien”** means a lien that has not been or cannot be financed, and that requires payment in full.
- J. “Redemption”** means the right of the property owner or any person with an interest in the property, excluding the purchaser in a foreclosure sale, to repurchase the foreclosed property by payment of the redemption price during the redemption period.

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- K. “Redemption period”** means one year from the date of a foreclosure sale, commencing on the day after the sale and ending at 5:00 p.m. (PST) on the 365th day thereafter, unless the 365th day falls on a Saturday, Sunday or legal holiday specified in ORS 187.010 (2001), in which case the last day for redemption shall be 5:00 p.m. (PST) on the next working day.
- L. “Redemption price”** means the sales price plus redemption interest and redemption penalties accrued during the redemption period.
- M. “Sales costs”** means all costs, direct and indirect, associated with a foreclosure sale by the City, including but not limited to: county recording fees, title reports or other means of identifying persons with interest in the property, title insurance, service and notification, publication and advertising, posting, sale, and staff salaries, including benefits and overhead.
- N. “Sales price”** means a sum equal to or exceeding the greater of:
1. The amount of the lien principal plus, interest and penalties, together with all collection costs and sales costs associated with the foreclosure sale; or
 2. Seventy-five percent of the total assessed value of the real property, as determined by the assessor of the county in which the land and improvements are located.

5.30.030 Applicability and Foreclosure Options.

- A.** The provisions of this Chapter apply to delinquent liens. This Chapter shall not apply to delinquent Sewer Safety Net liens, which are governed by Chapter 5.31.
- B.** The City shall not be limited to the foreclosure process in this Chapter. The City may elect to use other methods for foreclosure or sale of properties as authorized by the Charter, City Code or state law.

5.30.040 Authorities and Responsibilities.

(Amended by Ordinance Nos. 181483, 187833 and 189413, effective March 6, 2019.)

- A.** The Revenue Division shall maintain the City lien docket; maintain the records related to liens; process bonding contracts; and bill and collect open and bonded liens. As set forth elsewhere in this Chapter, the Revenue Division is also responsible for processing and approving or denying applications for the Catch-up Payment Program and the Hardship Payment Program; administering the foreclosure process; preparing foreclosure lists; and transmitting the foreclosure lists to the City Council for its review and approval.
- B.** The City Treasurer shall administer the foreclosure sale process; withhold or withdraw property from foreclosure sale for purchase by the City; administer the

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redemption process; and execute deeds conveying the property sold. As provided under Section 3.08.030, the City Treasurer may delegate this authority or such other authority as may be assigned under this Chapter.

- C. Unless otherwise specifically directed by Council, the Division of Asset Management shall manage, maintain, rent or market for sale properties purchased by the City under this Chapter.

5.30.050 Collection Process.

(Amended by Ordinance No. 189413, effective March 6, 2019.)

- A. The Revenue Division shall establish a collection process for delinquent liens and shall be authorized to:
 - 1. Establish written rules and procedures to carry out the provisions of this Chapter;
 - 2. Establish fees, including a billing fee and rebilling fee, to recover billing costs and the costs of collecting delinquent lien amounts; and
 - 3. In addition to the penalties and interest otherwise provided in this Section, establish increases in penalty amounts and the interest rate to encourage early payment of delinquent liens.
- B. The Revenue Division shall impose a penalty each month until the delinquent lien is brought current, paid in full or the property owner signs a payment plan. The penalty will be calculated as follows:
 - 1. Open delinquent liens shall be charged a penalty equal to one-quarter of one percent (.0025) of the total outstanding principal balance.
 - 2. Bonded delinquent liens shall be charged a penalty equal to five percent (5.00%) calculated on the total amount of the installment that is delinquent.
- C. The Revenue Division shall add interest to delinquent liens based on the following methods:
 - 1. For a delinquent open lien, interest shall be assessed at the adjusted prime rate, calculated on the unpaid balance from the assessment date. The annual interest rate shall not be less than 12% for an open lien, except in the Hardship Payment Program. Lien payments made during the 30-day period following the assessment date shall not be charged this interest.
 - 2. For a delinquent bonded lien, interest shall be calculated daily based on the amount of the unpaid principal balance and the interest rate set by the installment payment contract.

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- D.** As liens become delinquent, the Revenue Division shall provide notice of the delinquency to the property owner. Notice(s) shall be sent by registered or certified mail. Notice(s) shall identify the property, the amount owing (principal, interest, penalties and collection costs) and estimate the sales costs that will be charged to the account. In addition, the notices shall identify the type of the delinquent lien account and the fact that the property will be placed on the foreclosure list unless the property owner elects to pay under the Catch-up Payment Program or brings the account current.
- E.** The Revenue Division may waive interest, penalties and collection costs on delinquent liens under the following conditions:

 - 1.** A delay in receiving payment or installment payment contract which is caused by a documented oversight, omission or error by City staff;
 - 2.** A one-time failure in making a payment by the property owner which is caused by a documented financial emergency; or
 - 3.** The sale or transfer of a property that is subject to a delinquent lien to a non-profit organization or government program satisfying the goals of an expressed public purpose.

5.30.060 Adjustment of Open Lien Amounts.

(Amended by Ordinance No. 189413, effective March 6, 2019.)

- A.** The Revenue Division may evaluate individual delinquent open liens to develop recommendations on revising the payment amount of the lien and the payment terms. The Revenue Division's recommendation shall be based upon the factors set forth in Subsection 5.30.060 D. Delinquent bonded liens may not be reviewed or adjusted.
- B.** The Collections Committee shall be comprised of four members, consisting of a representative from two members of the City Council, one representative from the Bureau of Development Services and one representative from the Office of Management and Finance who does not work in the Revenue Division. These four offices shall each designate their representative to the Committee.
- C.** The Committee shall meet from time to time, as necessary, to review and consider the Revenue Division's recommendations. The Collections Committee shall make a written determination accepting, revising or rejecting the Revenue Division's recommendations on adjusting the delinquent open lien payment amount and terms. The Collections Committee's written determination shall be based upon the factors listed in Subsection 5.30.060 D. The Revenue Division shall notify the property owner in writing of the Collections Committee's determination.

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- D.** The factors to be considered when adjusting the payment amount and terms of delinquent open liens include, but are not limited to, the following:
1. Whether the property owner has committed any prior City Code violation, or has other delinquent liens, regardless of whether any administrative, civil, or criminal proceeding occurred;
 2. The history of the property owner in taking all feasible steps or procedures necessary or appropriate to correct the violation or resolve any delinquencies;
 3. The property owner's financial condition;
 4. The gravity and magnitude of the violation;
 5. Whether the violation was repeated or continuous;
 6. Whether the violation was due to unavoidable accident, other conditions or circumstances beyond the property owner's reasonable control, negligence, or an intentional act of the property owner;
 7. The opportunity and degree of difficulty to correct the violation or resolve any delinquencies;
 8. The economic or financial benefit accrued or likely to accrue to the property owner as a result of the violation;
 9. The property owner's cooperativeness and efforts to correct the violation for which the lien was assessed;
 10. The costs to the City of investigation, enforcement and correction or attempted correction of the violation;
 11. The total costs to the City for principal, penalty, billing, interest and collection charges; and
 12. Any other relevant factors.
- E.** If the property owner accepts the Collections Committee's determination on adjusting the delinquent open lien amount and payment terms, the owner shall enter into a written agreement prepared by the Revenue Division that contains the adjusted delinquent open lien amount and payment terms.
- F.** If the property owner rejects the Collection Committee's determination, the owner may appeal the determination on adjusting the delinquent open lien amount and payment terms to the Code Hearings Officer as provided for in Chapter 22.10.

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However, if the owner has previously appealed the lien or the related code violations to the Code Hearings Officer, there shall be no right of appeal.

5.30.070 Catch-up Payment Program.

(Amended by Ordinance Nos. 179361 and 189413, effective March 6, 2019.)

- A. Under the Catch-up Payment Program, a property owner is allowed to bring a delinquent bonded lien current or pay in full by the end of an established period by increasing the monthly amount, or to pay a delinquent open lien in full by the end of an established period.
- B. Qualifications. Any property owner with a delinquent lien may participate in the Catch-up Payment Program.
- C. Administration.
 - 1. For a delinquent bonded lien, the minimum monthly payment must be equal to the scheduled regular payment, plus an amount necessary to repay the arrears by the end of the individual payment plan. At the conclusion of an individual payment plan, the Revenue Division shall bill any property owner who has a bonded lien and has complied with the individual payment plan, but has not paid the account in full, according to the Revenue Division's standard billing procedures. The maximum period under this Program shall not exceed five years.
 - 2. For a delinquent open lien, the minimum monthly payment must be equal to an amount necessary to pay the account in full by the end of the term of the individual payment plan. The maximum payment period under this Program shall not exceed five years. Interest shall be calculated at the prime interest rate set by the City's bank on December 31st of the previous year plus 300 basis points (3%) per annum. The recalculated interest rate shall be applied to each individual payment plan on the first billing date following December 31st of each year.
 - 3. A payment for the specified amount in the Catch-up Payment Plan Agreement (CPPA) must be received in the Revenue Division with the signed CPPA.
- D. If a property owner fails to make any monthly payment before the completion of an individual catch-up plan, the Revenue Division may place the property on the foreclosure list in accordance with the priorities in Section 5.30.100.

5.30.080 Hardship Payment Program.

(Amended by Ordinance Nos. 178241, 179361 and 189413, effective March 6, 2019.)

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- A.** Under the Hardship Payment Program, a property owner may pay only interest and billing charges for a period not to exceed 12 months.
- B.** Qualifications. A property owner may qualify for the Hardship Payment Program if they meet all of the following criteria:

 - 1.** The property must be a single-family residence, occupied by the owner;
 - 2.** The property must be subject to a delinquent lien; and
 - 3.** The property owner is temporarily unable to make monthly payments due to catastrophic financial circumstances. These circumstances may include illness, loss of income or a temporary disability.
- C.** Administration.

 - 1.** The Revenue Division shall administer the Hardship Payment Program.
 - 2.** Applicants must complete a written request form and provide sufficient written documentation to support a determination that the applicant is experiencing catastrophic financial circumstances. Documentation may consist of records such as a lay-off-notice, proof of unemployment or other evidence of loss of income.
 - 3.** The Revenue Division shall review and approve or deny applications for individual payment plans under the Hardship Payment Program.
 - 4.** If the Revenue Division determines that a property owner is qualified to participate in the Program, the Revenue Division shall allow the qualified property owner to make a minimum monthly payment equal to the monthly interest accruing to the delinquent lien, plus the monthly billing charge. Interest shall be calculated at the prime interest rate set by the City's bank on December 31st of the previous year plus 200 base points (2%) per annum. The recalculated interest rate shall be applied to each individual payment plan on the first billing date following December 31st of each year.
 - 5.** The Revenue Division shall periodically review each individual payment plan to verify the qualifications of the participant.
 - 6.** At the conclusion of an individual payment plan, the Revenue Division shall bill any property owner who has complied with the individual payment plan, but has not paid the account in full, according to the Revenue Division's standard billing procedures.

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7. A payment for the specified amount in the Hardship Payment Plan Agreement (HPPA) must be received in the Revenue Division with the signed HPPA.

D. If the property owner fails to make a monthly payment before the completion of the plan, the Revenue Division may place the property on the foreclosure list, unless the Revenue Division finds there is an additional or continuing emergency. In that event the Revenue Division may authorize a new plan or reinstate the existing plan.

5.30.090 Negotiation of Bonded Lien Payment Contracts.

(Amended by Ordinance No. 189413, effective March 6, 2019.) If the Revenue Division declares a bonded lien payment contract void prior to the property being placed on the foreclosure list, the property owner and the Revenue Division may negotiate new installment payment arrangements. If the Revenue Division offers a new installment payment contract, the terms and conditions must protect the City's financial condition and assure the repayment of associated municipal bonds. The Revenue Division shall set the interest rate on the negotiated contract at a rate greater than or equal to the interest rate of the original installment payment contract. The Revenue Division shall prepare a form of agreement for negotiated installment payment contracts.

5.30.100 Preparation of Foreclosure List.

(Amended by Ordinance No. 189413, effective March 6, 2019.)

A. The Revenue Division shall be responsible for preparing the proposed foreclosure list. No property shall be placed on the proposed foreclosure list unless:

1. It is an open lien which is at least 60 days past the due date; or
2. It is a bonded lien which is at least one year past the installment due date.
3. The City has provided the property owner or their predecessor in interest at least two written delinquency notices within a three-month period prior to the sale.

B. The Revenue Division shall prioritize which delinquent liens to include on the proposed foreclosure list. Priority shall be given to properties that have the potential to significantly reduce the delinquency rate or help to solve a City public health, safety or welfare objective. Priority may also be given based on factors including, but not limited to, the total amount of delinquency; property owners with multiple delinquencies for one or more properties; or multiple nuisance abatement action by the City.

C. The Revenue Division may determine the number of properties to be placed on the proposed foreclosure list based on current City staffing resources, complexity of

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accounts, and time and resources necessary to complete timely processing of foreclosing the delinquent liens.

- D.** The Revenue Division shall:
- 1.** Submit the proposed foreclosure list to the Council for Council action;
 - 2.** Submit a report to the Council that identifies the properties recommended for purchase by the City from the proposed foreclosure list. The report shall identify the property and the source of the funds to be used to purchase the property; and
 - 3.** Determine whether any properties on the proposed foreclosure list are also delinquent in the payment of property taxes. The Revenue Division shall identify those properties which are likely to be foreclosed upon by the County prior to the City's foreclosure sale and shall make a recommendation to the Council regarding whether any of these properties should be purchased and removed from the foreclosure list.

5.30.110 Council Action on Foreclosure List.

(Amended by Ordinance No. 189413, effective March 6, 2019.)

- A.** The Council shall decide which properties to include on the foreclosure list and which properties should be purchased by the City. The Council shall approve the foreclosure list by ordinance. The ordinance shall state the provisions for redemption of properties by the prior owners, as provided by state law or City ordinance. After the foreclosure list is approved by Council, the only payment option is to make payment in full.
- B.** The foreclosure list shall be transmitted to the City Treasurer by the Council Clerk.

5.30.120 Purchase of Property by the City.

(Amended by Ordinance No. 187833, effective June 15, 2016.) Upon Council approval, the City may purchase any property on the foreclosure list for the amount of the lien principal plus interest and penalties, and may do so before, during, or after the sale subject to the following conditions:

- A.** Money for purchase has been transferred to the proper City fund for payment of the delinquent lien amount;
- B.** In the case of property purchased before the sale, any person having an interest in the property is given an opportunity to pay the lien in full including collection and sales costs, and thereby remove the property from the foreclosure list as provided by Section 5.30.150; and

- C. Any person having an interest in the property may redeem the property as provided by Section 5.30.210.

5.30.130 Recording Notice of Foreclosure Sale.

(Amended by Ordinance Nos. 178241, 188121 and 189413, effective March 6, 2019.)

- A. The City Treasurer shall record a notice of foreclosure sale for each property listed on the foreclosure list in the County records in which the property is located after ordering a foreclosure report and before giving notice as required by Section 5.30.140. The recorded notice shall contain the ordinance number approving the foreclosure list; the address and legal description of the property; the time, date and place of the sale; the types and amounts of liens; and, that the property will be sold unless the account is paid in full including all interest, penalties, collection costs and sales costs to date. The recorded notice shall also state a contact name, address and phone number for obtaining additional information from the City.
- B. Any property which is an asset of a bankruptcy estate shall either be removed from the sale or the City Attorney shall be requested to first seek relief from stay in the Bankruptcy Court.

5.30.140 Notice to Persons on Foreclosure List of Foreclosure Action.

(Amended by Ordinance Nos. 188121 and 189413, effective March 6, 2019.) As provided below, the City Treasurer shall provide notice to all persons known to have a recorded interest in the properties on the foreclosure list.

- A. Individual Notice.
 - 1. The City Treasurer shall mail a notice of foreclosure sale to all persons known to have a recorded interest in the property and to all persons having recorded a request for copy of notice of sale. Notice shall be sent at least 60 days prior to the sale by registered or certified mail.
 - 2. The mailed notice shall state that a foreclosure sale will be held and it shall specify the date, time and place. It shall contain the following information: the names of the owners of the property; the legal description of the property; the street address; the amount of the delinquent lien stating both the principal and interest due as well as any penalties and collection costs; the type of the delinquent account; and, the name of the City Treasurer and contact information. The notice shall also state that there shall be an additional charge for sales costs to date.
- B. Newspaper Notice.

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1. The City Treasurer shall have printed in a daily or weekly newspaper of general circulation a notice of foreclosure sale once a week for four successive weeks.
 2. The notice shall contain the information required in Subsection 5.30.140 A.2.
 3. A copy of the first of the four published newspaper notices shall be sent to the owner and to the occupant by registered or certified mail.
- C. Posted Notice.
1. The City 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 if a federal tax lien was recorded more than 30 days of the scheduled date of the foreclosure 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 Nos. 187833 and 189413, effective March 6, 2019.)

- A. The City 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.

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- 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 City 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.
- 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, 187983, 188121 and 189413, effective March 6, 2019)

- A.** After a foreclosure sale, the City 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

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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 the certificate of sale.
- C.** The City 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 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 Revenue Division.

5.30.200 Entry of Collections and Sales.

(Amended by Ordinance No. 189413, effective March 6, 2019.)

- A.** The City Treasurer shall return to the Revenue Division the foreclosure list with all collections and sales noted on it within three business days after the sale.
- B.** The Revenue Division 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 Revenue Division and recorded in the City lien docket.

5.30.210 Redemption.

(Amended by Ordinance Nos. 187983 and 189413, effective March 6, 2019.)

- 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 City Treasurer of the redemption price. The only acceptable form of payment shall be United States legal currency or cashier's check.

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- C. The City Treasurer shall issue a receipt to the person redeeming the property and shall report the redemption to the Revenue Division. 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 City 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 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.

(Amended by Ordinance No. 189413, effective March 6, 2019.)

- A. Upon expiration of the redemption period, the City 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.

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5.30.240 Sale of Property Purchased by City.

(Amended by Ordinance No. 189413, effective March 6, 2019.)

- 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 City Treasurer shall purchase title insurance as a precondition of sale and shall pay the cost of the policy.

**CHAPTER 5.31 - COLLECTIONS &
FORECLOSURE PROCESS FOR
DELINQUENT SEWER SAFETY NET LIENS**

(Chapter added by Ordinance No. 163063; amended
by Ordinance No. 165798, effective September 2,
1992.)

Sections:

- 5.31.005 Purpose.
- 5.31.010 Definitions.
- 5.31.015 Applicability and Foreclosure Options.
- 5.31.020 Authorities and Responsibilities.
- 5.31.025 Collection Process.
- 5.31.027 Renegotiation of Installment Payment Contracts.
- 5.31.030 Preforeclosure Process and Review for Delinquent Tax Accounts.
- 5.31.035 Preparation of Preforeclosure List.
- 5.31.045 Review of Final Foreclosure List.
- 5.31.050 Council Action on Final Foreclosure List; Recording of Notice.
- 5.31.055 Notice to Persons on Final Foreclosure List of Foreclosure Action.
- 5.31.060 Purchase of Property by the City.
- 5.31.065 Payment of Lien and Presale and Sale Conditions.
- 5.31.070 The Sale.
- 5.31.075 Certificate of Sale and Notice to Property Owner.
- 5.31.080 Lien Docket Entry.
- 5.31.085 Redemption.
- 5.31.090 Issuance of Deed.
- 5.31.095 Waste, Improvements to the Property, Nuisance Abatement.
- 5.31.100 Payment of Taxes.
- 5.31.105 Sale of Property.

5.31.005 Purpose.

The purpose of this Chapter is to establish a process for the collection of delinquent assessment liens and for the foreclosure of liens on properties which have delinquent Safety Net Loan Program accounts. The emphasis of the collections program will be to maintain good communication with property owners. Persons having an interest in the property may bring the account current until the time of the sale. After the sale, any person redeeming the property must pay the account in full. This Chapter provides the authority for the City to recover its costs associated with the collection of delinquent accounts and establishes penalties and other incentives to encourage payment. Foreclosure is viewed as a last resort. It is the intent of the City to use foreclosure to protect the interests of the State of Oregon.

5.31.010 Definitions.

- A. As used in this Chapter only, the following terms shall mean:

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1. **“Assessment lien”** means a lien placed upon certain real property for its proportionate share of costs incurred in the construction of the sewer system or for the connection of the property to the sewer system.
2. **“Collection costs”** means the costs associated with the collection of the assessment such as billing and rebilling charges.
3. **“Delinquent assessment lien”** means an assessment installment payment which has not been paid within 30 days after the installment payment due date.
4. **“Department of Environmental Quality”** means the State of Oregon, Department of Environmental Quality.
5. **“Foreclosure sale”** means a legal process which allows the City to foreclose and to sell property to liquidate a delinquent lien.
6. **“Foreclosure sale list”** means a list of properties with delinquent assessments which the City will see at a foreclosure sale.
7. **“Redemption period”** means the one-year period during which a person with an interest in the property may redeem the property which has been sold at a foreclosure sale to satisfy a delinquent assessment.
8. **“Redemption price”** means the sales price plus interest and penalties.
9. **“Sales costs”** means costs associated with the sale including the cost of advertising, sale direct and indirect costs related to notification such as the cost of any reports required to determine the names of persons having an interest in the property or the status of the property, printing, postage, advertising, posting of the property, title insurance and staff salaries, benefits and overhead costs directly expended to complete the sale.
10. **“Sale price”** means the amount owing on the principle, interest, penalties, collection costs and sales costs.
11. **“Sewer safety net participating property”**: A property on which the assessment or connection charge has been funded by the City of Portland, Sewer Safety Net Loan Program.

5.31.015 Applicability and Foreclosure Options.

- A. The provisions of this Chapter apply to delinquent assessment liens on Sewer Safety Net participating properties. The provisions of this Chapter do not apply to delinquent bonded liens or delinquent open liens. The foreclosure procedures applicable to these types of liens are set forth in Chapter 5.30.

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- B.** The City shall not be limited to the foreclosure process in this Chapter. The City may elect to use a Judicial Foreclosure process or to sell the property as provided in the Charter, City Code or state law.

5.31.020 Authorities and Responsibilities.

(Amended by Ordinance Nos. 181483 and 189413, effective March 6, 2019.)

- A.** The Revenue Division shall maintain the records related to Sewer Safety Net assessment liens, bill and collect lien accounts, administer the preforeclosure collection process, prepare a preforeclosure list, and transmit the preforeclosure list to the City's Bureau of Environmental Quality and the Commissioners for informal review and prepare a final foreclosure list for review by the Council. The Revenue Division shall also renegotiate loans, reduce the amount of liens, terminate foreclosure proceedings or eliminate liens as directed by the Department of Environmental Quality.
- B.** The Council shall review the final foreclosure list and adopt an ordinance which lists the properties subject to foreclosure and subject to purchase.
- C.** The City Treasurer shall administer the foreclosure sale process, purchase property identified by the Department of Environmental Quality and Council for purchase by the City, administer the redemption process and execute deeds conveying the property sold. There shall be at least one sale held annually.
- D.** The OMF Business Operations Division shall manage, maintain, rent or market for sale properties purchased by the City Treasurer for collection of delinquent assessments.

5.31.025 Collection Process.

(Amended by Ordinance No. 189413, effective March 6, 2019.)

- A.** The Revenue Division shall establish a collections process and shall be authorized to:
 - 1.** Establish in writing, rules and procedures to carry out provisions of this Section. Maintain a record of the rules and procedures and make the rules available to the public.
 - 2.** Establish fees including a billing and rebilling fee to recover the cost of collecting the delinquent lien amount;
 - 3.** Establish penalties and increases in the interest rate to encourage early payment of delinquent lien accounts; and

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4. Report delinquent lien accounts to a credit rating bureau to encourage payment if directed by the Department of Environmental Quality and the Council.
- B.** The Revenue Division will notify the Bureau of Environmental Services when an account becomes 60 days past due. The collection process shall begin after the account becomes 90 days past due. The Bureau of Environmental Services may delay the collection process up to 12 months if it notifies in writing to the Revenue Division and the Department of Environmental Quality. Such notification will include the account number, the principal balance, the past due amount, and the extenuating circumstances that would justify a delay in the collection process. The collections process at a minimum shall include the following steps:
 1. The property owner and mortgage holder shall be notified of the delinquent assessment or connection charge for each of three months prior to the sale.
 2. The notice shall state that if the account is not brought current, the property will be sold at a foreclosure sale.
 3. The Department of Environmental Quality shall be given a copy of the foreclosure list at least three months before the sale.
- C.** A one-time penalty equal to one-half of one percent (.005) of the principal balance shall be added to the amount due at the date any assessment or installment payment becomes delinquent. The penalty accumulates with each installment payment until the lien is brought current or paid in full.
- D.** Interest shall be added to delinquent liens and shall be calculated daily based on the amount of the unpaid principal balance and the interest rate set by the installment contract.
- E.** The Revenue Division may waive delinquent interest, penalties and charges if a delay in receiving payment is caused by an oversight, omission or error by City staff.
- F.** The Revenue Division is authorized to void the installment payment provisions of a sewer safety net contract, as follows:
 1. After a sewer safety net assessment becomes delinquent and prior to the Revenue Division placing the property on the foreclosure list, the Revenue Division may void the installment payment provisions and require the property owner to renegotiate new installment payment arrangements.
 2. After a sewer safety net assessment becomes delinquent and the Revenue Division has placed the property on the foreclosure list, the Revenue

Division shall void the installment payment provisions and require the property owner to renegotiate new installment payment arrangements.

5.31.027 Renegotiation of Installment Payment Contracts.

(Added by Ordinance No. 167655; amended by Ordinance No. 189413, effective March 6, 2019.) When the Revenue Division declares the installment payment provisions of a sewer safety net contract void, the property owner may renegotiate new provisions to pay in installments the unbilled principal portion of the sewer safety net account. The Revenue Division shall offer new installment contract terms and conditions which protect the City's financial condition and assure the repayment of the sewer safety net account. The Revenue Division shall set the interest rate on the renegotiated contract at a rate greater than or equal to the interest rate of the original installment payment contract. The renegotiated installment contract shall be in the same form as required by Chapter 17.12 of this Code for assessment installment payment contracts. The property owner or other interested party shall pay all delinquent assessment installments before the City will accept the renegotiated installment payment contract.

5.31.030 Preforeclosure Process and Review for Delinquent Tax Accounts.

(Amended by Ordinance No. 189413, effective March 6, 2019.)

- A. At the conclusion of the collection process, the Revenue Division shall prepare a list of delinquent lien accounts. No property shall be placed on the list unless the payment is at least one year past due. There shall be a sale at least once a year.
- B. The Revenue Division shall determine whether any properties on the delinquent accounts list are also delinquent in the payment of property taxes. The Revenue Division shall identify those properties which are likely to be foreclosed upon by the County prior to the City's foreclosure sale .
- C. The Revenue Division shall review the list of properties to be foreclosed upon by the County and shall make a recommendation to the Bureau of Environmental Services and Department of Environmental Quality regarding any properties which should be purchased. The determination of whether to pay the taxes shall be based on whether the total amount of the liens and taxes on the property is less than the market value of the property or, if the property has been sold, whether the sale price received by the County was enough to pay the amount of the City liens upon resale. The Department of Environmental Quality by written letter shall direct the City Treasurer on which properties shall be purchased by the City.
- D. The City Treasurer shall remove from the County foreclosure list and notify the Revenue Division to add the total amount paid to the County to the lien against the property. The City Treasurer shall pay the County from funds designated and provided by the Department of Environmental Quality.

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5.31.035 Preparation of List.

- A.** All delinquent properties satisfying the requirements of this Chapter shall be placed on the preforeclosure list, unless a delay in the collections process has been authorized pursuant to Section 5.31.025 B above.
- B.** No property on the preforeclosure list shall be placed on the final foreclosure list until the following steps have been taken:
 - 1.** The current property owners have been determined. The record shall state how the property ownership status was determined.
 - 2.** The property owner has received at least two written delinquency notices within a three-month period prior to the sale. The notice shall be sent certified mail, return receipt requested and by first class mail. The notice shall identify the property, the amount owing (principal, interest, penalties, and collection costs) and state the costs of the sale that will be charged to the account. In addition, the notice shall identify the type of the delinquent lien account and the fact that the property will be placed on the foreclosure list unless the account is brought current. The record shall contain a copy of the notice and the returned receipts.

5.31.045 Review of Final Foreclosure List.

(Amended by Ordinance No. 189413, effective March 6, 2019.)

- A.** The Revenue Division shall transmit a copy of the final foreclosure list to each Commissioner and to the Department of Environmental Quality for review. Any comments shall be transmitted to the Revenue Division within 15 working days from the date the Revenue Division sends the final foreclosure list to the Commissioners and Department.
- B.** The Council shall:
 - 1.** Review the final foreclosure list and shall make a report to the Revenue Division regarding whether each step in the preparation of the final foreclosure list, as set forth in City Code 5.31.025 B. and 5.31.035 B. has been applied correctly.
 - 2.** Review the list of properties which have been on the final foreclosure list but for which no bids were received and make a recommendation on each property to the Department of Environmental Quality regarding how the property should be handled in order to liquidate the lien; and
 - 3.** Transmit to the Revenue Division the instructions from the Department of Environmental Quality regarding how to handle each property which has been placed on the final foreclosure list but not sold.

- C. The Revenue Division shall:
 - 1. Prepare a report to the Council which identifies properties which have been deleted from the list based on the recommendations of the Commissioners;
 - 2. Transmit to the Council a list of properties which have twice been on final foreclosure lists and which have not sold together with the directions from the Department of Environmental Quality and Commissioners regarding how each property shall be handled; and
 - 3. Prepare a revised final foreclosure list for submission to the Council for Council action.

5.31.050 Council Action on Final Foreclosure List; Recording of Notice.

(Amended by Ordinance No. 189413, effective March 6, 2019.)

- A. The Council shall review the final foreclosure list and reports submitted by the Revenue Division to determine:
 - 1. Whether each step in the collection process as set forth in City Code 5.31.025 B. and 5.31.035 B. has been applied correctly; and
 - 2. The Council shall act by ordinance and shall identify for the Revenue Division and City Treasurer which properties should be placed on the final foreclosure list and as directed by the Department of Environmental Quality and the Council which properties on the list should be purchased by the City in the event no bids are received on those properties, and the source of the funds to be used to purchase the property.
- B. The final foreclosure list shall be transmitted to the City Treasurer by the Council Clerk. After list is submitted to the City Treasurer, the only payment option is to bring the account current.
- C. The City Treasurer shall record a Notice of Foreclosure and Sale for each property listed on the final foreclosure list in the County records in which the property is located before ordering a foreclosure report and before giving notice as required by City Code 5.30.065. The notice shall contain the ordinance number adopting the final foreclosure list; the address and legal description of the property, the time, date and place of the sale, the types and amounts of assessments and that the property will be sold unless the account is brought current and all interest, penalties, collection costs and sales costs to date are paid. It shall also state the name of the person and address and phone number where additional information is available.

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- D. The City Treasurer shall determine the names and addresses of all persons having an interest in the sale including lien holders and whether the property is part of a bankruptcy estate. This may be done by purchasing a report from a title company.
- E. Any property which is part of a bankruptcy estate shall be removed from the sale or the City Attorney should be requested to seek relief from the stay from the Bankruptcy Court.

5.31.055 Notice to Persons on Final Foreclosure List of Foreclosure Action.

(Amended by Ordinance No. 189413, effective March 6, 2019.)

- A. Individual notice.
 - 1. The City Treasurer shall mail a “Notice of Foreclosure” to all persons having an interest in the property and to all persons requesting notice. It shall be sent at least 60 days prior to the sale by certified mail, return receipt requested.
 - 2. The notice shall state that a foreclosure sale will be held and it shall specify the date, time and place. It shall contain the following information: the names of the owners of the property, the legal description of the property, the street address, the amount of the delinquent account stating both the principal and interest due as well as any penalties and collection charges, the type of the delinquent account, and the name of the City Treasurer. It shall also state that there shall be an additional charge.
 - 3. The City Treasurer shall retain and file the returned mailing receipt.
- B. Newspaper notice.
 - 1. The City Treasurer shall have printed in a daily newspaper of general circulation the notice of sale once a week for four successive weeks.
 - 2. The notice shall contain the information required in City Code 5.31.055 A 2.
 - 3. A copy of the first of the four published newspaper notices shall be sent to the owner and to the occupant by certified mail, return receipt requested and a copy of the notice shall be retained in the file.
- C. Posted notice.
 - 1. The City Treasurer shall have notice posted on the property at least once, no less than four weeks before the sale. Proof of posting shall be maintained in the property foreclosure file.

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2. The notice shall contain the information required in City Code 5.31.055 A 2.
3. The City Treasurer shall prepare an affidavit of posting and a copy of the affidavit shall be retained in the file.

D. Other notice.

1. Notice shall be given to the Internal Revenue Service by certified mail, return receipt requested, at least 25 days prior to the sale.

5.31.060 Purchase of Property by the City.

A. The City may purchase property on the final foreclosure list for City properties before, during or after the sale subject to the following conditions:

1. The Department of Environmental Quality and the Council have directed the purchase of the property in the ordinance adopted under City Code 5.31.050 B, and the money has been transferred to the proper assessment fund;
2. In the case of property purchased before the sale, any person having an interest in the property is given an opportunity to bring the account current and pay the collection and sales costs, and thereby remove the property from the list as provided by City Code 5.31.065 A; and
3. Any person having an interest in the property may redeem the property as provided by City Code 5.31.085.

5.31.065 Payment of Lien and Presale and Sale Conditions.

(Amended by Ordinance Nos. 167655 and 189413, effective March 6, 2019.)

- A.** A person with an interest in the property may remove the property from the foreclosure list by paying the amount of the delinquent assessment with penalties, interest, collection costs and sales costs incurred to date any time prior to the sale. In addition, in the case of installment payments, the Revenue Division shall void the installment provision of the sewer safety net contracts and require the property owner or interested person to renegotiate new installment payment arrangements as provided in this Chapter. Payment plans as provided by PCC 5.30.035 may not be initiated as a means to bring the account current. If requested, notice that the property has been removed from the sale, shall be recorded in the County records in which the property is located.
- B.** A bidder purchases the property “as is.” There shall be no opportunity for an on site inspection of the land or buildings unless the bidder has permission from the owner.

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5.31.070 The Sale.

(Amended by Ordinance No. 189413, effective March 6, 2019.)

- A. The City Treasurer shall prepare rules governing the conduct of the sale. The rules shall be available at least 60 days prior to the sale.
- B. Each piece of property shall be sold separately . The sales price shall be the amount owing on the principle, interest, penalties, collections costs and sales.
- C. The interest charged during the redemption period shall be set by ordinance. The interest rate shall be set at a level which attracts bidders, but shall be equal to or greater than the interest rate established for the Sewer Safety Net loans.
- D. The penalty charged during the redemption period shall be set by ordinance. It shall be set at a rate to encourage payment by delinquent property owners.
- E. In situations where there are two or more bids, the successful bidder shall be determined by lot.
- F. Property which is not sold may again be offered for sale. The steps in City Code 5.31.050 D. through City Code 5.31.105 shall be followed.
- G. In the event there is more than one bidder and the successful bidder fails to pay, the property shall be sold to the other bidder or in the event there were more than two bidders, the successful bidder shall be determined by lot.

5.31.075 Certificate of Sale and Notice of Sale to Property Owner.

(Amended by Ordinance No. 189413, effective March 6, 2019.)

- A. The City Treasurer shall immediately deliver a certificate of sale to the purchaser. The certificate of sale is a right to own the property at the end of the redemption period. The holder of a certificate of sale has no ownership rights and no possessory interest in the property prior to the completion of the redemption period and holds the certificate of sale subject to the rights of all persons having an interest in the property to redeem it, the City to place additional liens on the property and the right of 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 a deed is given to the purchaser.
- 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 interest rate and the amount of the 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.

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- C. The City Treasurer shall send to the property owner and all persons known to have an interest in the property a “Notice of the Sale” by certified mail, return receipt requested and by first class mail, within 10 working days after the sale. Notice shall be sent to any persons known to have acquired an interest in the property since initial notice was given unless a notice was recorded. The notice shall contain the following information: the name of the purchaser, the right of redemption, the date the 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 keep the purchaser’s current address on file with the City Treasurer.

5.31.080 Lien Docket Entry.

(Amended by Ordinance No. 189413, effective March 6, 2019.)

- A. The City Treasurer shall return to the Revenue Division the final foreclosure list with all collections and sales noted on it within three business days after the sale.
- B. The Revenue Division shall make the proper entries of the collections and sales in the appropriate lien docket.

5.31.085 Redemption.

(Amended by Ordinance No. 189413, effective March 6, 2019.)

- A. Any person having an interest in the property, or their legal representative, may redeem the property within one year from the date of sale. The one-year period is computed as follows. The date of the sale shall not be counted. The period shall begin to run the day after the sale. The last day of the one-year period shall be the 365th day at 5 p.m. on the next working day. Purchasers have no redemption rights.
- B. Redemption shall be subject to the payment to the City Treasurer of the amount of the property sale price , the interest to date and the penalty to date. Property which has been sold at a foreclosure sale is not eligible for installment payments. Property may be redeemed only by payment in full.
- C. The City Treasurer shall issue a receipt to the person redeeming the property and shall report the redemption to the Revenue Division. 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.

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- E. Upon deposit of the sum in redemption, the City Treasurer shall issue a check or warrant for the amount paid to the holder of the certificate of sale shown on the lien docket for the amount of the delinquent account, costs and interest.

5.31.090 Issuance of Deed.

(Amended by Ordinance No. 189413, effective March 6, 2019.)

- A. Upon expiration of the redemption period, the City Treasurer shall execute a deed conveying the property sold. The deed conveys to the grantee the legal and equitable title in fee simple.
- 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 deed conveys title in fee simple excepting only for the liens of the City which were not included in the foreclosure sale or other liens as provided by state law. The deed, however, does not guarantee clear title.
- D. The grantee shall be entitled to immediate possession upon delivery of the deed.

5.31.095 Waste, Improvements to the Property, Nuisance Abatement Procedures.

- A. The City shall not be responsible for damage to the property during the redemption period. The purchaser assumes all risk.
- B. Any improvements or maintenance to the property made by a purchaser during the redemption period shall be made by a contractual agreement with the owner. The contract shall specifically state the amount owing and the rate of interest, if any.
- C. In the event the property becomes a public nuisance, the City reserves the right to enforce its nuisance abatement code provisions which may result in additional assessments against the property and which may become the liability of the purchaser.
- D. The property may also become subject to special assessments.

5.31.100 Payment of Taxes.

- A. 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.

5.31.105 Sale of Property.

(Amended by Ordinance Nos. 181483 and 189413, effective March 6, 2019.)

- A.** Any property purchases by the City from the foreclosure list may be sold as directed by the Council by the OMF Business Operations Division in the manner provided by the Charter or state law. The 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 Referral Account unless otherwise designated by Council.
- B.** Except in situations where the purchaser agrees to accept a quit claim deed, the City Treasurer shall purchase title insurance as a precondition of sale and shall pay the cost of the policy.
- C.** In cases where the title report shows a defect in title, the defect shall be referred to the City Attorney. The City Attorney shall take the steps necessary to clear the title.

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**CHAPTER 5.32 - PURCHASING AGENT AND
PROCEDURES**

(Chapter repealed by Ordinance Nos. 174509 and
174904, effective January 1, 2001.)

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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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, 187974 and 189451, effective April 10, 2019.)

- 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 \$1,000,000 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 \$1,000,000 or less.
 3. Award and execute Price Agreements for the purchase or lease of Goods and Services if the yearly estimated cost to the City is \$1,000,000 or less.
 4. Recommend the Award of a Contract for Goods and Services by a report to City Council for Contracts in excess of \$1,000,000. 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 \$1,000,000 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 \$1,000,000 or less. If the Contract Amount exceeds \$1,000,000 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 \$1,250,000 and the director of the bureau in whose behalf of the Contract was issued concurs.

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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 (OECDD); or

- 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 procure 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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- (2) In submitting its proposed Price to the City, the City shall require the QRF to make full disclosure of known costs. The disclosure must include documentation, on a form prescribed by the State Procurement Office, that the costs proposed will result in a Price that will permit the QRF to recover the amounts prescribed in ORS 279.845(1)(a). The City shall require that an authorized officer of the QRF certify that the costs claimed are, to the best of the officer's knowledge, reasonable and adequate, and that the proposed Price will permit the QRF to recover the amounts prescribed in ORS 279.845(1)(a).
 - (3) If the QRF and the City agree on the terms and conditions of a proposed Contract and the price for the services to be provided under the proposed Contract, the Department shall present the proposed Contract (including the agreed Price) to the State Procurement Office for review and approval of the Price. If the QRF and the City cannot agree on the price, the parties shall present the issue of price to the State Procurement Office for determination.
 - (4) The City shall not execute or implement any Contract under the program created by ORS 279.835 to 279.850 until the State Procurement Office has transmitted notice of the Price approved determined by the State Procurement Office to the City and the QRF.
- c. Re-determinations of Price. The Price established by the State Procurement Office shall apply for the initial term or period of the Contract unless otherwise approved by the State Procurement Office. The State Procurement Office may re-determine a Price at the request of a QRF or City, or at the discretion of the State Procurement Office. Until the State Procurement Office approves a new Price, the QRF shall continue to provide, at the established Price, the service or product in accordance with the Scope of Work that was the basis for establishing the existing Price.
 - d. The City shall not pay or agree to pay a QRF any amount other than the Price approved by the State Procurement Office. Any Price established by the State Procurement Office for a product or service shall remain in effect until the State Procurement Office approves a new Price.
- 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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- 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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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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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;

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- (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 expected 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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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.** 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

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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,

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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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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.

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- 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 they 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;

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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' 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.
- 5.34.340 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.
- 5.34.490 Mistakes.
- 5.34.493 First-Tier Subcontractors; Disclosure and Substitution.
- 5.34.500 Responsibility of Offerors.
- 5.34.510 Prequalification of Offerors.
- 5.34.520 Eligibility to Bid or Propose; Registration or License.
- 5.34.530 Disqualification of Persons.
- 5.34.535 Disadvantaged, Minority, Women, Service-Disabled Veteran or Emerging Small Business Enterprise Prohibited Conduct; Sanctions; Appeals.
- 5.34.600 Bid or Proposal Evaluation Criteria.
- 5.34.610 Offer Evaluation and Award; Determination of Responsibility.
- 5.34.620 Negotiation With Bidders Prohibited.
- 5.34.625 Contract Preference; Resident Bidders.
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- 5.34.640 Negotiation When Bids Exceed Cost Estimate.
- 5.34.645 Rejection of Offers.
- 5.34.650 Notice of Intent to Award.
- 5.34.660 Cancellation, Delay or Suspension of Solicitation.
- 5.34.670 Disposition of Offers if Solicitation Canceled.
- 5.34.675 Documentation of Award.
- 5.34.680 Time for City Acceptance; Extension.
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- 5.34.700 Protests and Judicial Review of Individual and Class Exemptions.
- 5.34.710 Protests and Judicial Review of Multi-Tiered Solicitations.
- 5.34.720 Protests and Judicial Review of Solicitation Documents and the Solicitation Processes other than Multi-Tier Processes.
- 5.34.725 Administrative Reconsideration as a Result of Rejection for Failure to Meet DBE Requirements.
- 5.34.730 Protest of Contractor Selection, Contract Award.
- 5.34.740 Protests of Other Violations.
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- 5.34.850 Requests for Proposals (RFP).
- 5.34.860 RFP Pricing Mechanisms.
- 5.34.870 Design-Build Contracts.
- 5.34.880 Energy Savings Performance Contracts (ESPC).
- 5.34.890 Construction Manager/General Contractor Services (CM/GC Services).
- 5.34.900 Required Contract Clauses.
- 5.34.910 Waiver of Delay Damages Against Public Policy.
- 5.34.915 BOLI Public Works Bond.
- 5.34.920 Retainage.
- 5.34.930 Social Equity Contracting and Employment Programs.
- 5.34.940 Public Works Contracts.
- 5.34.950 City Payment for Unpaid Labor or Supplies.
- 5.34.960 Records Maintenance; Right to Audit Records.
- 5.34.970 Right to Inspect Plant or Place of Business.
- 5.34.980 Contract Cancellation, Contractor Termination Procedures.

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 (OECDD); 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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- 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 279C.450. The Chief Procurement Officer may exercise the powers of the City

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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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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

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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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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.

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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

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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. 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;

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.** 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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- 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.

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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

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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

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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:

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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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.
- 5.36.025 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.

5.36.001 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, 187165 and 189452, effective May 10, 2019.)

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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- (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.

(Repealed by Ordinance No. 188280, effective April 14, 2017.)

**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, 173369 and 189452, effective May 10, 2019.) The Accounting Division on behalf of 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 Accounting Division has determined that payment is legally due and payable.

5.40.020 Certain Demands to be Submitted to Council.

(Amended by Ordinance Nos. 173369 and 189452, effective May 10, 2019.) All demands for expenses of litigation, damages, relief and other demands of like character, except as hereinafter provided, shall be examined by the Accounting Division and submitted to the Council with any recommendations, explanations or information the Accounting Division 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.

(Amended by the Ordinance No. 189452, effective May 10 2019.) The Accounting Division hereby is directed to charge all demands for the furnishing of supplies, materials, equipment, etc. to appropriations therefor.

5.40.040 Requisitions Required.

(Amended by the Ordinance No. 189452, effective May 10 2019.) 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 Accounting Division in order that the Accounting Division 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.)

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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 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.

**CHAPTER 5.44 - EXECUTION OF
CONTRACTS AND BONDS**

(Chapter 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, 181483 and 189413; effective March 6, 2019.) 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 Revenue Division 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 Revenue Division 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 Nos. 144020 and 189413, effective March 6, 2019.)

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 Revenue Division. 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 Nos. 173369 and 189452, effective May 10, 2019). The Accounting Division on behalf of 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 Accounting Division a request for a new check which shall include a statement of facts concerning the claimed loss, theft or destruction of the check. The Accounting Division on behalf of 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 Accounting Division 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.

(Amended by Ordinance No. 189413, effective March 6, 2019.) The Revenue Division 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 Revenue Division.

5.52.040 When Checks Are to Be Canceled.

(Amended by Ordinance Nos. 173369 and 189452, effective May 10, 2019.) At the close of each fiscal year the Accounting Division 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 Nos. 173369 and 189452, effective May 10, 2019.) The Accounting Division on behalf of the Mayor and the Auditor shall draw checks on the appropriations provided for by Section 2-108 and Section 2-105 (a)(14) of the Charter when a memorandum requisition for funds has been submitted to the Accounting Division, 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.

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5.52.060 Establishing Checking Account and Providing for Payment of Certain Refunds by Check.

(Repealed by Ordinance No. 177676, effective July 9, 2003.)

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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.

**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.

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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;
- 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 Nos. 176577 and 189413, effective March 6, 2019.) 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 Revenue Division 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.

**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.

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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 Nos. 173369 and 189452, effective May 10, 2019.)

- A. The Accounting Division on behalf of the Mayor and Auditor is 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, who 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.

(Corrected under authority of PCC Section 1.01.035 on May 15, 2017.) 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 such as may be lawfully held by the City under Section 7-108 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.

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**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.

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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, 184427 and 189451, effective April 10, 2019.)

- 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.

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The Chief Procurement Officer, or designee, is authorized to execute contracts, including Price Agreements, for PTE services required by the City in any amount not exceeding \$1,000,000 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 for Contracts and Price Agreements that were originally executed in accordance with Chapters 5.68 as follows:
- 1.** Amendments not exceeding 25 percent of the original Contract Amount.
 - 2.** Amendments exceeding 25 percent of the original Contract Amount, provided that the amended Contract Amount does not exceed \$1,250,000 and the director of the bureau in whose behalf of the Contract was issued concurs.
 - 3.** Execute amendments to Price Agreements if the yearly estimated cost to the City is \$1,250,000 or less.
 - 4.** Amendments whenever an ordinance approved by the City Council grants additional authority to the Chief Procurement Officer beyond that stated in these rules.
- 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 effect 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 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.

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- 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.
- 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.)

**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

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.

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.

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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

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it in its deliberations, and may set administrative procedures from time to time as necessary.

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

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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.

**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, 187339 and 188859, effective April 13, 2018.)

- A.** The Revenue Division's first year start-up costs are capped at \$600,000. Ongoing administrative costs will be subject to the oversight and annual approval of the City Council.
- 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

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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.

**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.

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4. The purchase of improved or unimproved property by the Portland Development Commission solely for resale or redevelopment, in which 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.

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.

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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.

CHAPTER 5.75 - CLAIMS UNDER ORS
CHAPTERS 195 AND 197

(Chapter 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.

- 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.

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.

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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.

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- 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.
- D.** After the close of the public hearing the City Council shall makes 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.

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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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6.06.010 License Required.

(Amended by Ordinance No. 185495, effective July 11, 2012.) Any person engaged in property management activities within a District will pay a license fee for such activities covering each license year, or if registration is made after the beginning of a license year, then for the balance of the license year. The term “license,” as used in this Chapter, will 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 property management in a District, and the revenues collected will be used to provide, through a qualified contractor, cleaning, security, crime prevention, business development, transportation, public policy, housing, and marketing and communications services, or any such services, that benefit properties in the District. The payment of a license fee required hereunder and the acceptance of such fee and issuance of a license by the City will 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.

6.06.020 Definitions.

(Amended by Ordinance Nos. 182925, 185495, 187339 and 189374, effective April 8, 2019.) Unless the context requires otherwise, the terms used in this Chapter will be defined as follows:

- A. “Assessed Value of Improvements” means, for property tax years beginning on or before July 1, 1996, the assessed value of improvements as recorded in the assessment roll for Multnomah County for a specified assessment year and, for property tax years beginning on or after July 1, 1997, the real market value of improvements as recorded in the assessment roll for Multnomah County for a specified assessment year; or, as to property assessed by the Oregon Department of Revenue, the real market value of the property where “real market value” means the minimum amount in cash which could be reasonably expected by an informed seller acting without compulsion from an informed buyer acting without compulsion, in an arm’s length transaction during that assessment year.
- B. “Division” means the Revenue Division of the City of Portland Bureau of Revenue and Financial Services, along with its employees and agents;
- C. “Business property” means real property that is not residential property and is not exempt property. If real property in the District in part is residential or exempt

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property and in part is neither residential nor exempt property, then “business property” is that portion of the real property that is neither residential nor exempt property, including a proportionate share of the land. For a condominium, all condominium units and their undivided interests in the common elements will be treated as a single property;

- D.** “CPI-W” means the Consumer Price Index for Urban Wage Earners and Clerical Workers for Portland-Salem, OR-WA, not seasonally adjusted, as published semi-annually by the United States Bureau of Labor Statistics. Effective January 1, 2018, “CPI-W means the Consumer Price Index for Urban Wage Earners and Clerical Workers for West – Size Class A, not seasonally adjusted, as published by the United States Bureau of Labor Statistics;
- E.** “CPI-W adjustment factor” for a license year means the fraction in which the numerator is the CPI-W HALF1 immediately preceding the commencement of that license fee year and the denominator is the CPI-W for HALF1 for 2011;
- F.** “District” means an enhanced services district as described in this Chapter;
- G.** “Elevator capacity” means the pounds of elevator capacity for elevators type PXH, PXVE, and PXE as recorded in the records of the Building Codes Division of the Oregon Department of Consumer and Business Services;
- H.** “Engaged in property management activities” means:
 - 1.** Being financially responsible for a water service provided to a building or, if there is no building on property, to land within the District, in the event there is a single water service serving the property;
 - 2.** Being financially responsible for operation of a business or a residential use that exclusively occupies a building or, if there is no building on property, land within the District, in the event there is no water service serving the property;
 - 3.** Being financially primarily responsible for the indicia of management of property within the District, 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 a water service provided to common areas of a building;
 - b.** Being responsible for waste disposal service provided to a building, including common areas, or, if there is no building, to land;
 - c.** Being responsible for providing fire insurance for a building;

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- d. Being responsible for repair and maintenance of a building;
 - e. Being responsible for operation of heating, ventilating, and air conditioning equipment that serves a building, including common areas; and
 - f. Being responsible for the operation and maintenance of fire prevention and suppression equipment that serves a building, such as alarm systems and sprinklers.
4. Notwithstanding Subsections 1. through 3. of this Subsection, being an owner of property whose activities in relationship to the property consist only of activities that the owner is mandated by law to carry out will not constitute being “engaged in property management activities.”
- I.** “Exempt property” means:
1. Mass shelters, as defined in Chapter 33.910 of this Code;
 2. Property owned or being purchased by religious organizations including:
 - a. Houses of public worship and other additional buildings and property used solely for administration, education, literary, benevolent, charitable, entertainment, and recreational purposes by religious organizations, the lots on which they are situated, and the pews, slips, and furniture therein. However, “exempt property” does not include any part of any house of public worship or other additional buildings or property which is kept or used as a store or shop or for any purpose other than those stated in this subsection; and
 - b. Parking lots used for parking or any other use as long as that parking or other use is permitted without charge for no fewer than 355 days during the license year; and
 3. Any other property in a particular District established by this Chapter that this Chapter identifies as exempt property for that District.
- J.** “Licensee” means a person licensed to engage in property management activities within the District under this Chapter;
- K.** “Manager” means the Director of the Revenue Division or his or her designee;
- L.** “Notice” means a written document mailed by the Division by first class mail to the last known address of a licensee as provided to the Division in the latest application on file at the Division; or, if mailed to a person who is not a licensee,

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then to the last known address of the person as provided to the Portland Water Bureau or, if that Bureau has no address record, as provided to the Revenue Division in the latest general business license tax return on file at the Division or, if none, then to such address as may be determined following reasonable investigation;

- M.** “Person” means a natural person, sole proprietorship, partnership, joint venture, association, club, trust estate, corporation (for profit or not-for-profit), or any other entity capable of engaging in property management activities within the District;
- N.** “Qualified contractor” means a non-profit corporation or other non-profit entity established by property owners or licensees in the District for the purpose of providing services that benefit the District;
- O.** “Residential Property” means real property that is exclusively in residential use and is not exempt property. If part of real property is in residential use and part is not in residential use or is exempt property, then “residential property” is that portion of the real property that is exclusively in residential use and is not exempt property, and a proportionate share of land. Property is considered to be in residential use if the use is within a “Residential Use Category” as defined by Chapter 33.920 of this Code. For a condominium, all condominium units and their undivided interests in the common elements will be treated as a single property; and
- P.** “Square feet” and “square footage,” except as otherwise expressly stated in this Chapter, means square footage as recorded in the records of the Multnomah County Office of Assessment and Taxation or, if not so recorded, as measured using the same method as used by the Multnomah County Office of Assessment and Taxation.

6.06.030 Authority of Manager to Adopt Rules, Procedures and Forms.

(Amended by Ordinance No. 185495, effective July 11, 2012.)

- A.** The Manager may adopt 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 Manager pursuant to this Section, a public hearing will be conducted. The Manager will give reasonable public notice of his or her proposal to adopt rules not less than ten nor more than thirty days before such public hearing. Such notice will 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 Manager will hear statements or receive written comment concerning the proposed rules. The Manager will 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 may be conducted, but no additional public notice will 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 will be effective upon adoption by the Manager. All rules adopted by the Manager will be filed in the Bureau's office. Copies of all current rules will be made available to the public upon request.
3. Notwithstanding Subsections 6.06.030 B.1.-2., the Manager 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 will be effective for a period of not longer than 180 days.

6.06.040 License.

(Amended by Ordinance No. 185495, effective July 11, 2012.) No person will engage in property management activity within the District unless such person first will have paid a license fee installment as described in Subsection 6.06.140.

6.06.050 Exemptions from License Requirements.

Persons who the city is prohibited from licensing or taxing under the Constitution or laws of the United States, the Constitution or laws of the State of Oregon, or the Charter of the City are exempt from the license requirements imposed by this Chapter, to the extent of any such prohibition.

6.06.060 License Transfer.

(Amended by Ordinance No. 185495, effective July 11, 2012.)

- A. Except as provided in this Section, no license will be transferable from one person to another.
- B. The Bureau may allow transfer of a license for the balance of its term to a successor or transferee who continues the acts that constituted property management activities requiring a license under this Chapter. Any transfer will be reported to the Bureau in writing or on a form provided by the Bureau and will be effective when the Bureau approves the transfer as complete. The licensee will be responsible for any license fee installments which become payable prior to the Bureau's approval; and the transferee will be responsible for any license fee installments which become payable after the Bureau's approval.

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6.06.070 Contents of License.

(Repealed by Ordinance No. 185495, effective July 11, 2012.)

6.06.080 License Term.

(Amended by Ordinance No. 185495, effective July 11, 2012.)

- A. Each license issued under this Chapter will 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 will expire on the day prior to the beginning of the new license year. In no case will a license be valid in excess of 12 months.

6.06.090 Preparation and Notice of Fee.

(Amended by Ordinance No. 185495, effective July 11, 2012.) On or before August 1 of each year, the Bureau will make a preliminary determination of each person engaged in property management activity within the District and subject to the license fee requirement and of the amount of license fee payable by the person for the next license year. On or before August 1, the Bureau will mail to each person preliminarily determined to be engaged in property management activity within the District and subject to the license fee requirement a notice which contains the following information:

- A. That the Bureau has determined the person is engaged in property management activity within the District that is subject to the license fee requirement;
- B. The amount of the license fee the Bureau has determined to be payable by the person for the next license year, including the data and formula used in determining the amount;
- C. The activities which constitute being engaged in property management activities, as defined in Subsection 6.06.020 H.1.-3.;
- D. The activities which do not constitute being engaged in property management activities, as defined in Subsection 6.06.020 H.4.;
- E. The exemption provisions of Section 6.06.050 and the definition of exempt property as set out in Section 6.06.020 I. and any other provision of this Chapter applicable to the District;
- F. That any appeal from the determinations of the Bureau as to the person's engagement in property management activity within the District, as to the person's being subject to the license fee requirement, or as to the amount of the license fee payable by the person for the next license year, must be filed in writing with the Bureau not later than 30 days after the notice is mailed. Appeal information from Section 6.06.100 will be included with the notice.

6.06.095 Preparation and Notice of Fee Adjustment.

(Amended by Ordinance No. 185495, effective July 11, 2012.) In cases in which the sections of this Chapter establishing a license fee formula for the District provide for a license fee adjustment, the Bureau, following City issuance of authorization to occupy improvements or any portion of improvements, will make a preliminary determination of the license fee adjustment for the balance of the license year. The Bureau will mail to the licensee a notice which contains the following information:

- A. That the Bureau has determined that the licensee is subject to a fee adjustment;
- B. The amount of the adjusted license fee the Bureau has determined to be payable by the licensee for the balance of the license year, including the data and formula used in determining the adjusted amount;
- C. That any appeal from the determinations of the Bureau as to the person's being subject to a license fee adjustment, or as to the adjusted amount payable for the balance of the license year, must be filed in writing with the Bureau not later than 30 days after the notice is mailed.

Failure to receive notice as provided in this Section will not relieve a person from the obligation to pay an adjusted license fee payable under this Chapter.

6.06.100 Appeals.

(Amended by Ordinance Nos. 176955 and 185495, effective July 11, 2012.)

- A. Persons to whom the Bureau mails a notice under Section 6.06.090 will be presumed to be engaged in property management activity within the district, to be subject to the license fee requirement, and to be liable for the amount indicated in the notice as the license fee payable by the person for the next license year, unless the person files with the Bureau an appeal not later than 30 days after the date of mailing of the notices.
- B. Persons to whom the Bureau mails a notice under Section 6.06.095 will be presumed to be subject to a license fee adjustment, and to be liable for the adjusted amount indicated in the notice as payable for the balance of the license year, unless the person files with the Bureau an appeal not later than 30 days after the date of mailing of the notices.
- C. A person may appeal a preliminary determination of the Bureau made under Section 6.06.090 on the following grounds:
 - 1. The person is not engaged in property management activity within the District as defined in Subsection 6.06.020 H.1.-4.;

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2. The person is not subject to the license fee requirement because the person is exempt under Section 6.06.050;
 3. The amount of license fee determined by the Bureau to be payable by the person for the next license year is incorrect because the data reviewable under Subsection E. of this Section or the application of the formula to the data is incorrect.
- D.** A person may appeal a preliminary determination of the Bureau made under Section 6.06.095 on the following grounds:
1. The licensee is not subject to a fee adjustment;
 2. The amount of the adjusted license fee determined by the Bureau to be payable by the person for the balance of the license year is incorrect because the data reviewable under Subsection E. of this Section or the application of the formula to the data is incorrect.
- E.** The Bureau, in its discretion, may grant an appeal without audit or may audit an appeal to determine whether the appeal should be granted. The audit may include review of such evidence as the Bureau deems appropriate. If the person appeals on the ground that the data used in determining the license fee payable are incorrect, the Bureau will not be bound by the data contained in the record sources identified in the sections of this Chapter establishing the license fee formula for the District and may consider other evidence as to data, except that the Bureau will be bound by the assessed value data as recorded in the Multnomah County assessment roll, by the square footage data as recorded in the records in the Multnomah County Office of Assessment and Taxation, by the City Bureau of Development Services written documentation of authorization to occupy improvements or portions of improvements, by the City Bureau of Development Services building permit application records of the cost of physical changes, and by the City Bureau of Development Services building permit application records of the additional square feet of improvements, when those record sources are designated for use by a section of this Chapter establishing the license fee formula for the District. In the event the Bureau determines that an appeal should or should not be granted, in whole or in part, then the Bureau will give the appealing person written notice of the determination and the reasons, by mail or personal delivery. The Bureau's determination is final.

6.06.110 Registration for License.

(Amended by Ordinance No. 185495, effective July 11, 2012.)

- A.** All persons required to obtain a license under this Chapter may register with the Bureau either in writing or on specific forms if provided by the Bureau.

Registrations will be filed, together with the specified license fee installment if known or due at the time of registration:

1. Before the property manager engages in property management activities in the District; or
 2. Prior to commencement of the new license year.
- B.** The Bureau may, for good cause, allow further time for filing registrations, except that no extension may be granted for more than 30 days.
- C.** The registration may contain a written declaration, verified by the property manager, that the statements made therein are true.
- D.** The Bureau will prepare information containing appropriate data and fee calculations and make them available at its office, on request. Failure to receive or secure a form, file a registration or to receive notice as provided in Section 6.06.090, will not relieve a person from the obligation to pay a license fee and register for a license under this Chapter.

6.06.120 Interest on Delayed Application.

(Amended by Ordinance No. 185495, effective July 11, 2012.) When the time for filing a license registration is extended at the request of the applicant, interest at the rate specified in Subsection 6.06.150 B. will be added and paid on the license fee installment or portion thereof not paid within the time originally allowed.

6.06.140 Fee Payment in Two Installments.

(Amended by Ordinance No. 185495, effective July 11, 2012.) Except as otherwise provided by Section 6.06.145, District license fees will be payable as follows:

- A.** Except as provided in Subsection F. of this Section, the license fee computed under a section of this Chapter establishing a license fee formula for the District will be payable in two equal installments, with the first installment due on October 1 of the license year and the second installment due on April 1 of the license year.
- B.** On or before February 15 of each license year, the Bureau will mail notice to each licensee stating the amount of the second installment payable on April 1 of the license year.
- C.** The property manager or licensee on record as of the billing date of the notice of fee each license year is presumed to be the responsible party for the entire license year unless the Bureau approves the transfer to another property manager or licensee under Section 6.06.060. If the licensee has not engaged in property management activities within the District until after the beginning of the license year and a transfer has been approved, then the fee payment required will be the

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next installment due, provided that the property management activities within the District began no later than the billing notice of the next installment.

- D.** In computing the license fee payable by a licensee who has not engaged in District business property management activities until after the beginning of a license year, no fee shall be payable in relation to any real property which, for that license year, has been paid by another licensee.
- E.** In case of a license fee adjustment under a subsection of this Chapter establishing a license fee formula for the District:
 - 1.** The amount of any adjustment increase allocable to the portion of the license year between October 1 and March 31 will be due 30 days after the Bureau's mailing of notice of the fee adjustment to the licensee under Section 6.06.095, subject to any change in the adjustment in an appeal under Subsection 6.06.100 B.
 - 2.** The amount of any adjustment increase allocable to the portion of the license year between April 1 and September 30 will be due on April 1 of the license year or 30 days after the Bureau's mailing of notice of the fee adjustment to the licensee under Section 6.06.095, whichever is later, subject to any change in the adjustment in an appeal under Subsection 6.06.100 B.
 - 3.** The amount of any adjustment decrease allocable to the portion of the license year between October 1 and March 31, provided that the amount previously determined to be due as of that October 1 has already been paid, will be refunded to the licensee or credited to an outstanding installment amount due within 30 days after the Bureau's mailing of notice of the fee adjustment to the licensee under Section 6.06.095, subject to any change in the adjustment in an appeal under Subsection 6.06.100 B.; and
 - 4.** The amount of any adjustment decrease allocable to the portion of the license year between April 1 and September 30, provided that the amount previously determined to be due as of that April 1 has already been paid, will be refunded to the licensee or credited to an outstanding installment amount due within 30 days after the Bureau's mailing of notice of the fee adjustment to the licensee under Section 6.06.095, subject to any change in the adjustment in an appeal under Subsection 6.06.100 B.

6.06.145 Fee Payment in One Installment.

(Amended by Ordinance No. 185495, effective July 11, 2012.) If a qualified contractor for a District has filed a written request approved by resolution of the City Council that the District license fee be payable in one installment, District license fees for future license fee years will be payable as follows, until such time as the City Council by resolution

determines that the District license fee will be payable in two installments in accord with Section 6.06.140:

- A.** Except as provided in Subsection E. of this Section, the license fee computed under a section of this Chapter establishing a license fee formula for the District will be payable in one installment due on October 1 of the license year.
- B.** Each registration for a license, will be accompanied by payment of the license fee for the license year if known.
- C.** The property manager or licensee on record as of the billing date of the notice of fee each license year is presumed to be the responsible party for the entire license year unless the Bureau approves the transfer to another property manager or licensee under Section 6.06.060.
- D.** In computing the license fee payable by a licensee who has not engaged in District business property management activities until after the beginning of a license year, no fee will be payable in relation to any real property which, for that license year, has been included in computing the license fee payable by another licensee.
- E.** In case of a license fee adjustment under a subsection of this Chapter establishing a license fee formula for the District:
 - 1.** The amount of any adjustment increase for a license year will be due 30 days after the Bureau's mailing of notice of the fee adjustment to the licensee under Section 6.06.095, subject to any change in the adjustment in an appeal under Subsection 6.06.100 B.
 - 2.** The amount of any adjustment decrease for a license year, provided that the amount previously determined to be due has already been paid, will be refunded to the licensee or credited to an outstanding installment amount due within 30 days after the Bureau's mailing of notice of the fee adjustment to the licensee under Section 6.06.095, subject to any change in the adjustment in an appeal under Subsection 6.06.100 B.

6.06.150 Penalty and Interest on Failure to Pay Fee.

(Amended by Ordinance No. 185495, effective July 11, 2012.)

- A.** If a person:
 - 1.** Fails to file a correct registration at the time required by or under this Chapter; or
 - 2.** Fails to pay a fee installment at the time it becomes due, unless it is shown that the failure is due to reasonable cause and not due to neglect, then there will be added to the amount of a fee installment a penalty of:

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- a.** 5 percent of the amount of the unpaid fee installment, but not less than \$20, if the failure is for not more than 1 month; and
 - b.** Additional penalties of 5 percent of the unpaid fee installment for each additional month or fraction thereof during which the failure continues, up to a maximum of four (4) additional months.
- B.** Interest will be collected on any unpaid fee installment at the rate of 10 percent simple interest per annum, computed on the balance still due at the end of each month following the date the fee installment became due. For purposes of this subsection, “unpaid fee installment” will not include penalties or interest.
- C.** If a person fails to file a registration on the prescribed date, as determined with regard to any extension for filing, the Bureau may determine the fee and fee installment payable. If the Bureau determines the fee and fee installment payable, the Bureau will determine appropriate penalties and interest and will send notice to the person of the determination.
- D.** The Bureau may apply payments to penalty and interest assessments before applying payments to fee installments due.

6.06.160 Civil Penalties.

(Amended by Ordinance No. 185495, effective July 11, 2012.)

- A.** The Manager may impose a civil penalty of up to \$500 for each of the following violations of this Chapter:
 - 1.** Failure to file any registration within 90 days of the Bureau’s original written notice to file;
 - 2.** Failure to pay any fee installment within 90 days of the Bureau’s original written notice for payment.
- B.** The Manager may only impose a civil penalty under this section if the Bureau gives notice of the potential for assessment of civil penalties for failure to comply in the original written preliminary determination notice issued under Sections 6.06.090 and 6.06.095.
- C.** The determination of a violation and imposition of a civil penalty under this Section will be subject to appeal to the Code Hearings Officer under the provisions of Chapter 22.10 of this Code.

6.06.180 Severability.

(Amended by Ordinance No. 185495, effective July 11, 2012) 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 will not be affected but will remain in full force and effect.

6.06.190 Clean & Safe District.

(Amended by Ordinance No. 185495, effective July 11, 2012.)

- A.** The Clean & Safe District is that area within the boundaries formed by NW and SW Front Avenue on the east; SW Harrison between SW Front and SW 4th; SW 4th between SW Harrison and SW Market; SW Market between SW 4th and SW 9th; SW 9th between SW Market and SW Salmon; SW Salmon between SW 9th and SW 11th; SW 11th between SW Salmon and W Burnside; W Burnside between 11th and 9th; NW 9th between W Burnside and NW Hoyt; NW Hoyt between NW 9th and NW Broadway; and the Broadway Bridge on the north; but excluding the area known as 1800 SW First Avenue, more particularly described as part of Block 1, South Auditorium Addition, Blocks A, B, I, J and partial Block H (all comprising Tax Lot 2 of Block 1), at the southeast corner of the District.
- B.** Notwithstanding the exclusion set out in Subsection A. of this Section, beginning with the license year commencing October 1, 2004, the Clean & Safe District also will include the area known as 1800 SW First Avenue, more particularly described as part of Block 1, South Auditorium Addition, Blocks A, B, I, J and partial Block H (all comprising Tax Lot 2 of Block 1), at the southeast corner of the District.

6.06.200 Clean & Safe District Fee Rates for Engaging in Business Property Management Activities.

(Amended by Ordinance Nos. 175840, 176776, 176955, 179000 and 185495, effective July 11, 2012.)

- A.** The fee established by this Chapter for management of business property in the Clean & Safe District in a license year will be the sum of the following amounts, computed separately in relation to each such property within the District as to which the licensee is engaged in property management activities:

 - 1.** \$.87 (cents) per \$1,000 of value of improvements, measured as set out in Subsection B. of this Section;
 - 2.** Plus \$5.52 per 290 square feet of the sum of improvements and land square footage as of the July 1 immediately preceding commencement of the license fee year;
 - 3.** Plus \$.46 (cents) per pound of elevator capacity as of the July 1 immediately preceding commencement of the license fee year;
 - 4.** Plus 2.5 percent of the sum of Subsections A.1. through 3., as to any business property as to which the licensee is engaged in property

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management activities, if the business property is among the 50 District business properties used primarily for business activities with the highest value of improvements; and

5. Less 2.5 percent of the sum of Subsections A.1 through .3., as to any business property as to which the licensee is engaged in property management activities, if the business property is among the 51st to the 150th District business properties used primarily for business activities with the highest value of improvements;
6. Plus 15 percent of the amounts determined under subsections A.1. through 5.;
7. Plus \$.01401 (1.401 cents) per square foot of improvements and, for surface parking lots, per square foot of land square footage, as of the July 1 immediately preceding commencement of the license fee year;
8. Plus 20.03 percent of the amounts determined under Subsections A.1. through 7. which is the inflation that occurred during license years 2001 through 2011.
9. Plus the total of the amounts determined under Subsections A.1. through 7. multiplied by the CPI-W factor, for license fee years commencing on or after October 1, 2012.

B. “Value of improvements” under this Section will be measured as follows:

1. For business property as to which, on or after July 1, 1994, there has been no physical change resulting in an increase or decrease in square footage of the sum of improvements and land or in elevator capacity, “value of improvements” is the assessed value of improvements for the 1993-94 property tax assessment year;
2. For business property as to which, on or after July 1, 1994 but before July 1, 1997, there has been physical change resulting in an increase or decrease in square footage of the sum of improvements and land or in elevator capacity, “value of improvements” is the assessed value of improvements for the 1996-97 property tax assessment year, discounted by 8.8 percent;
3. For business property as to which, on or after July 1, 1997 but before July 1, 2001, there has been physical change resulting in an increase or decrease in square footage of the sum of improvements and land or in elevator capacity, “value of improvements” is:
 - a. For license fee years that commence before the January 1 immediately preceding the first property tax assessment year in

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which the assessment roll reflects the change or would reflect it were the property not assessed by the Oregon Department of Revenue, the amount determined under whichever of Subsections B.1. or 2. or C.1. otherwise would be applicable plus the cost of the physical changes as determined from the City Bureau of Development Review records of all building permits issued authorizing or in association with the physical changes, discounted by a percent equal to 8.8 percent plus an additional 2.9 percent for each year between the 1996-97 assessment year and such occupancy authorization date; or

- b.** For license fee years that commence after the January 1 immediately preceding the first property tax assessment year in which the assessment roll reflects the change or would reflect it were the property not assessed by the Oregon Department of Revenue, the assessed value of improvements for the first assessment year in which the assessment roll reflects the physical change or would reflect it were the property not assessed by the Oregon Department of Revenue, discounted by a percent equal to 8.8 percent plus an additional 2.9 percent for each year between the 1996-97 assessment year and such first assessment year;
 - 4.** For business property as to which, on or after July 1, 2001, there has been physical change resulting in an increase or decrease in square footage of the sum of improvements and land square footage or in elevator capacity, but the physical change has not resulted in there being a new building on the property, “value of improvements” is the amount determined under whichever of Subsections B.1., 2., or 3. otherwise would be applicable, multiplied by a fraction the numerator of which is the square footage of improvements after the physical change and the denominator of which is the square footage of improvements prior to the physical change. For purposes of this Subsection and Subsection B.5. of this Section, building on a property will be considered new if the cost of the physical change, as determined from the City Bureau of Development Services records of all building permits issued authorizing or in association with the physical change, is more than 50 percent of the assessed value of improvements on the property immediately prior to the physical change;
 - 5.** For business property as to which, on or after July 1, 2001, there has been physical change that has resulted in there being a new building on the property, “value of improvements” is \$73 per square foot of improvements.
- C.** Notwithstanding Subsections A. and B. of this Section, if as of July 1 immediately preceding commencement of a license year, the Multnomah County Assessor in accord with ORS 307.340 has cancelled the property tax assessment on a business

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property building, structure, or addition for the property tax assessment year beginning on that July 1, then:

1. For purposes of initially determining the license fee for such license year, the value of improvements, improvements square footage, and elevator capacity attributable to the business property building, structure, or addition will be deemed to be zero; and
2. If, after that July 1 and prior to completion of such license year the City Bureau of Development Services issues an authorization to occupy the building, structure, or addition as to which the property tax assessment was cancelled, then the license fee payable for such license year will be adjusted. For purposes of adjustment, value of improvements will be measured as set out in set out in Subsection B. of this Section, improvements square footage will be measured as of the date of such authorization, and elevator capacity will be measured as of the date of such authorization. The adjusted license fee will be the amount determined under Subsection A. of this Section multiplied by a fraction, the numerator of which is the number of whole and partial months after the date of such authorization remaining in the license year and the denominator of which is twelve. For purposes of this Subsection, the date of such authorization will be the date the Bureau of Development Services issues a written authorization to occupy all new improvements on the business property or the date 180 days after the Bureau issues a written authorization to occupy some but not all new improvements on the property, whichever occurs first.

6.06.210 Clean & Safe District Fee Rates for Engaging in Residential Property Management Activities.

(Amended by Ordinance Nos. 175840, 176955 and 185495, effective July 11, 2012.)

- A. The fee established by this Chapter for management of residential property in the Clean & Safe District for a license year, other than affordable residential rental property as defined in Section 6.06.211, will be the sum of the following amounts, computed separately in relation to each such property within the District as to which the licensee is engaged in property management activities:
 1. \$.87 (cents) per \$1,000 of value of improvements, measured as set out in Subsection B. of this Section;
 2. Plus \$5.52 per 725 square feet of the sum of improvements and land square footage as of the July 1 immediately preceding commencement of the license fee year;
 3. Plus \$.46 (cents) per pound of elevator capacity as of the July 1 immediately preceding commencement of the license fee year;

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4. Plus 15 percent of the amounts determined under Subsections A.1. through 3.;
5. Plus 20.03 percent of the amounts determined under Subsections A.1. through 4. which is the inflation that occurred during license years 2001 through 2011.
6. Plus the total of the amounts determined under Subsections A.1. through 4. multiplied by the CPI-W adjustment factor, for license fee years commencing on or after October 1, 2012.

B. “Value of improvements” under this Section will be measured as follows:

1. For residential property as to which, on or after July 1, 1994, there has been no physical change resulting in an increase or decrease in square footage of the sum of improvements and land or in elevator capacity, “value of improvements” is the assessed value of improvements for the 1993-94 property tax assessment year;
2. For residential property as to which, on or after July 1, 1994 but before July 1, 1997, there has been physical change resulting in an increase or decrease in square footage of the sum of improvements and land or in elevator capacity, “value of improvements” is the assessed value of improvements for the 1996-97 property tax assessment year, discounted by 8.8 percent;
3. For residential property as to which, on or after July 1, 1997 but before July 1, 2001, there has been physical change resulting in an increase or decrease in square footage of the sum of improvements and land or in elevator capacity, “value of improvements” is:
 - a. For license years that commence before the January 1 immediately preceding the first property tax assessment year in which the assessment roll reflects the change or would reflect it were the property not assessed by the Oregon Department of Revenue, the amount determined under whichever of Subsections B.1. or 2. or C.1. otherwise would be applicable plus the cost of the physical changes as determined from the City Bureau of Development Services records of all building permits issued authorizing or in association with the physical changes, discounted by a percent equal to 8.8 percent plus an additional 2.9 percent for each year between the 1996-97 assessment year and such occupancy authorization date; or
 - b. For license years that commence after the January 1 immediately preceding the first property tax assessment year in which the

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assessment roll reflects the change or would reflect it were the property not assessed by the Oregon Department of Revenue, the assessed value of improvements for the first assessment year in which the assessment roll reflects the physical change or would reflect it were the property not assessed by the Oregon Department of Revenue, discounted by a percent equal to 8.8 percent plus an additional 2.9 percent for each year between the 1996-97 assessment year and such first assessment year;

4. For residential property as to which, on or after July 1, 2001, there has been physical change resulting in an increase or decrease in square footage of the sum of improvements and land square footage or in elevator capacity, but the physical change has not resulted in there being a new building on the property, “value of improvements” is the amount determined under whichever of Subsections B.1., 2., or 3. otherwise would be applicable, multiplied by a fraction the numerator of which is the square footage of improvements after the physical change and the denominator of which is the square footage of improvements prior to the physical change. For purposes of this Subsection and Subsection B.5. of this Section, building on a property will be considered new if the cost of the physical change, as determined from the City Bureau of Development Services records of all building permits issued authorizing or in association with the physical change, is more than 50 percent of the assessed value of improvements on the property immediately prior to the physical change;
 5. For residential property as to which, on or after July 1, 2001, there has been physical change that has resulted in there being a new building on the property, “value of improvements” is \$68 per square foot of improvements.
- C. Notwithstanding Subsections A. and B. of this Section, if as of July 1 immediately preceding commencement of a license year, the Multnomah County Assessor in accord with ORS 307.340 has cancelled the property tax assessment on a residential property building, structure, or addition subject to this Section, for the property tax assessment year beginning on that July 1, then:
1. For purposes of initially determining the license fee for such license year, the value of improvements, improvement square footage, and elevator capacity attributable to the building, structure, or addition will be deemed to be zero; and
 2. If, after that July 1 and prior to completion of such license year the City Bureau of Development Services issues an authorization to occupy new residential improvements on the property, then the license fee payable for such license year will be adjusted. For purposes of adjustment, value of improvements will be measured as set out in Subsection B. of this Section,

improvements square footage will be measured as of the date of such authorization, and elevator capacity will be measured as of the date of such authorization. The adjusted license fee will be the amount determined under Subsection A. of this Section multiplied by a fraction, the numerator of which is the number of whole and partial months after the date of such authorization remaining in the license year and the denominator of which is twelve. For purposes of this Subsection, the date of such authorization will be date the Bureau of Development Services issues a written authorization to occupy all new residential improvements on the property or the date 180 days after the Bureau issues a written authorization to occupy some but not all new residential improvements on the property, whichever occurs first.

6.06.211 Clean & Safe District Fee Rates for Engaging in Affordable Residential Rental Property Management Activities.

(Amended by Ordinance No. 185495, effective July 11, 2012.)

- A.** The fee established by this Chapter for management of affordable residential rental property in the Clean & Safe District for a license year will be the sum of the following amounts, computed separately in relation to each such residential property within the District as to which the licensee is engaged in property management activities:
- 1.** If the licensee is a not-for-profit corporation or a government entity, \$20 multiplied by the number of affordable residential dwelling units managed by the licensee; and
 - 2.** If the licensee is other than a not-for-profit corporation, \$44 multiplied by the number of affordable residential dwelling units managed by the licensee.
- B.** For purposes of this Section, “affordable residential rental property” means single room occupancy housing, as defined in Chapter 33.910 of this Code; low income housing; and subsidized housing. For purposes of this Subsection, low income housing is dwelling units available for rent at rates that are considered affordable, under federal affordability standards in effect on the July 1 immediately preceding commencement of the license year, to persons earning 60 percent or less of the Portland region median income as identified in the records of Metro as of that July 1. For purposes of this Subsection, subsidized housing is housing units available for rent at below market rates because either the units qualify for federal income tax benefits under Section 42 of the Internal Revenue Code; or the units are subsidized through United States Department of Housing and Community Development Section 8 subsidies or other public or private organization subsidies. Subsidized housing includes but is not limited to student housing owned by the Oregon State System of Higher Education and housing owned by non-profit organizations that is subsidized through charitable contributions and grants.

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- C. For purposes of this Section, “dwelling units” means dwelling units as defined in Chapter 33.910 of this Code.

6.06.212 Clean & Safe District Exempt Property.

(Amended by Ordinance Nos. 182925 and 185495, effective July 11, 2012.) The Clean & Safe District property management license requirements will not apply to exempt property. For purposes of this Section, “exempt property” means exempt property as defined in Subsection 6.06.020 I. and also means exempt residential property. “Exempt residential property” means a dwelling unit as defined in Chapter 33.910 of this Code that is owner-occupied and has its own separate water service.

6.06.213 Computation of Clean & Safe District License Fee for Management of Mixed Use Properties.

(Amended by Ordinance No. 185495, effective July 11, 2012.) In computing Clean & Safe District property management license fees under Sections 6.06.200, 6.06.210, and 6.06.211, in relation to property within the District as to which the licensee is engaged in property management activities, where the property is a combination of any two or more of business property that is subject to Section 6.06.200, residential property that is subject to Section 6.06.210, residential property that is subject to Section 6.06.211, exempt property that is subject to Section 6.06.212, or property managed by a person generally exempt under Section 6.06.050 but where the exemption does not apply in relation to part of the property the person manages, the fee in relation to property management activities will be the sum of the following:

- A. For management of the part of the property that is business property subject to Section 6.06.200, the fee computed under Section 6.06.200 computed as though the entire property were such business property, multiplied by a fraction, the numerator of which is the square footage of business property improvements on the property subject to Section 6.06.200 and the denominator of which is the square footage of all improvements on the property;
- B. For management of the part of the property that is residential property subject to Section 6.06.210, the fee computed under Section 6.06.210 computed as though the entire property were such residential property, multiplied by a fraction, the numerator of which is the square footage of residential property improvements on the property subject to Section 6.06.210, and the denominator of which is the square footage of all improvements on the property; and
- C. For management of the part of the property that is residential property subject to Section 6.06.211, the fee computed under Section 6.06.211.
- D. If there are common area improvements in a property subject to this Section, then in computing square footage of business property improvements subject to Subsection A. of this Section and of residential property improvements subject to Subsection B. of this Section, such square footage will be deemed to include an

allocated portion of the common area improvements. The allocated portion of common area improvements will be determined by multiplying the square footage of common area improvements by a fraction, the numerator of which is the square footage of business property improvements subject to Subsection A. of this Section or the square footage of residential property improvements subject to Subsection B. of this Section, whichever is appropriate, and the denominator of which is the square footage of all improvements on the property less the square footage of the common area improvements.

6.06.214 Clean & Safe District Square Footage of Improvements.

(Added by Ordinance No. 176262; Amended by Ordinance No. 185495, effective July 11, 2012.) For purposes of Sections 6.06.200, 6.06.210 and 6.06.213 only, the terms "square footage of improvements" and "improvements square footage" will not include:

- A. Surface area of surface parking lots;
- B. Landscaped area;
- C. Unenclosed sidewalk, plaza, and courtyard area;
- D. Below grade parking area (but, for parking structures that have above grade parking, will include both any at grade parking area within the parking structure and all above grade parking area within the parking structure); and
- E. Other below grade area unless improved for occupancy by employees or tenants.

6.06.215 Pledging of Clean & Safe District License Fee Revenues.

(Amended by Ordinance Nos. 176776 and 185495, effective July 11, 2012.)

- A. In addition to the uses of District revenues set out in Section 6.06.010, the City, if so requested in writing by a qualified contractor and approved by the City Council, may pledge Clean & Safe District license fee revenues as security for City debt incurred to finance the design, acquisition, construction, and installation of improvements within the District and may pledge Clean & Safe District license fee revenues to a qualified contractor or its designee in order that the contractor or designee may have revenues sufficiently ensured to enable the contractor or designee to incur debt to finance the design, acquisition, construction, installation, operation and maintenance of improvements within the District. Any such pledge of Clean & Safe District license fee revenues will be subject to any limitations set out in Oregon law or in the City Charter. In addition, no City pledge or combination of pledges under this Section for City payment of actual debt service or to enable the qualified contractor or its designee to make payments of actual debt service, but not including pledges to provide excess coverage for City payment of actual debt service or to enable the qualified contractor or its designee to provide excess

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coverage for payments of actual debt service, at any time will exceed one-third of the Clean & Safe District license fee revenues.

- B.** In making a request under Subsection A. of this Section, the qualified contractor will submit to the City a description of the improvements to be funded in whole or in part with the proceeds of the debt financing. The request also will include a description of any previously provided Clean & Safe District services proposed to be reduced or not provided due to the pledge of the District license fee revenues.
- C.** Notwithstanding Section 6.06.010, if the City pledges District license fee revenues for City debt incurred in accord with this Section, the City will retain the pledged portion of the District license fee revenues, to be used for repayment of the debt.

6.06.216 Lighting and District Amenities Revenues and Program.

(Added by Ordinance No. 176776; amended by Ordinance Nos. 179000, 185495 and 186288, effective November 15, 2013.)

- A.** As used in this Chapter, “lighting revenues” means that portion of Clean & Safe District revenues collected under Subsection 6.06.200 A.7. as adjusted each year under Subsection 6.06.200 A.8.
- B.** As used in this Chapter, “lighting program” means the design, acquisition, construction, installation, operation, and maintenance of all components, including but not limited to electrical connections and decorative lighting fixtures, necessary for a seasonal and decorative lighting system within portions of the District.
- C.** As used in this Chapter, “district amenities revenue” means that portion of Clean & Safe District revenues collected under Subsection 6.06.200 A.7. as adjusted each year under Subsection 6.06.200 A.8. in excess of amounts necessary to fund the lighting program in Subsection B. in a given year.
- D.** As used in this Chapter, “district amenities program” means the design, acquisition, construction, installation, operation, and maintenance of all components of amenities that improve the safety, function, and appearance of downtown sidewalks including but not limited to:
 - 1.** Trash receptacles, including solar trash compactors;
 - 2.** Co-located publication boxes.
- E.** Notwithstanding Section 6.06.010, lighting revenues and district amenities revenues will be used only:
 - 1.** For the lighting program and district amenities program as set forth above, including but not limited to the pledging of such revenue as provided under Section 6.06.215;

2. For a proportionate share of the Bureau's costs of administration of the license fee directed by the City Council to be recovered from license fee revenues, based on the ratio of lighting revenue and district amenities revenues to total District revenues; or
3. If a qualified contractor determines that lighting revenue and district amenities revenues in a license year will exceed or have exceeded the costs and expenses of the lighting program and the district amenities program in that license year and that the excess revenues will not be needed to fund a prudent reserve or for the costs and expenses of the lighting program and district amenities program in future license years, then for distribution by the qualified contractor to the payers of the lighting revenues and district amenities revenues of that portion of the excess determined by the qualified contractor not to be so needed, in proportion to the amount paid by each payer in the license year that produced the excess.

6.06.220 Clean & Safe District Periodic Sunset Review.

(Amended by Ordinance No. 185495, effective July 11, 2012.) During 2011 and each tenth year thereafter, the City Council will conduct a public hearing or hearings to determine whether the Clean & Safe District property management license fee should be terminated. Prior to the first such hearing in 2011 and in each tenth year thereafter, the City will mail notice of the hearing to the then current Clean & Safe District licensees under this Chapter.

6.06.230 Clean & Safe District Early Termination.

(Amended by Ordinance No. 185495, effective July 11, 2012.) If the City Council, on or before March 30 of any license fee year, receives written objections signed in that license fee year by licensees responsible for more than 33 percent of the total revenues generated from the Clean & Safe District property management license fee during that year, then the license fee for the Clean & Safe District will be terminated as of September 30 of that license fee year except that the fee will continue, at a rate reduced equally proportionally as to each licensee, to the extent necessary to meet any City pledge obligations incurred as authorized by Section 6.06.215.

6.06.240 Request Annual CPI Increase to be Different than Calculated.

(Added by Ordinance No. 185495; amended by Ordinance No. 187339, effective October 16, 2015.)

- A. The contractor's Board of Directors may recommend that the annual CPI adjustment be set to an amount other than the CPI calculation, but not less than zero for a license year.
 1. The Board must pass a resolution during a regular board meeting and submit the resolution, any minutes from the meeting and the results of the vote to the Revenue Division no later than June 10th. The resolution must contain the following information:

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- a. The reason why the board is requesting the annual CPI adjustment to be set at a rate that is different than calculated;
 - b. What the CPI adjustment amount for the license year should be; and
 - c. The impact on the upcoming budget that will result if a different CPI adjustment is made, specifically as it relates to contract employee wages and contract service levels.
 - d. The impact to District services.
2. The Revenue Division will review the information from the contractor's Board of Directors and evaluate impacts to contract employee wages to ensure wages for these employees do not decrease inappropriately as a result of a lower CPI adjustment. The Revenue Division will make a recommendation to City Council if a different CPI adjustment is warranted for the upcoming license year.
 3. City Council must approve a different CPI adjustment prior to August 1st;
 4. An approved different CPI adjustment will apply to the license year that begins on October 1st.
- B.** Once one or more different CPI adjustments have been approved by City Council, the Revenue Division has authority to adjust the CPI component in the fee rate formulas in Subsections 6.06.200 A.9., and 6.06.210 A.6. The Revenue Division will document via written policy all changes to the CPI calculation as a result of City Council approval and this policy will supersede the calculation defined in Subsection 6.06.020 E.

6.06.250 Lloyd District.

(Amended by Ordinance No. 186356, effective November 27, 2013.) The Lloyd District is that area within the boundaries formed by the Willamette River, from the Broadway Bridge to the point just south of the Oregon Convention Center at which NE Lloyd Boulevard reaches the River; NE Lloyd Boulevard, from the Willamette River to NE 16th Avenue; NE 16th Avenue curving into NE 15th Avenue, from NE Lloyd Boulevard to NE Halsey Street; NE Halsey Street, from NE 15th Avenue to NE Grand Avenue; NE Grand Avenue, from NE Halsey Street to NE Broadway; and NE Broadway, from NE Grand Avenue to the Willamette River.

6.06.260 Lloyd Business District Fee Rates for Engaging in Property Management Activities.

(Amended by Ordinance Nos. 176262, 176955, 182925, 185495 and 186356, effective November 27, 2013.)

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- A.** Except as set out in Subsection B. of this Section, the fee established by this Chapter for management of business and residential property in the Lloyd District for a license year will be the sum of the following amounts, computed separately in relation to each such property within the District as to which the licensee is engaged in property management activities:
1. \$.40 (cents) per \$1,000 of assessed value of improvements for the 2010-2011 property tax assessment year;
 2. Plus \$2.25 per 290 square feet of improvements as of July 1, 2010;
 3. Plus \$.015 (cents) per square foot of land as of July 1, 2010.
 4. Plus the total of the amounts determined under Subsections A.1. through A.3. multiplied by a 2.3 percent annual escalator for license years commencing on or after February 1, 2015.
- B.** In relation to business and residential property other than exempt residential property where physical changes to the property on or after July 1, 2010 have resulted in an increase or decrease in square footage of improvements, as compared to the square footage as of July 1, 2010, the fee established by this Chapter, for management of such property in the Lloyd District in a license year, will be as provided in this Subsection:
1. During the period between the date the City Bureau of Development Services issues an authorization, documentable by written documentation, to occupy the improvements, or during the period between 180 days after the date the Bureau of Development Services issues such an authorization to occupy any portion of the improvements that was not occupied while the physical changes were being made, and the date of beginning of the license year following the first property tax assessment year in which the assessment roll reflects the physical changes, the fee otherwise payable during the period will be adjusted to the following amount, prorated based on the number of days of the period in the applicable license year:
 - a. The amount determined under Subsection A.1., plus \$.40 (cents) per \$1,000 of the cost of the physical changes, as determined from the City Bureau of Development Services records of all building permits issued authorizing or in association with the physical changes;
 - b. Plus the amount determined under Subsection A.2., plus \$2.25 per 290 additional square feet of improvements, resulting from the physical changes, as determined from the City Bureau of

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- a.** Each property manager’s fee will first be computed as though the property manager was subject to the fee for the entire property. That amount will then be multiplied by a fraction, the numerator of which is the square footage of the area for which the property manager is engaged in property management activities subject to the fee (including land or improvements, as applicable), and the denominator of which is the square footage of the entire real property parcel (including land or improvements, as applicable); and
 - b.** If there are common area improvements in a property subject to Subsection a. above, then in computing square footage of each property manager’s improvements, such square footage will be deemed to include an allocated portion of the common area improvements. The allocated portion of common area improvements will be determined by multiplying the square footage of common area improvements by a fraction, the numerator of which is the square footage of the property improvements subject to this fee for each district manager, and the denominator of which is the square footage of all improvements on the property less the square footage of the common area improvements.
- D.** Notwithstanding the amount of the fee computed under Subsections A., B., and C., of this Section, in no case will the fee payable by a licensee, in relation to all real property within the Lloyd District as to which the licensee is engaged in property management activities, exceed \$35,000 for non-residential zoned property and \$8,500 for non-exempt residential zoned property.
- E.** The Lloyd District license requirements will not apply to exempt property. For purposes of this Section, “exempt property” means exempt property as defined in Section 6.06.020 I. and also means exempt residential property. For purposes of this Section, “exempt residential property” means a dwelling unit as defined in Chapter 33.910 of this Code that is owner-occupied and has its own separate water service; single room occupancy housing, as defined in Chapter 33.910 of this Code; low income housing; and subsidized housing. For purposes of this Subsection, low income housing is dwelling units available for rent at rates that are considered affordable, under federal affordability standards in effect on July 1, 1997, to persons earning 60 percent or less of the Portland region median income as identified in the records of Metro as of July 1 of each year. For purposes of this Subsection, subsidized housing is housing units available for rent at below market rates because either the units qualify for federal income tax benefits under Section 42 of the Internal Revenue Code, as in effect on January 1, 1997; or the units are subsidized through United States Department of Housing and Community Development Section 8 subsidies, as in effect on January 1, 1997, or other public or private organization subsidies. Subsidized housing includes but is not limited to student housing owned by the Oregon State System of Higher Education and housing

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owned by non-profit organizations that is subsidized through charitable contributions and grants.

- F. For purposes of this Section only, the terms "square feet of improvements" and "square footage of improvements" will not include:
1. Surface and structured parking lot area;
 2. Landscaped area;
 3. Unenclosed sidewalk, plaza, and courtyard area; and
 4. Below grade area unless improved for occupancy by employees or tenants.

6.06.270 Revisions to License Fee Year Schedule.

(Amended by Ordinance Nos. 178073, 185495, 186356 and 187339, effective October 16, 2015.) Notwithstanding that Sections 6.06.010 through 6.06.180 are based on a license fee year of October 1 through September 30, the license fee year for the Lloyd District will be February 1 through January 31, with the first license fee year to commence February 1, 2001. Therefore, the due dates set out in Sections 6.06.010 through 6.06.180, for purposes of the Lloyd District, will be February 15 and September 15 except that the August 1 date set out in Section 6.06.090 will be January 5. Any other dates are also changed to provide at least 30 days notice before a due date and may be clarified by the Revenue Division in a written policy.

6.06.280 Lloyd District Periodic Sunset Review.

(Replaced by Ordinance No. 178073; amended by Ordinance Nos. 185495 and 186356, effective November 27, 2013.) During 2013 and each tenth year thereafter, the City Council will conduct a public hearing or hearings to determine whether the Lloyd District property management license fee should be terminated. Prior to the first such hearing in 2013 and in each tenth year thereafter, the City will mail notice of the hearing to the then current Lloyd District licensees under this Chapter.

6.06.290 Lloyd District Early Termination.

(Added by Ordinance No. 178073; amended by Ordinance Nos. 185495 and 186356, effective November 27, 2013.) If the City Council, on or before July 31 of any license fee year, receives written objections signed in that license fee year by licensees responsible for more than 33 percent of the total revenues generated from the Lloyd District property management license fee during that year, then the license fee for the Lloyd District will be terminated as of January 31 of that license fee year.

6.06.300 Request That Annual Lloyd District Escalator Be Lowered.

(Added by Ordinance No. 186356; amended by Ordinance No. 187339, effective October 16, 2015.)

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- A.** The Lloyd District contractor’s Board of Directors may recommend that the annual 2.3 percent escalator adjustment be set to an amount lower than 2.3 percent for a particular license year.
- 1.** The Board must pass a resolution during a regular board meeting and submit the resolution, any minutes from the meeting and the results of the vote to the Revenue Division no later than October 10th. The resolution must contain the following information:
 - a.** The reason why the board is requesting the annual escalator adjustment be set at a rate that is lower than 2.3 percent;
 - b.** What the Board recommends as the appropriate escalator amount for the license year;
 - c.** The impact on the upcoming budget that will result if a lower escalator adjustment is made, specifically as it relates to contract employee wages and contract service levels; and
 - d.** The impact to District services.
 - 2.** The Revenue Division will review the information from the Lloyd District contractor’s Board of Directors and evaluate impacts to contract employee wages to ensure wages for these employees do not decrease inappropriately as a result of a lower escalator adjustment. The Revenue Division will make a recommendation to City Council if a lower escalator adjustment is warranted for the upcoming license year.
 - 3.** City Council must approve a lower escalator adjustment prior to December 1st.
 - 4.** An approved lower escalator adjustment will apply to the next license year that begins on February 1st.
- B.** City Council’s approval to decrease the annual escalator for any given year has no effect on future years, and the District contractor’s Board must follow the process outlined in Subsection A.1. of this Section for each year it wishes to recommend a rate lower than the prescribed 2.3 percent escalator.

6.06.310 Central Eastside Industrial District.
(Added by Ordinance No. 189374, effective April 8, 2019.)

- A.** The Central Eastside Industrial District is that area within the boundaries formed by:

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1. Northern Boundary: The south side of I-84 between the Willamette River and east side of SE 12th Avenue;
 2. Southern Boundary: SE Division Place, north side between I-99 and Willamette River; SE Division Street, including the properties on the south side between SE Grand and SE 10th Avenues; both sides between SE 10th and SE 12th Avenues; and SE Hawthorne, including the properties on the south side between SE 10th and SE 11th Avenues, and north side between SE 11th and SE 12th Avenues;
 3. Eastern Boundary: SE 10th Avenue, west side between SE Hawthorne Blvd and SE Division Street; SE 12th Avenue, west side between I-84 and SE Stark Street; including the properties on the east side between SE Stark Street and SE Hawthorn Blvd; I-99, west side between SE Division Place and SE Division Street; and
 4. Western Boundary: Willamette River, between I-84 and north side of SE Division Place.
- B.** The District shall also include the properties immediately on both sides of SE Division Street between SE 10th and SE 12th Avenues and the area within the west side of SE 12th Ave between SE Division Street and SE Ivon Street.
- C.** The District Shall also include the property at 1401 SE Morrison Street.

6.06.320 Central Eastside Industrial District Fee Rates for Engaging in Property Management Activities.

(Added by Ordinance No. 189374, effective April 8, 2019.)

- A.** Except as set out in Subsection B. of this Section, the fee established by this Chapter for management of business and residential property in the Central Eastside Industrial District for a license year will be the sum of the following amounts, computed separately in relation to each such property within the District as to which the licensee is engaged in property management activities:
1. \$.45 (cents) per \$1,000 of assessed value of improvements as of July 1, 2017;
 2. Plus \$3.50 per 290 square feet of improvements less parking structures(s) as of July 1 2017;
 3. Plus \$.02 (cents) per square foot of land as of July 1, 2017.
 4. Plus the total of the amounts determined under Subsections A.1. through A.3. multiplied by a 2.3 percent annual escalator for license years commencing on or after July 1, 2020.

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- B.** In relation to business and residential property other than exempt residential property where physical changes to the property on or after July 1, 2017 have resulted in an increase or decrease in square footage of improvements, as compared to the square footage as of July 1, 2017, the fee established by this Chapter, for management of such property in the Central Eastside Industrial District in a license year, will be as provided in this Subsection:
- 1.** During the period between the date the City Bureau of Development Services issues an authorization, documentable by written documentation, to occupy the improvements, or during the period between 180 days after the date the Bureau of Development Services issues such an authorization to occupy any portion of the improvements that was not occupied while the physical changes were being made, and the date of beginning of the license year following the first property tax assessment year in which the assessment roll reflects the physical changes, the fee otherwise payable during the period will be adjusted to the following amount, prorated based on the number of days of the period in the applicable license year:
 - a.** The amount determined under Subsection A.1., plus \$.45 (cents) per \$1,000 of the cost of the physical changes, as determined from the City Bureau of Development Services records of all building permits issued authorizing or in association with the physical changes;
 - b.** Plus the amount determined under Subsection A.2., plus \$3.50 per 290 additional square feet of improvements, resulting from the physical changes, as determined from the City Bureau of Development Services records of building permits issued authorizing or in association with the physical changes;
 - c.** Plus the amount determined under Subsection A.3.
 - 2.** Beginning with the license year following the first property tax assessment year in which the assessment roll reflects the physical changes, the fee will be:
 - a.** \$.45 (cents) per \$1,000 of assessed value of improvements for the first property tax assessment year in which the assessment roll reflects the physical changes or would reflect the changes were the property not assessed by the Oregon Department of Revenue;
 - b.** Plus \$3.50 per 290 square feet of improvements, as of July 1 of the first property tax assessment year in which the assessment roll reflects the physical changes or would reflect the changes were the property not assessed by the Oregon Department of Revenue;

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is the square footage of the property improvements subject to this fee for each district manager, and the denominator of which is the square footage of all improvements on the property less the square footage of the common area improvements.

- D.** The Central Eastside Industrial District license requirements will not apply to exempt property. For purposes of this Section, “exempt property” means exempt property as defined in subsection 6.06.020 I. and also means exempt residential property. For purposes of this Section, “exempt residential property” means a dwelling unit as defined in Chapter 33.910 of this Code that is owner-occupied and has its own separate water service.
- E.** The Central Eastside Industrial District license fee requirement will be reduced by 50 percent per license year for non profit organizations organized under section 501 of the U.S. Tax Code.
- F.** The Central Eastside Industrial District license fee requirement will be reduced by 50 percent per license year for low income housing. For purposes of this Subsection, low income housing is dwelling units available for rent at rates that are considered affordable, under federal affordability standards in effect on July 1, 1997, to persons earning 60 percent or less of the Portland region median income as identified in the records of Metro as of July 1 of each year.
- G.** For purposes of this Section 6.06.320 only, the terms "square feet of improvements" and "square footage of improvements" will not include:
 - 1.** Surface and structured parking lot area;
 - 2.** Landscaped area;
 - 3.** Unenclosed sidewalk, plaza, and courtyard area; and
 - 4.** Below grade area unless improved for occupancy by employees or tenants.

6.06.330 Revisions to License Fee Year Schedule.

(Added by Ordinance No. 189374, effective April 8, 2019.) Notwithstanding that Sections 6.06.010 through 6.06.180 are based on a license fee year of October 1, through September 30, the license fee year for the Central Eastside Industrial District will be July 1, through June 30, with the first license fee year to commence July 1 2019. Therefore, the due dates set out in Sections 6.06.010 through 6.06.180, for purposes of the Central Eastside Industrial District, will be July 1 and February 1 except that the August 1 date set out in Section 6.06.090 will be May 1st. Any other dates are also changed to provide at least 30 days notice before a due date and may be clarified by the Revenue Division in a written policy.

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6.06.340 Central Eastside Industrial District Periodic Sunset Review.

(Added by Ordinance No. 189374, effective April 8, 2019.) During the license year ending 2022 and each tenth year thereafter, the City Council will conduct a public hearing or hearings to determine whether the Central Eastside Industrial District property management license fee should be terminated. Prior to the first such hearing in the license year ending 2022 and in each tenth year thereafter, the City will mail notice of the hearing to the then current Central Eastside Industrial District licensees under this Chapter.

6.06.350 Central Eastside Industrial District Early Termination.

(Added by Ordinance No. 189374, effective April 8, 2019.) If the City Council, on or before June 30, of any license fee year, receives written objections signed in that license fee year by licensees responsible for more than 33 percent of the total revenues generated from the Central Eastside Industrial District property management license fee during that year, then the license fee for the Central Eastside Industrial District will be terminated as of June 30 of that license fee year.

6.06.360 Request That Annual Central Eastside Industrial District Escalator Be Lowered.

(Added by Ordinance No. 189374, effective April 8, 2019.)

- A. The Central Eastside Industrial District contractor's Board of Directors may recommend that the annual 2.3 percent escalator adjustment be set to an amount lower than 2.3 percent for a particular license year.
1. The Board must pass a resolution during a regular board meeting and submit the resolution, any minutes from the meeting and the results of the vote to the Revenue Division no later than March 10th. The resolution must contain the following information:
 - a. The reason why the Board is requesting the annual escalator adjustment be set at a rate that is lower than 2.3 percent;
 - b. What the Board recommends as the appropriate escalator amount for the license year;
 - c. The impact on the upcoming budget that will result if a lower escalator adjustment is made, specifically as it relates to contract employee wages and contract service levels; and
 - d. The impact to District services.
 2. The Revenue Division will review the information from the Central Eastside Industrial District contractor's Board of Directors and evaluate impacts to contract employee wages to ensure wages for these employees do not decrease inappropriately as a result of a lower escalator adjustment.

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The Revenue Division will make a recommendation to City Council if a lower escalator adjustment is warranted for the upcoming license year.

- 3.** City Council must approve a lower escalator adjustment prior to April 1st.
 - 4.** An approved lower escalator adjustment will apply to the next license year that begins on July 1st.
- B.** City Council's approval to decrease the annual escalator for any given year has no effect on future years, and the District contractor's Board must follow the process outlined in Subsection A.1. of this Section for each year it wishes to recommend a rate lower than the prescribed 2.3 percent escalator.

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**CHAPTER 6.07 - TAX ON RECREATIONAL
MARIJUANA SALES**

(Chapter added by Ordinance No. 186857; amended by Resolution No. 37217 (approved at November 8, 2016 election); effective November 8, 2016.)

Sections:

- 6.07.010 Purpose.
- 6.07.020 Definitions.
- 6.07.030 Levy of Tax.
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- 6.07.040 Deductions.
- 6.07.050 Seller Responsible for Payment of Tax.
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- 6.07.130 Audit of Books, Records or Persons.
- 6.07.140 Forms and Regulations.
- 6.07.145 Net Revenues Distribution.
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6.07.010 Purpose.

(Amended by Resolution No. 37217 (approved at November 8, 2016 election); effective November 8, 2016.) For the purposes of PCC 6.07, every person who sells recreational marijuana, or recreational marijuana-infused products, to consumers within the City is exercising a taxable privilege. The purpose of PCC 6.07 is to impose a tax upon recreational marijuana and recreational marijuana-infused product sales to consumers within the City.

6.07.020 Definitions.

(Amended by Resolution No. 37217 (approved at November 8, 2016 election); effective November 8, 2016.) When not clearly otherwise indicated by the context, the following words and phrases as used in PCC 6.07 have the following meanings:

- A. “Director”** means the director of the Revenue Division of the Bureau of Revenue and Financial Services or his/her designee, and includes any Person or entity with whom the City contracts to administer and enforce the Marijuana Tax program or a portion thereof.

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- B.** “**Consumer**” means a person who purchases, acquires, owns, holds or uses marijuana other than for the purpose of resale.
- C.** “**Marijuana**” means the plant of the Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae. “Marijuana” includes cannabinoid products, cannabinoid concentrates and cannabinoid extracts as those terms are defined in ORS 475B.015. Marijuana does not include industrial hemp, as defined in ORS 571.300.
- D.** “**Oregon Medical Marijuana Program**” means the office within the Oregon Health Authority that administers the provisions of ORS 475B.400 to 475B.525, the Oregon Medical Marijuana Act, and all policies and procedures pertaining thereto.
- E.** “**Person**” means a natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit, including the United States of America, the state and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.
- F.** “**Retail sales price**” means the price paid for marijuana, excluding tax, to a Seller by or on behalf of a Consumer of marijuana.
- G.** “**Retail Sale**” means any transfer, exchange, gift or barter of marijuana by a seller to a consumer.
- H.** “**Seller**” means any person who is required to be licensed or has been licensed under ORS 475B.110 to sell marijuana to a consumer within the City of Portland.
- I.** “**Tax**” means either the tax payable by the Seller or the aggregate amount of taxes due from a Seller during the period for which the Seller is required to report collections under PCC 6.07.
- J.** “**Taxpayer**” means any person obligated to account to the Director for taxes collected or to be collected, or from whom a tax is due, under the terms of PCC 6.07.

6.07.030 Levy of Tax.

(Amended by Resolution No. 37217 (approved at November 8, 2016 election); effective November 8, 2016.)

- A.** Every Seller exercising the taxable privilege of retail sales of marijuana within the City of Portland is subject to and must pay a tax for exercising that privilege.
- B.** The amount of tax levied is as follows: Three percent of the retail sales price paid to the Seller in a retail sale of marijuana to any Consumer.

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6.07.035 Exemption of Medical Marijuana Cardholders from Marijuana Tax.

(Added by Resolution No. 37217 (approved at November 8, 2016 election); effective November 8, 2016.)

- A.** As used in this Section, “designated primary caregiver,” “registry identification card” and “registry identification cardholder” have the meanings given those terms in ORS 475B.410.
- B.** Notwithstanding Section 6.07.030:
 - 1.** A tax is not imposed upon the retail sale of marijuana in the City of Portland by a Seller to a registry identification cardholder or to a designated primary caregiver who is purchasing marijuana for a registry identification cardholder; and
 - 2.** A Seller may not collect the tax imposed under Section 6.07.030 from a Consumer if, at the time at which the retail sale of the marijuana occurs, the Consumer provides proof to the Seller that the Consumer:
 - a.** Holds a valid registry identification card under ORS 475B.415; or
 - b.** Holds a valid identification card under ORS 475B.415 (5)(b) and is purchasing the marijuana for a registry identification cardholder.

6.07.040 Deductions.

(Amended by Resolution No. 37217 (approved at November 8, 2016 election); effective November 8, 2016.) The following deductions are allowed against sales received by the Seller providing marijuana:

- A.** Refunds of sales actually returned to any Consumer;
- B.** Any adjustments in sales that amount to a refund to a Consumer, providing such adjustment pertains to the actual sale of marijuana and does not include any adjustments for other services furnished by a Seller.

6.07.050 Seller Responsible for Payment of Tax.

(Amended by Ordinance No. 188215, effective March 3, 2017.)

- A.** Every Seller must, on or before the last day of the month following the end of each calendar quarter (in the months of April, July, October and January) make a return to the Director, on forms provided by the Revenue Division or designee, specifying the total sales subject to PCC 6.07 and the amount of tax collected under PCC 6.07. The Seller may request, or the Director may establish, shorter reporting periods for any Seller if the Seller or Director deems it necessary in order to ensure collection of the tax. The Director may require further information in the return relevant to the

payment of the tax. A return is not considered filed until it is actually received by the director.

- B.** The Seller must remit to the Director the full amount of the tax collected for each month by the last day of the subsequent month. Payments must be remitted with forms provided by the Revenue Division or designee, specifying the total sales subject to PCC 6.07 and the amount of tax collected under PCC 6.07. Payments received by the Director for application against existing liabilities will be credited toward the period designated by the Taxpayer under conditions that are not prejudicial to the interest of the City. A condition considered prejudicial is the imminent expiration of the statute of limitations for a period or periods.
- C.** The City will apply non-designated payments in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax.
- D.** If the Director, in his or her sole discretion, determines that an alternative order of payment application would be in the best interest of the City in a particular tax or factual situation, the Director may order such a change. The Director also may require additional information in the return relevant to payment of the liability. When a shorter return period is required, penalties and interest will be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. Sellers must hold in trust all taxes collected pursuant to PCC 6.07 on the City's behalf until the Seller makes payment to the Director. A separate trust bank account is not required in order to comply with this provision, unless the Director determines one necessary to ensure collection of the tax.
- E.** Every Seller must keep and preserve in an accounting format established by the Director records of all sales made by the Seller and such other books or accounts as the Director may require. Every Seller must keep and preserve for a period of three years after the tax was due or paid, whichever is later, all such books, invoices and other records. The Director has the right to inspect all such records at all reasonable times.

6.07.060 Penalties and Interest.

(Amended by Resolution No. 37217 (approved at November 8, 2016 election) and Ordinance Nos. 188215 and 189004, effective July 1, 2018.)

- A.** Any Seller who fails to remit any portion of any tax imposed by PCC 6.07 within the time required must pay a penalty of 5 percent of the unpaid tax, in addition to the amount of the tax.

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- B.** If any Seller fails to file any return for a period in excess of one month after the return due date, there shall be added to the amount of tax required to be shown on the return a failure to file penalty of 20 percent of the amount of the tax. Thereafter the Director or designee may send a notice and demand to the person to file a report or return within 30 days of the mailing of the notice. If after the notice and demand no report or return is filed within the 30 days, the Director or designee may determine the tax according to the best of its information and belief, assess the tax with appropriate penalty and interest plus an additional penalty of 25 percent of the tax deficiency determined by the department and give written notice of the determination and assessment to the person required to make the filing.
- C.** In addition to the penalties stated in PCC 6.07.060 A. and PCC 6.07.060 B., if tax returns are not filed by the due date for three consecutive years, a penalty of 100 percent of the unpaid tax will be assessed for each year.
- D.** If the Director determines that the nonpayment of any remittance due under PCC 6.07 is due to fraud, a penalty of 25 percent of the entire amount of the tax will be added thereto in addition to the penalties stated in PCC 6.07.060 A., PCC 6.07.060 B. and PCC 6.07.060 C.
- E.** In addition to the penalties imposed, any Seller who fails to remit any tax imposed by PCC 6.07 must pay interest at the annual rate of 5 percent on the amount of unpaid tax from the date on which the remittance first became delinquent until paid. The interest rate will remain at 5 percent unless this rate is adjusted under the administrative authority of the Director or designee to reflect then current national market conditions for interest rates.
- F.** All sums collected, including penalty and interest, will be distributed to the City's Recreational Cannabis Tax Fund.
- G.** Penalties for certain late tax payments may be waived or reduced pursuant to policies and processes adopted by the Director.

6.07.070 Failure to Report and Remit Tax – Determination of Tax by Director.

(Amended by Ordinance No. 188215, effective March 3, 2017.)

- A.** If any Seller fails to make any report of the tax required by PCC 6.07 within the time provided in PCC 6.07, the Director may proceed to obtain facts and information on which to base the estimate of tax due. As soon as the Director procures such facts and information upon which to base the assessment of any tax imposed by PCC 6.07 and payable by any Seller, the Director may determine and assess against such Seller the tax, interest and penalties provided for by PCC 6.07.
- B.** If the Director makes a determination as outlined in PCC 6.07.070 A., the Director must give notice to the Seller of the amount assessed. The notice must be personally

served on the Seller or deposited in the United States mail, postage prepaid, addressed to the Seller at the last known place of address.

- C. The Seller may appeal the determination as provided in PCC 6.07.080. If no appeal is timely filed, the Director's determination is final and the amount assessed is immediately due and payable.

6.07.080 Appeal.

(Amended by Ordinance No. 188215, effective March 3, 2017.)

- A. Any Seller aggrieved by any decision of the Director with respect to the amount of the tax owed along with interest and penalties, if any, may appeal the decision to the Director or designee.
- B. The Seller must follow the administrative appeal process that is set forth by the Director or designee.

6.07.090 Credits/Refunds.

(Amended by Ordinance No. 188215, effective March 3, 2017.)

- A. The Director may credit to the Seller any tax, interest or penalty amount under any of the following circumstances:
 - 1. The Seller has overpaid the correct amount of tax, interest or penalty; or
 - 2. The Seller has paid more than once for the correct amount owed; or
 - 3. The City has erroneously collected or received any tax, interest or penalties.
- B. If the Director determines the claim is valid, the claimant may take as credit against taxes collected and remitted the amount that was overpaid, paid more than once, or erroneously received or collected by the City.
- C. In cases where a there is no future filing to claim the credit or other circumstances where a credit amount should be refunded, the claimant may petition the director to have the credit amount refunded to the claimant.

6.07.100 Actions to Collect.

Any tax required to be paid by any Seller under the provisions of PCC 6.07 is a debt owed by the Seller to the city. Any tax collected by a Seller that has not been paid to the City is a debt owed by the Seller to the City. Any person owing money to the City under the provisions of PCC 6.07 is liable to an action brought in the name of the City of Portland for the recovery of the amount owing. In lieu of filing an action for the recovery, the City, when taxes due are more than 30 days delinquent, may submit any outstanding tax to a collection agency. So long as the City has complied with the provisions set forth in ORS

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697.105, if the City turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency fees.

6.07.110 Violation Infractions.

- A.** All violations of PCC 6.07 are also subject to civil penalties of up to \$2,000 per occurrence. It is a violation of PCC 6.07 for any Seller or other person to:
 - 1.** Fail or refuse to comply as required herein;
 - 2.** Fail or refuse to furnish any return required to be made;
 - 3.** Fail or refuse to permit inspection of records;
 - 4.** Fail or refuse to furnish a supplemental return or other data required by the director;
 - 5.** Render a false or fraudulent return or claim; or
 - 6.** Fail, refuse or neglect to remit the tax to the City by the due date.
- B.** The remedies provided by PCC 6.07 are not exclusive and do not prevent the City from exercising any other remedy available under the law.
- C.** The remedies provided by this section do not prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or city ordinance.

6.07.120 Confidentiality.

(Amended by Resolution No. 37217 (approved at November 8, 2016 election); effective November 8, 2016.) Except as otherwise required by law, it is unlawful for the City, any officer, employee or agent to divulge, release or make known in any manner any financial information submitted or disclosed to the City under the terms of PCC 6.07. Nothing in PCC 6.07.120 prohibits any of the following:

- A.** The disclosure of the names and addresses of any person who is operating a licensed establishment from which marijuana is sold or provided; or
- B.** The disclosure of general statistics in a form which would not reveal an individual Seller's financial information; or
- C.** Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the Director or an appeal from the Director for amounts due the city under PCC 6.07; or

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- D.** The disclosure of information to a collection agency in order to collect any delinquent tax amount; or
- E.** The disclosure of records related to a business' failure to report and remit the tax when the report or tax is in arrears for over six months or when the tax exceeds \$5,000. The Council expressly finds that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).
- F.** The Revenue Division may also disclose and give access to information described in PCC 6.07.120 to:
 - 1.** The City Attorney, his or her assistants and employees, or other legal representatives of the City, to the extent the Revenue Division deems disclosure or access necessary for the performance of the duties of advising or representing the Revenue Division, including but not limited to instituting legal actions on unpaid accounts.
 - 2.** Other employees, agents and officials of the City, to the extent the Revenue Division deems disclosure or access necessary for such employees, agents or officials to:
 - a.** Aid in any legal collection effort on unpaid accounts,
 - b.** Perform their duties under contracts or agreements between the Revenue Division and any other department, bureau, agency or subdivision of the City or state relating to the administration of PCC 6.07, or
 - c.** Aid in determining whether a Revenue Division account is in compliance with all city, state and federal laws or policies.

6.07.130 Audit of Books, Records or Persons.

The City may examine or may cause to be examined by an agent or representative designated by the City for that purpose, any books, papers, records, or memoranda, including copies of Seller's state and federal income tax return, bearing upon the matter of the Seller's tax return for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due. All books, invoices, accounts and other records must be made available within the city limits and be open at any time during regular business hours for examination by the director or an authorized agent of the director. If any Taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Director may immediately seek a subpoena from the court to require that the Taxpayer or a representative of the Taxpayer attend a hearing or produce any such books, accounts and records for examination.

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6.07.140 Forms and Regulations.

(Amended by Resolution No. 37217 (approved at November 8, 2016 election) and Ordinance No. 188215; effective March 3, 2017.)

- A. The Director is authorized to enter into contracts or agreements relating to the administration of PCC 6.07, including intergovernmental agreements with the State of Oregon as provided in ORS 305.620, and 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.
- B. Notwithstanding any other provisions in this Chapter, the State of Oregon, if appointed as the designee, may apply the provisions of ORS 475B.700 to ORS 475B.755 in the administration of the Portland tax.

6.07.145 Net Revenues Distribution.

(Added by Resolution No. 37217 (approved at November 8, 2016 election); amended by Ordinance No. 189004, effective July 1, 2018.) Net revenues remaining after collection, refunds, credits, and costs related to administration of the tax will be distributed by the City as follows:

- A. In the course of developing the City's budget, the Bureau of Revenue and Financial Services shall report the projected balance in the Recreational Cannabis Tax Fund at the beginning of the next fiscal year.
- B. Allocation of revenue from the Recreational Cannabis Tax Fund shall occur annually as part of the public budget adoption process followed by Council, with funding allocations made annually by City Council.
- C. These funds shall be allocated in the Adopted Budget for the following purposes:
 - 1. Drug and alcohol education and treatment programs, including but not limited to services that facilitate or increase access to drug and alcohol education and treatment, and programs that support rehabilitation and employment readiness.
 - 2. Public safety, including police, fire, and transportation safety purposes that protect community members from unsafe drivers. Examples include but are not limited to police DUII training and enforcement, support for firefighter paramedics, street infrastructure projects that improve safety, and other initiatives to reduce impacts of drug/alcohol abuse.

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3. Support for neighborhood small businesses, especially women-owned and minority-owned businesses, including but not limited to business incubator programs, management training, and job training opportunities; and providing economic opportunity and education to communities disproportionately-impacted by cannabis prohibition.

6.07.150 Invalidation.

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.

6.07.155 Effective Date.

(Added by Resolution No. 37217 (approved at November 8, 2016 election); effective November 8, 2016.) This Chapter will be in full force and effect upon approval by the voters in the November 8, 2016 election. The tax levied in PCC 6.07.030 shall be imposed beginning on and after January 1, 2017. The Director is authorized to collect amounts receivable under this Chapter for taxes, interest and penalties.

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**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.
- 6.08.070 Failure to Pay.
- 6.08.080 Statement of Entire Value of Improvement Required.
- 6.08.090 Interest and Penalties for Failure to Comply.
- 6.08.100 Enforcement by Civil Action.
- 6.08.110 Refunds.
- 6.08.120 Appeals.
- 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.

(Amended by Ordinance No. 189078, effective July 18, 2018.)

- 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

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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 Community & Civic Life 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 Community & Civic Life. 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;

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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

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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.

CHAPTER 6.09 - NIGHTLY FEE ON SHORT-TERM RENTALS

(Chapter added by Ordinance No. 189031, effective August 1, 2018.)

Sections:

- 6.09.005 Purpose.
- 6.09.010 Definitions.
- 6.09.020 Fee Imposed.
- 6.09.030 Administrative Authority.
- 6.09.040 Due Dates; Returns and Payments.
- 6.09.050 Registration.
- 6.09.060 Penalties and Interest.
- 6.09.070 Administration and Recordkeeping.
- 6.09.080 Deficiency Determinations; Redeterminations.
- 6.09.090 Business License Appeals Board; Hearings Officer; Appeal; Rules.
- 6.09.100 Civil Penalties.

6.09.005 Purpose.

All Booking Agents and Transient Lodging Intermediaries that facilitate the rental of Short-Term Rentals will be charged a fee each night a Guest rents a room. This fee is separate from the transient lodging tax authorized by the Portland City Charter and Chapter 6.04. The revenues from this fee will be used to fund affordable housing and homelessness initiatives in the Portland area.

6.09.010 Definitions.

Except where the context otherwise requires, the definitions given in this Section govern the construction of this Chapter.

- A. “Booking Agent” has the same meaning as the term defined in Section 6.04.010.
- B. “Division” means the Revenue Division of the City of Portland Bureau of Revenue and Financial Services, along with its employees and agents;
- C. “Division Director” and “Director” means the director of the Revenue Division of the City of Portland Bureau of Revenue and Financial Services or designee;
- D. “Guest” means a person who rents one or more rooms in a Short-Term Rental on a temporary basis, for any number of days. Any person who signs a monthly rental or fixed-term lease agreement is not considered to be a Guest, but is considered a tenant exercising Long-Term Occupancy.
- E. “Host” means the owner, agent or person who resides at a Short-Term Rental or has been designated by the owner, agent or resident of the Short-Term Rental and

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who rents out the Short-Term Rental for transient lodging occupancy either directly or by using a Booking Agent or Transient Lodging Intermediary;

- F. “Hotel”, for purposes of Chapter 6.09 only, means a commercially zoned structure that was built or remodeled to operate as a hotel or motel for transient lodging purposes.
- G. “Long-Term Occupancy” means a rental agreement between a property owner and a tenant with the intention of the rental period being an extended period of time, often months or years, governed by a verbal or written monthly rental agreement or a lease. Long-Term Occupancy established a person’s primary residence for voting and income tax purposes.
- H. “Transient Lodging Occupancy” means the use or possession, or the right to the use or possession for lodging or sleeping purposes of any Short-Term Rental or portion thereof. Transient Lodging Occupancy does not establish or change a person’s primary residence
- I. “Online Booking Site” means a hosting or other online website that provides a means through which a Host may offer to rent a Short-Term Rental unit for transient lodging or other short-term occupancy;
- J. “Person” has the same meaning as defined in Section 6.04.010.
- K. “Rent” has the same meaning as defined in Section 6.04.010.
- L. “Room” has the same meaning as defined in Section 6.04.010.
- M. “Short-Term Rental” means a house, duplex, multi-plex, apartment, condominium, bed & breakfast, accessory dwelling unit, tiny house, houseboat, trailer or other residential dwelling where a person rents a full house or guest bedroom(s) for transient lodging occupancy. A Short-Term Rental is generally, but not always, zoned residential and has a residential building occupancy. Certain residential building occupancy may allow Transient Lodging Occupancy by right or by permit.
- N. “Transient Lodgings Intermediary” means any Transient Lodging Intermediary, Transient Lodging Tax Collector or Transient Lodging Provider as defined in ORS 320.300

6.09.020 Fee Imposed.

For the privilege of facilitating a Transient Lodging Occupancy of a Short-Term Rental within the City of Portland, a Booking Agent or Transient Lodging Intermediary shall pay to the City a fee of \$4 per night for each Transient Lodging Occupancy. This fee is due each night on any occupancy between one and 30 nights at a Short-Term Rental Accommodation. If the occupancy exceeds 30 continuous days, the fee is no longer due for any of the nights, and if collected, must be refunded to the Guest. This fee may be

passed onto the Guest if the receipt provided to the Guest separately states this nightly fee, identifying the fee as “Portland Housing and Homelessness Fee”. This fee is not assessed on Booking Agents or Transient Lodging Intermediaries who only facilitate the rental of rooms of a Hotel defined in Chapter 6.09. Additionally, Booking Agents or Transient Lodging Intermediaries who facilitate the rental of rooms of a Hotel as defined in Chapter 6.09, in addition to Short-Term Rentals are not required to collect this fee on Hotel room rentals.

6.09.030 Administrative Authority.

- A. The Revenue Division administers this Chapter. Nothing in this Chapter precludes the disposition of a controversy by stipulation or agreed settlement, through correspondence or a conference with the Director.
- B. The Director may implement procedures, forms and written policies for administering the provisions of this Chapter.
- C. The Director may adopt rules relating to matters within the scope of this Chapter or to obtain compliance with this Chapter.
 - 1. Before adopting a new rule, a public hearing must be held. The Director shall give reasonable notice of the hearing, not less than 10 nor more than 30 days before the hearing. The notice shall include the place, time, purpose of the public hearing, a brief description of the proposed rule(s) and where copies of the full text of the proposed rule(s) may be obtained.
 - 2. At the hearing, the Director must accept oral or written testimony concerning the proposed rule. The Director must either adopt the proposed rule, modify it or reject it, taking into consideration the testimony received during the hearing. Unless otherwise stated, all rules adopted by the Director are effective upon adoption.
 - 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.

6.09.040 Due Dates; Returns and Payments.

- A. The fee imposed by this Chapter is due and payable on or before the last day of the month for the preceding month or other reporting period allowed by the Division. Amounts due are considered delinquent on the first of the month, or in the case when the due date falls on a Sunday or legal holiday as defined by ORS 187.010, amounts are delinquent on the first business day that follows.

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- B. A return must be filed with the fee due on a form prescribed by the Division by the due date in Subsection A. above. Returns must show the amount of the fee owed for the period. The Division may require returns to include additional information to explain the fee calculation.
- C. The Booking Agent or Transient Lodging Intermediary required to file the return must deliver the return, together with the remittance of the fee amount due, to the Division at its office, either by personal delivery or mail. If the return is mailed, the postmark will be considered the day of delivery for determining delinquencies.
- D. For good cause, the Division may extend the time for making any return or payment of the fee due for one month. No further extension will be granted. Any Booking Agent or Transient Lodging Intermediary granted an extension will pay interest at the rate of 1.25 percent for the month on the amount of fee due without proration for a portion of a month or reduction for any prepayments or credits available. If an extension is granted and the assessment and interest due is not paid by the end of the extension period, then the interest will be added to the fee due for the computation of penalties and additional interest as detailed elsewhere in the Chapter.
- E. The Division, if deemed necessary in order to ensure payment or facilitate collection by the Division of the fee in any individual case, may require returns and payment of fees due for other than monthly periods. If a Booking Agent or Transient Lodging Intermediary is required to report on a different basis, the Division will provide a schedule showing the filing periods, due dates and delinquent dates.

6.09.050 Registration.

All Booking Agents and Transient Lodging Intermediaries that facilitate any Short-Term Rental reservations for Transient Lodging Occupancy must register with the Division. Failure to register with the Division does not relieve the Booking Agent or Transient Lodging Intermediary from the obligation to pay the fee. Registration must state the name under which the Booking Agent or Transient Lodging Intermediary transacts business, any affiliated companies or brands that are associated with the registration, the location of the place of business and other information necessary to facilitate the collection of the fee as the Division may require.

6.09.060 Penalties and Interest.

- A. **Original Delinquency.** Any Booking Agent or Transient Lodging Intermediary that has not been granted an extension of time for remittance of the fee due and who fails to remit any fee imposed by this Chapter on or before the due date will pay a late penalty of 10 percent of the amount of the fee due in addition to the fee. There is no grace period between the due date and the assessment of penalty and interest; the day following the due date is considered be the delinquent date.

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- B.** Continued Delinquency. Any Booking Agent or Transient Lodging Intermediary who fails to pay in full on or before the due date of an original delinquency notice will pay a second delinquency penalty of 15 percent of the amount of the fee due plus all penalty and interest assessments at the time of the continued delinquency.
- C.** Fraud. If the Division determines that the nonpayment of any amount due under this Chapter is due to fraud or intent to evade the provisions thereof, a penalty of 25 percent of the amount due will be added in addition to late penalties stated in Subsections A. and B. of this Section and interest stated in Subsection D. of this Section. This penalty is calculated on the entire amount due, including any penalties and interest previously assessed at the time of the calculation.
- D.** Interest. In addition to the penalties imposed above, any Booking Agent or Transient Lodging Intermediary that fails to file or pay any fee imposed by this Chapter will pay interest at the rate of 1 percent per month or fraction thereof without proration for portions of a month, on the amount due from the first day following the original due date. Interest shall be compounded monthly until the amount due is paid in full.
- E.** Penalties and interest merge with fee. Every penalty imposed and such interest as accrues under the provisions of this Section will be merged with and become a part of the fee required to be paid. If delinquency continues, requiring additional penalty and interest calculations, previously assessed penalty and interest are added to the fee due. This amount becomes the new base for calculation new penalty and interest amounts. This merging continues each month until the full balance is paid.
- F.** Petition for Waiver. Any Booking Agent or Transient Lodging Intermediary that fails to pay the fee within the time stated must pay the fee, penalties and interest assessed; however, the Booking Agent or Transient Lodging Intermediary may petition the Division for waiver and refund or credit of all or part of the penalty assessed and the Division may, if a good and sufficient reason is shown, waive some or all of the penalty assessment. Interest will not be waived except by written policy.

6.09.070 Administration and Recordkeeping.

- A.** Records. Booking Agents and Transient Lodging Intermediaries must keep appropriate records, including but not limited to accounting and bank records, detailed transaction information including Short-Term Rental location and number of nights rented during the period and any other documentation necessary to support the fee calculation and report filed or required to be filed. All records must be retained by the Booking Agent or Transient Lodging Intermediary for a period of 5 years and 6 months after the filing of the return, amended return or payment of the fee, whichever is later.

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- B.** Examination of records; investigations. The Division, or any person authorized in writing by it, may examine during normal business hours the books, papers, reservation records and accounting records relating to returns filed by Booking Agents or Transient Lodging Intermediaries, after notification by the Division and may investigate the business of the Booking Agent or Transient Lodging Intermediary in order to verify the accuracy of any return made or if no return is filed, to determine the amount required to be paid.
- C.** Should the City prevail in any legal proceedings in any state or federal court to collect the fees, penalties and interest assessed in accordance with this Chapter, the City shall be entitled to its reasonable costs and attorneys' fees.

6.09.080 Deficiency Determinations; Redeterminations.

- A.** Deficiency determinations. If the Division determines that a return is incorrect, that required reports or returns have not been filed or that a Booking Agent or Transient Lodging Intermediary has otherwise failed to comply with the terms of this Chapter, it may compute and determine or estimate the amount required to be paid based on the facts contained in the return or any other information reasonably within its possession. Once a deficiency determination is made, the amount is due and payable within 10 days. The Division may assess penalties and interest as set forth in Section 6.09.060.
 - 1.** The Booking Agent or Transient Lodging Intermediary may petition for a redetermination if the petition is filed with 10 days of the postmark date on the written deficiency notice. Nothing prohibits the Division from extending the time for petition beyond 10 days at its sole discretion.
 - 2.** Every deficiency determination must be made and notice mailed within five years after a return was originally filed, subsequently amended or the tax was paid, whichever period expires later. In the case of the filing of a false or fraudulent return with the intent to evade this Chapter, a failure to file a required return or willful refusal to remit the fee, a deficiency determination may be made, or a proceeding for the collection of such deficiency may be commenced at any time and is not subject to the 5-year limitation above.
- B.** Any Booking Agent or Transient Lodging Intermediary against whom a deficiency determination is made or civil penalties are assessed under Section 6.09.100 may petition for a redetermination within the time required in this Section. If a petition for redetermination is filed timely, the Director will consider the deficiency determination or civil penalties and, if requested in the petition, will grant an oral hearing and give 10 days' notice of the time and place of the hearing.

1. The Director may adjust the amount of the deficiency determination as a result of the hearing and, if an increase is determined, such increase will be payable immediately after the hearing.
 2. The Director's order or decision becomes final 10 days after service upon the petitioner unless an appeal is filed with the Business License Appeals Board or Hearings Officer, if applicable, within 10 days of the postmark date on the written order.
 3. No petition for redetermination or other appeal will be accepted and no petition or appeal is effective for any purpose unless the Booking Agent or Transient Lodging Intermediary has first paid in full the amount determined to be due in the deficiency determination or civil penalty assessment that is being appealed.
- C. Appeals of penalty and/or interest assessments are not subject to the appeals process outlined in Section 6.09.090. The decision of the Director regarding penalty and interest assessments is final.

6.09.090 Business License Appeals Board; Hearings Officer; Appeal; Rules.

Any Booking Agent or Transient Lodging Intermediary aggrieved by a decision of the Division or Director made pursuant to this Chapter may appeal as allowed in 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 Section 6.04.140 will apply to any such appeal.

6.09.100 Civil Penalties.

- A. The Director may impose a civil penalty of up to \$500 for failure to file a return or pay any fee within 60 days of the Due Date provided in Section 6.09.040.
- B. Failure to separately state on the guest receipt the per night privilege charge if the charge is being passed through to the guest as an additional charge or fee.
- C. The determination of a violation and imposition of a civil penalty under this Section shall be subject to appeal pursuant to Section 6.09.090.

- B.** A licensee may not deduct from the utility license fee the value of any right given to City to use poles, conduits, or ducts to other facilities in common with the licensee. A licensee may not deduct from the utility license fee any permit or inspection fee imposed under any Code provision or ordinance of the City.

7.14.080 Reports and Review of Records.

(Amended by Ordinance No. 189491, effective May 9, 2019.)

- A.** Each person paying a utility license fee shall simultaneously file a report to the Bureau in a form satisfactory to the Director. The report shall show the licensee's calculations of the license fee, the licensee's gross revenues earned within the corporate limits of the City, and any deductions against the licensee's gross revenues or the amount of the utility license fee. Such reports shall be verified by the licensee or an authorized agent to the effect that all statements made therein are true.
- B.** If a person asserts that any provision of federal, state or local law imposes a limit upon the amount of utility license fees which the City may impose or require from a licensee, the licensee claiming to be within such limitation shall identify in its utility license fee report the specific federal, state or local law, and the service it provides that it claims is subject to the exception.
- C.** The Director shall have authority to arrange for and conduct audits for all amounts paid under Section 7.14, provided that only payments which occurred during a period of 3 years prior to the date the City notifies licensee of its intent to perform an audit shall be subject to such audit. The Director shall make all requests related to the audit in writing. The Director may determinate the scope of audit in each instance.
- D.** The Director shall have authority to issue an administrative subpoena for the purpose of collecting any information necessary to enforce any provision of this chapter.
 - 1.** The Director may inspect, examine, copy and audit any books, papers, records, invoices, and other data needed to determine the accuracy of any license fee due. Such records and documentation shall be open for inspection or examination by the Director or a duly authorized agent. The Director shall have the authority, after notice, to:
 - a.** Require the attendance of any person required to be licensed under the Utility License Law, or officers, agents, or other persons with knowledge of the person's business operations, at any reasonable time and place the Director may designate;

7.14.090 Appeals.

(Amended by Ordinance No. 189491, effective May 9, 2019.)

- A.** Any person who has received a written determination from the Director applying the provisions of the Utility License Law may appeal such determination of the Director to the Business License Appeals Board of the City as provided in Section 7.02.290 of this Code.
- B.** The filing of any notice of appeal shall not stay the effectiveness of the Director's determination unless the Business License Appeals Board so directs.

7.14.100 Interest.

- A.** If a person fails to pay to the City all or any part of the utility license fee on or before the date on which the fee is due, 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 payment. Payment of interest charges shall be due at the same time as the unpaid utility license fee is due.
- B.** For purposes of calculating interest under Subsection 7.14.100 A., the amount of the utility license fee due shall be reduced by the amount of any fee payments received by the Bureau on or before the due dates for fee payment established in the Utility License Law.
- C.** Interest amounts properly assessed in accordance with this Section may not be waived or reduced by the Director.

7.14.110 Civil Penalties.

(Amended by Ordinance No. 187717, effective June 3, 2016.)

- A.** The Director may assess civil penalties for any of the following violations of the Utility License Law:
 - 1.** Any failure to file a license application at the time required under the Utility License Law;
 - 2.** Any failure to pay the utility license fee when due;
 - 3.** Any failure to file a utility license fee report when due;
 - 4.** Any failure to provide or make available all books, financial records, papers, invoices, documents, data and related information when required by the Director; or,

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- 5.** For any person to make any false statement on any license application or utility license fee report or to provide false information in any investigation or audit conducted pursuant to the Utility License Law.
- B.** The Director may assess civil penalties for any violation under Subsection 7.14.110 A. of the greater of either a minimum of \$500 per occurrence or up to two percent (2%) of the utility's gross revenues subject to the Utility License Law for the period during which the violation occurred.
- C.** The Director may assess a civil penalty of \$500 if a person fails to file a reporting form as required under Section 7.14.080.
- D.** In assessing civil penalties under this Section, the Director shall produce a written decision, identifying the violation, the amount of the penalty, and the basis for the decision. In making such determination, the Director shall consider the following criteria:

 - 1.** The extent and nature of the violation;
 - 2.** Any benefits to the licensee and any impacts to the City or the general public, financial or otherwise, resulting from the violation;
 - 3.** Whether the violation was repeated and continuous, or isolated and temporary;
 - 4.** Whether the violation appeared willful (characterized primarily by substantial acts of commission) or negligent (characterized primarily by substantial acts of omission);
 - 5.** The magnitude and seriousness of the violation;
 - 6.** The City's costs of investigating the violation and correcting or attempting to correct the violation; and,
 - 7.** Any other factors the Director deems relevant in the particular case.
- E.** The Director may impose civil penalties under this Section only after having given written notice of the potential for assessment of civil penalties identifying the violation serving as the basis for the assessment.
- F.** The Director may waive or reduce any civil penalty for good cause, according to and consistent with written policies.

3. City Council Hearing. Notice of the hearing shall be mailed to those who testified at the UFC hearing, either in person or in writing, or those who requested such notice. If hearings were not held by the UFC or PSC, notice shall be mailed to all affected bureaus and persons who have requested such notice. Notice shall be published in a recognized newspaper and mailed at least 14 days prior to the hearing.
 4. The notifications required by this Section shall be the responsibility of the Bureau coordinating the amendment or technical correction.
- E. City Council. The City Council shall hold at least one public hearing on all amendments that are not considered technical. City Council makes the final decision on amendments, after considering the recommendations of the UFC and PSC and after hearing testimony from the public.
- F. Declaring an emergency. City Council may declare an emergency in accordance with the City Charter and amend this Title and associated Administrative Rules without following the process set out in this Section.

11.10.050 Interagency and Intergovernmental Agreements.

The City Forester or BDS Director in the course of their duties in implementing this Title may enter into agreements with other bureaus or public agencies. These interagency and intergovernmental agreements may allow the BDS Director or City Forester to delegate powers granted within this Title to or provide services to other bureaus or public agencies, subject to the requirements outlined in the agreement. Such agreements may not grant or delegate powers or authority not already assigned to the City Forester or BDS Director. Neither the BDS Director nor the City Forester may enter into any agreement under this Section that requires expenditure of City funds, unless such funds have been appropriated by the Council through the budget process.

11.10.060 Performance Guarantees.

- A. Applicability. The City Forester or BDS Director may require performance guarantees when an owner, applicant, or responsible person defers a planting requirement, as an assurance for performance path root protection methods, or when a violation has occurred and there is uncertainty regarding the extent of a particular tree injury.
- B. Types of guarantees. Guarantees may be in the form of a performance bond payable to the City in cash, by certified check, time certificate of deposit, irrevocable letter of credit, or other form acceptable to the City. Indemnity agreements may be used by other governmental agencies. Guarantees shall be accompanied by a contract. The form of the guarantee and contract shall be approved by the City Attorney. The City Forester and BDS Director are each authorized to accept and sign the contract for the City, and to accept the guarantee.

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- C.** Amount of guarantee. The amount of the performance guarantee shall be equal to at least 110 percent of the estimated cost of performance as described below. The owner, applicant or responsible party shall provide written estimates by three contractors with their names and addresses. The estimates shall include as separate items all materials, labor, and other costs of the required action.
- 1.** Planting deferral. When tree planting is deferred, the cost of performance is equivalent to the payment in lieu for any trees to be planted and maintained for a 2 year period.
 - 2.** Alternate root protection method assurance. If assurances are required for alternate root protection methods, the cost of performance is the estimated cost for removing the tree, plus an equivalent payment in lieu for planting to meet the tree standards in Chapter 11.50 Trees in Development Situations.
 - 3.** Violation remedy. Should an injury result to a protected tree, and where the City Forester determines that the tree may still be viable, the property owner or responsible party may submit a performance guarantee in lieu of providing for an arborist treatment regimen or removing the tree in accordance with the provisions in Chapter 11.70. If assurances are allowed in these cases, the cost of performance is the estimated cost for removing the tree, plus an equivalent payment in lieu for replacing the tree based on mitigating at an inch for inch equivalent.
- D.** Completion. An inspection and approval of the action or improvement covered by the performance guarantee is required before the performance guarantee is returned. The inspection will be conducted by the appropriate City bureau that holds the guarantee. If the action or improvement is not completed satisfactorily within the stated time limits, the City may have the necessary action or improvement completed and seek reimbursement for the work from the performance guarantee. Any remaining funds will be returned to the owner, applicant, or responsible party.

11.10.070 Fees.

(Amended by Ordinance No. 189514, effective June 21, 2019.)

- A.** Generally. The City Council may establish and amend by ordinance permit, inspection, review, enforcement, in-lieu of planting or preservation, appeal and other fees as necessary to sustain the development permit, tree permit, and other Development Service or Urban Forestry programs. All fees, charges, civil penalties, and fines established by authority of this Title will be listed in the Portland Policy Documents.
- B.** Fees in lieu of planting or preserving trees. Where allowed by other provisions of this Title, a fee may be paid into the Tree Planting and Preservation Fund in lieu of planting or preserving trees. The fee per tree is the entire cost of establishing a new

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tree in accordance with standards described by the City Forester. The cost includes materials and labor necessary to plant the tree, and to maintain it for 5 years. The fee will be reviewed annually and, if necessary, adjusted to reflect current costs. See Section 11.15.010 for more information on the Tree Planting and Preservation Fund.

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**CHAPTER 11.15 - FUNDS AND
CONTRIBUTIONS**

Sections:

- 11.15.010 Tree Planting and Preservation Fund.
- 11.15.020 Urban Forestry Fund.
- 11.15.030 Charitable Contributions.
- 11.15.040 Annual Report.

11.15.010 Tree Planting and Preservation Fund.

(Amended by Ordinance No. 189514, effective June 21, 2019.)

- A.** Purpose. The purpose of the Tree Planting and Preservation Fund is to facilitate tree planting, to ensure mitigation or tree replacement when tree preservation or tree density standards are not met on a particular site, and to advance the City's goals for the urban forest and intend to achieve equitable distribution of tree-related benefits across the City.
- B.** Expenditures. Money in the Tree Planting and Preservation Fund may be used only as follows:
 - 1.** To plant trees on public or private property, including streets. Planting trees includes the cost of materials and labor necessary to install and establish a tree for a 5 year period;
 - 2.** To purchase conservation easements for the perpetual retention of trees and tree canopy. Such conservation easements shall allow the City to replace trees that are removed when they die or become dangerous; and
 - 3.** To acquire land to permanently protect existing trees or groves.
- C.** Contributions. Contributions to the Tree Planting and Preservation Fund may occur through a number of means, including:
 - 1.** Payment made in lieu of tree replacement as part of a tree permit issued as stated in Chapter 11.40;
 - 2.** Payment made in lieu of preservation or planting where site or street characteristics or construction requirements make it infeasible to meet the requirements of Chapter 11.50;
 - 3.** Payment of restoration fees for enforcement actions for Private Trees; and
 - 4.** Voluntary contributions.
- D.** Administration of the Tree Planting and Preservation Fund. The Tree Planting and Preservation Fund is administered by the City Forester, maintained in a dedicated

separate account, and is independent of the general fund. Any balance in the Tree Planting and Preservation Fund will be carried forward into subsequent fiscal years.

11.15.020 Urban Forestry Fund.

- A.** Purpose. The purpose of the Urban Forestry Fund is to replace Street or City Trees illegally removed or damaged, to enhance the urban forest through the planting of new Street or City Trees, and to increase public awareness of trees, tree care, and values of the urban forest.
- B.** Expenditures. Money in the Urban Forestry Fund may be used as follows:
 - 1. To replace, establish, and maintain Street or City Trees illegally removed or damaged;
 - 2. To plant, establish and maintain Street or City Trees where, in the judgment of the Forester, they will enhance the values of the Urban Forest;
 - 3. To provide education, outreach and technical assistance to the community; and
 - 4. Other Forestry-related actions or programs, as determined by the City Forester.
- C.** Contributions. Contributions to the Urban Forestry Fund may occur through a number of means as established by the City Forester, including:
 - 1. Payment of restoration fees, civil penalties, or civil remedies resulting from City or Street Tree enforcement actions; and
 - 2. Voluntary contributions
- D.** Administration of Urban Forestry Fund. The Urban Forestry Fund is administered by the City Forester, maintained in a dedicated separate account, and is independent of the general fund. Any balance in the Urban Forestry Fund will be carried forward into subsequent fiscal years.

11.15.030 Charitable Contributions.

The City Forester may accept, on behalf of the City, gifts and contributions which are specifically designated for the purpose of planting or maintaining trees within the City. Gifts may include: nursery stock and planting supplies, vehicles, tools, pro bono consultation, education and outreach services, and real property for the purposes of open space and tree planting or preservation. Contributions may also be made to the Tree Planting and Preservation Fund or Urban Forestry Fund as described in this Chapter. Nothing in this Section obligates the City Forester to accept such gifts when the City Forester determines it is not in the best interests of the City to do so.

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11.15.040 Annual Report.

(Amended by Ordinance No. 189514, effective June 21, 2019.) The City Forester will provide an annual report to the Urban Forestry Commission and City Council at the end of each fiscal year. The report will include any charitable contributions received, as well as fund revenues collected and spent and the end balance in each fund. The report should also include recommendations for future expenditures of the funds and means to optimize those expenditures in the upcoming fiscal year.

- A.** Tree Planting and Preservation Fund. The report will include a general inventory of the funds collected and number and types of trees planted or area protected through preservation easements or acquisition.
- B.** The Urban Forestry Fund. The report will include an accounting of revenues collected and expenditures.

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4. No person shall use City parking garages for the purpose of housing or camping, including but not limited to, sleeping, bathing, cooking, or use as a restroom.
5. No person shall deface, damage, or destroy City parking garages.
6. Unless authorized by the City of Portland, no person shall post or place on cars any handbills, flyers, or posters of any kind within City parking garages.
7. No person shall engage in sexual conduct as defined by ORS 167.060 (10).
8. Other than at City of Portland authorized events, no person shall possess an open container of alcohol or consume alcoholic beverages.
9. Other than at City of Portland authorized events, no person shall play or use amplified or audio equipment at a level that disturbs others.
10. Other than at City of Portland authorized events, no person shall participate in parties, rave parties, or other similar gatherings.
11. No person shall use City parking garages and/or their structures and fixtures, including but not limited to, walls, railings, banisters, stairs, or ventilation fixtures, in ways they were not intended to be used, including but not limited to, sitting, standing, lying kneeling, skating, or skateboarding.
12. No person shall smoke or carry any lighted smoking instrument while in the elevator or any enclosed portion of City parking garages.
13. No person shall engage in conduct that disrupts or interferes with normal operations of City parking garages, or any tenant of a City parking garage, or that disturbs employees or patrons of City parking garages, including but not limited to, conduct that involves the use of abusive or threatening language or gestures, conduct that creates unreasonable noise, or conduct that consists of loud or boisterous physical behavior.
14. No person shall interfere with free passage of patron or employees of City parking garages, including but not limited to, placing objects such as bicycles, backpacks, carts or other items in a manner that interferes with free passage.
15. No person shall refuse to obey any posted parking signs or any reasonable direction of a Parking Garage Officer.

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16.20.920 Garage Parking Rates.

(Added by Ordinance Nos. 185351 and 189529, effective June 28, 2019.) The Bureau of Transportation Director shall be authorized to set parking rates at City-owned Parking Garages without first returning to City Council, subject to the following provisions:

- A.** Portland City Council shall set the hourly parking rate for the first four hours at all City Parking Garages.
- B.** The Transportation Director may set different parking rates at different locations and may consider the following factors when setting parking rates:
 - 1.** Rate changes may reflect an amount intended to reach a desired occupancy rate in each location;
 - 2.** Rate changes may reflect the annual consumer price index (CPI) for inflation in the Portland Metropolitan Area;
 - 3.** Rate changes may reflect market conditions in the Portland Central City;
 - 4.** Rate changes may accommodate specific site characteristics and seasonal events; and
 - 5.** Rate changes may reflect parking conditions, including without limitation the availability and desirability of reserved and non-reserved parking spaces.
- C.** Parking rates may not exceed the following rate maximums without Council approval:
 - 1.** Weekday daily maximum: \$40
 - 2.** Weekday evening maximum: \$20
 - 3.** Weekend daily maximum: \$30
 - 4.** Weekend evening maximum: \$15
 - 5.** Monthly general access: \$400
 - 6.** Monthly reserved: \$450
 - 7.** Monthly carpool: \$300
 - 8.** Monthly motorcycle: \$250
 - 9.** Event maximum: \$50

**CHAPTER 17.14 – FINANCING OF, AND
EXEMPTIONS FROM, SYSTEM
DEVELOPMENT CHARGES**

(Chapter added by Ordinance No. 145785; amended
by Ordinance Nos. 166334 and 189050, effective
August 1, 2018.)

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.
- 17.14.070 System Development Charge Exemptions.

17.14.010 Purpose.

(Amended by Ordinance Nos. 183447 and 189050, effective August 1, 2018.) The purposes of this Chapter are to authorize financing agreements that provide for payments deferrals and installment payments of City system development charges and to provide exemptions from such charges. This Chapter fulfills the following mandates:

- A.** The requirement of Chapter 722 Oregon Laws of 1977 (ORS 223.207 and 223.208) 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)); and
- B.** The decisions of City Council to establish certain exemptions from the assessment of system development charges.

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.

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- 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, 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, 185326 and 189506, effective June 21, 2019.)

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.

- 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.

(Amended by Ordinance No. 189413, effective March 6, 2019.) The Revenue Division 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 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 Nos. 183447 and 189413, effective March 6, 2019.)

- A.** Upon written request of the responsible City bureau, the Revenue Division 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 Revenue Division shall establish administrative guidelines and fees or charges relating to the cancellation of assessments. The Revenue Division 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.

17.14.070 System Development Charge Exemptions.

(Added by Ordinance No. 189050; amended by Ordinance No. 189323, effective December 19, 2018.)

- A.** Affordable housing developments are exempt from all system development charges as provided by Section 30.01.095 of this Code.
- B.** Certain developments and uses are exempt from parks and recreation system development charges as provided by Section 17.13.060 of this Code.
- C.** Certain developments and uses are exempt from transportation system development charges as provided by Section 17.15.050 of this Code.
- D.** Temporary uses are exempt from sanitary sewer system development charges as provided by Section 17.36.040 of this Code.
- E.** Certain developments and uses are exempt from water service system development charges as provided by Section 21.16.170 of this Code.
- F.** An accessory dwelling unit, as that term is defined in Chapter 33.910 of this Code, is exempt from all system development charges under the following conditions:
 - 1.** The building permit application for the accessory dwelling unit must have an intake date of August 1, 2018 or later.
 - 2.** Prior to issuance of a building permit for the accessory dwelling unit, the applicant must submit a recorded covenant on a form provided by the Revenue Division of the Bureau of Revenue and Financial Services. The covenant will prohibit the use of the accessory dwelling unit or any other structure on the property as an accessory short-term rental, as that term is

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defined in Chapter 33.207 of this Code, for a period of 10 years from the date of permit final inspection. The covenant must be recorded in the deed records for the property before the City will issue the building permit.

- 3.** The Revenue Division will enforce the requirements of this Section and may:

 - a.** Adopt, amend, and repeal administrative rules, establish procedures, and prepare forms for the implementation, administration, and enforcement thereof;
 - b.** In the event of a violation, use any reasonable means to collect debt, including but not limited to private collection agencies, liens, or lawsuits;
 - c.** Delegate functions under this Section as deemed appropriate by the Revenue Division;
 - d.** Impose a civil penalty of up to \$500 for failure to pay an application fee within 60 days of the approval of an SDC fee waiver;
 - e.** Impose a civil penalty of up to \$500 per violation for failure to provide requested information to the Division; and
 - f.** Waive or reduce for good cause any civil penalty assessed under this Section.

- 4.** If an applicant for an exemption under this section or a successor-in-interest thereof violates the covenant for an accessory dwelling unit or any requirement of this section, or if the covenant is terminated according to its terms:

 - a.** The exemption will be terminated and all previously exempt portions of system development charges will become immediately due and payable by the then-owner of the property. The amount owing will be 150 percent of the rates in effect at the time the violation is identified or the covenant is terminated, whichever is later.
 - b.** For the purpose of applying any previous use credits, SDC Bureaus will use the timeframe of the ADU building permit intake date. If credits are applicable, SDC Bureaus will apply credits using the rates in effect at the time the violation is identified, or the covenant terminated, whichever is later.
 - c.** A processing fee of \$400 per waiver application shall apply from August 1, 2018 through June 30, 2019. Thereafter the Revenue

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Division Director shall publish a fee schedule based on cost recovery.

- d.** 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 of this Code.
- G.** Mass shelters and short-term housing are exempt from all system development charges as provided by Section 30.01.096 of this Code.

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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.

(Amended by Ordinance No. 189506, effective June 21, 2019.)

- 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, the Source Control 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.

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- 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

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protective of existing or proposed public sewer, storm sewer or drainage improvements or activities in the immediate vicinity;

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.

(Amended by Ordinance No. 189506, effective June 21, 2019.)

- 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;

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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.
 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 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 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 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:

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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:
 - 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 owners(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 BES-approved volunteers may voluntarily perform any of the following tasks:
 - a. Trash, debris, and sediment removal;

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- b.** Weed removal;
- c.** Leaf pick up and removal;
- d.** Watering of vegetation;
- e.** Clearing inlets and outlets to allow stormwater to freely enter and exit the facility; and
- f.** Planting vegetation with written approval from BES.

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.

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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 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.

(Amended by Ordinance No. 189506, effective June 21, 2019.) 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.

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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.
 3. Flows from outside the City limits may be required to meet the standards in the Source Control Manual, 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.

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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 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:

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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;
 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

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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 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.

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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.

- 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

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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 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,

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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 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

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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:
 - 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.

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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, 186902 and 189506, effective June 21, 2019.)

- 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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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 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, 185397 and 189506, effective June 21, 2019.)

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- 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 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.

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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 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

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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.

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.

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- G.** Renewal of Permits. A permittee shall apply for renewal of its industrial wastewater discharge permit at least 90 days prior to the expiration date of the existing permit. Upon timely application for renewal, an existing permit will remain effective until the renewed permit is issued or denied.
- 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.

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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 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.

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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.
- 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

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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.

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:

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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.
- 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.

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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 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

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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;
 - 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.

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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 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.

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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, 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,

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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 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 17.36 - 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, 187926 and 189506, effective June 21, 2019.) The following definitions apply to this Chapter:

- A. “Billing Error” means an instance in which a calculation used by the City for billing is not consistent, in the determination of the City, with adopted City Code and Administrative Rules for billing sewer volume and stormwater management charges.
- B. **"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.
- C. **"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.
- D. **"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.
- E. **"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

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charge, and a stormwater system development charge. Connection charges are for use or expansion of use of City sanitary or stormwater management services.

- F.** **"Director"** means the Director of the Bureau of Environmental Services or the Director's designee.
- G.** **"Equivalent Dwelling Unit (EDU)"** means the estimated average sanitary flow from a single-family dwelling charged to a sewer account.
- H.** **"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.
- 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.** **"Impervious Area"** means the area of a property that does not allow rainwater to percolate naturally into the ground.
- L.** **"ITE Manual"** means the manual used per Section 17.15.020 to determine transportation system development charges.
- M.** **"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.
- N.** **"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.
- O.** **"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.
- P.** **"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.

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- Q.** “**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
- R.** “**Ratepayer**” means a person who has the right to possession of a property and:
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.
- S.** “**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.
- T.** “**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.
- U.** “**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.
- V.** “**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.
- W.** “**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.
- X.** “**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.
- Y.** “**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

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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.

- Z.** “**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.
- AA.** “**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.
- BB.** “**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.
- CC.** “**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.
- DD.** “**Transportation SDC Study**” means the transportation system development methodology established by Chapter 17.15.
- EE.** “**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 Nos. 186403, 189050, 189323 and 189506, effective June 21, 2019.) 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.

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- 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.
 - 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;

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property. Owners of flag, oddly shaped or landlocked properties must pay at least a minimum line charge based on an assumed minimum lot size of 1,200 square feet.

2. Non-Residential Property. The line charge is based on the charge rate as established by City Council and 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 away from the property. Owners of flag, oddly shaped or landlocked properties must pay at least a minimum line charge based on an assumed 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.

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- 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.
 - 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.

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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 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.
- I. Exemptions for Mass Shelters, Short-term Housing, and certain Accessory Dwelling Units. Mass shelters, short-term housing, and accessory dwelling unit may be eligible for a waiver of sanitary and stormwater SDCs pursuant to Section 17.14.070.

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

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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.
 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.

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- 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. 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.

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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 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.

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- 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.
 - 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.

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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.
 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 or 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

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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.
 - (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.

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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 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

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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.
- 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 Nos. 187926 and 189506, effective June 21, 2019.)

- A. The Director may authorize 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:
 - 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 Bureau 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

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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 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

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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 17.39 - 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, 186902 and 189506, effective June 21, 2019.) 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 17.39.040.
- 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**” means any system or structure that is intended to discharge fluids below the ground surface. Examples of UICs include, but are not limited to sumps, drywells, trench drains, and infiltration galleries.
- 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 Nos. 186403 and 189506, effective June 21, 2019.)

- 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.** Interfere 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

20.12.265 Park Exclusions.

(Replaced by Ordinance No. 189576, effective June, 19, 2019.)

- A.** To ensure compliance with rules and regulations governing the behavior, conduct or activity of users at Parks and to provide for a safe environment for the Bureau's operations, and in addition to any other remedy or right of action allowed by law, ejections and exclusions from Parks are authorized in accordance with this Section.

Nothing in this Section shall be construed to authorize the ejection or exclusion of a person for lawfully exercising free speech rights or other rights protected by the Oregon or United States Constitutions. However, a person lawfully exercising these protected rights but who commits an act that is not protected can be subject to ejection or exclusion as provided by this Section.

- B.** For the purposes of this Section, the following definitions apply:

- 1.** Disruptive Activity. Disruptive Activity is behavior, conduct or activity that obstructs, disrupts or interferes with the operation or business being conducted by the City, or authorized users, or other permitted activities at a Park.
- 2.** Ejection. An ejection is an order given by an authorized Park Officer directing a person to immediately leave a Park and not to return for the remainder of the day.
- 3.** Exclusion. An exclusion is an order made by an authorized Park Officer prohibiting a person from entering or remaining at a Park for a specified period of time.
- 4.** Park Violation. Park Violation is behavior, conduct or activity at a Park that would constitute a violation of:
 - a.** Federal, state or local law.
 - b.** Provisions of the Code applicable to Parks, including but not limited to Title 11, Title 14, Title 16, and Title 20.
 - c.** Any rule or regulation applicable to Parks.
 - d.** Any ordinance or regulation adopted by the Tri-County Metropolitan Transportation District of Oregon (Tri-Met) governing any Tri-Met facility in a Park.
- 5.** Park Facility. A Park Facility is a facility, building or improved area of a Park where the Bureau engages in business and operational functions at

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Park Facility, and entry or admission to the Park Facility serves proprietary, revenue or other business purposes.

- C.** Park Officer Authorized to Eject or Exclude.
- 1.** Any Park Officer may issue an ejection to a person who engages in a Disruptive Activity or a Park Violation and direct that person to immediately leave the Park for the remainder of the day.
 - 2.** The following Park Officers are authorized to issue an exclusion to a person who engages in a Disruptive Activity or a Park Violation:
 - a.** Any peace officer as defined by Oregon law and any reserve officer of the Portland Police Bureau.
 - b.** Any Park Ranger.
 - c.** Any Health and Safety Manager for the Bureau, or their designee.
 - d.** Any Division Manager for the Bureau, or their designee
- D.** Oral Warning.
- 1.** A Park Officer shall attempt to give a person who may be subject to an ejection or exclusion under this Section an oral warning and a reasonable opportunity to stop engaging in the Disruptive Activity or Park Violation; provided, however, failure to give an actual oral warning does not nullify the effectiveness or enforceability of an ejection or exclusion.
 - 2.** A Park Officer is not required to attempt to give an oral warning before issuing an ejection or exclusion where the behavior, conduct or activity constitutes one or more of the following:
 - a.** A felony, misdemeanor, or motor vehicle offense.
 - b.** A violation of Chapter 14A.40, 14A.50 or 14A.60.
 - c.** Dangerous or threatening behavior. Behavior is dangerous or threatening if a reasonable person, exposed to or experiencing such behavior could believe that the person would be in imminent danger of physical harm. Actual bodily injury to a person is not required. The belief of a person engaging in self-harming behavior is not deemed reasonable.
- E.** Length of Exclusion.

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- 1.** Except as provided below in Subsection E.2, the length of exclusion from a Park shall be for 30 days, unless:

 - a.** The person to be excluded has also been excluded previously from any Park for any reason within three years before the date of the present exclusion, then the exclusion shall be for 90 days.
 - b.** The person to be excluded has also been excluded previously from any Parks for any reason on two or more occasions within 3 years before the date of the present exclusion, then the exclusion shall be for 180 days.

- 2.** The length of exclusion shall be:

 - a.** For 60 days if the Disruptive Activity or Park Violation giving rise to the present exclusion:

 - (1)** Constitutes child abuse under ORS Chapter 419B, elder abuse under Chapter ORS 124, or abuse of adults with mental illness or development disabilities under ORS Chapter 430, that may trigger mandatory reporting by a Park Officer or a “public or private official” under the mandatory reporting statutes;
 - (2)** Constitutes any offenses against persons under ORS Chapter 163;
 - (3)** Constitutes intimidation under ORS 166.155 or ORS 166.165; or
 - (4)** Results in property damage to a Park of \$1,000 or more.
 - b.** For 120 days if the person to be excluded for a reason described in Subsection E.2.a has also been issued an exclusion for any reason previously from any Park within 3 years before the date of the present exclusion.
 - c.** For 270 days if the person to be excluded for a reason described in Subsection E.2.a has also been excluded from any Parks for any reason on two or more occasions within 3 years before the date of the present exclusion.

- F.** Except as otherwise provided in this Subsection, the place of exclusion shall be the Park where the Disruptive Activity or Park Violation occurred.

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If the Disruptive Activity or Park Violation giving rise to the exclusion occurred at a Park Facility under Subsection I. and is a violation under Subsection E.2.a.(1) or Subsection E.2.a.(2), the place of exclusion may include one or more Park Facilities.

A Park Officer may use reasonable discretion to determine multiple Park Facilities for the exclusion and that determination is not subject to appeal to the Code Hearings Officer.

- G.** The notice of exclusion shall be in writing and signed by the Park Officer issuing the exclusion. The notice shall include:
1. The date, length and place(s) of the exclusion.
 2. Specification of whether Disruptive Activity or Park Violation serves as the basis for the exclusion, and if applicable the provision of law the person has violated.
 3. A brief description of the Disruptive Activity or Park Violation.
 4. Information on the right to appeal.
 5. A warning of consequences for failure to comply.
- H.** A person receiving a notice of exclusion may appeal, in writing, to the Code Hearings Officer in accordance with the provisions of Title 22 of this Code to have the exclusion rescinded. The appeal to the Code Hearings Officer must be filed within 5 days of issuance of the notice of exclusion unless an extension is granted by the Code Hearings Officer for good cause shown.
- I.** If an appeal of the exclusion is timely filed under this Section, the effectiveness of the exclusion is stayed pending the outcome of the appeal except as indicated herein. If the exclusion is affirmed, the remaining period of exclusion shall be effective immediately upon the issuance of the Hearings Officer's decision, unless the Hearings Officer specifies a later effective date. The stay in this Subsection does not apply to the following Park Facilities:
1. Any community center, or arts and cultural building. Examples include but are not limited to Matt Dishman Community Center, East Portland Community Center, Community Music Center and Interstate Firehouse Cultural Center.
 2. An outdoor swimming pool and its fenced area. Examples include but are not limited to Creston, Grant, Montavilla, Peninsula, Pier, Sellwood and Wilson Outdoor Pools.

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3. Any golf course and all portions of the real property designated as part of the identified golf course.
 4. Portland International Raceway and all portions of the real property designated as part of the raceway complex.
 5. A public garden where an admission fee may be charged. Examples include but are not limited to: Crystal Springs Rhododendron Garden; Japanese Garden in Washington Park; and Lan Su Chinese Garden.
 6. Any other facility, building or improved area satisfying the definition of Park Facility in Subsection B.5. Inclusion of an additional Parks Facility for the purposes of this Subsection I. shall made by the Director with the concurrence of the Commissioner in Charge. The Director will file with the Auditor in the Portland Policy Documents repository the additional facility designated as a Park Facility within two business days after the designation becomes effective.
- J.** The Code Hearings Officer shall uphold the exclusion if, upon the Code Hearings Officer's de novo review, the preponderance of evidence admissible under the provisions of Title 22 of this Code that, more likely than not, the person in fact committed the violation for which the person was excluded, and if the exclusion is otherwise in accordance with law. The Code Hearings Officer may rely upon any evidence that a reasonable person would rely upon in making an important decision or conducting personal business, including hearsay deemed reliable by the Code Hearings Officer. Sworn statements of the Park Officer issuing the notice of exclusion shall be admissible evidence on appeal, unless the appellant requests in writing the presence of the Park Officer at the appeal hearing.
- K.** If a person is issued a subsequent exclusion while a previous exclusion is stayed pending appeal (or pending judicial review, should a court stay the exclusion), the stayed exclusion shall be counted in determining the appropriate length of the subsequent exclusion under Subsection E. If the predicate exclusion is set aside, the term of the subsequent exclusion shall be reduced, as if the predicate exclusion had not been issued. If multiple exclusions issued to a single person are simultaneously stayed pending appeal, the effective periods of those which are affirmed shall run consecutively.
- L.** At any time after the time for an appeal has elapsed, or after an appeal has been decided by the Code Hearings Officer, the excluded person may request a modification of the exclusion in writing to the Commissioner.
1. A request for modification of the exclusion must specify good reason and identify the modification desired.

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2. The Commissioner may consider the seriousness of the Disruptive Activity or Park Violation for which the person has been excluded, prior incidents of violations that may have resulted in ejections or exclusions, the nature and scope of disruption to City operations due to the person's violations, the particular need of the person to be in the Park during some or all of the period of exclusion such as for work or to attend or participate in a particular event (without regard to the content of any speech associated with that event), and any other criteria the Commissioner determines to be relevant to the determination of whether or not to grant a modification.
3. The Commissioner has the sole discretion to grant or deny a request for modification of an issued exclusion, in whole or in part, and the decision is not subject to appeal or review.
4. Nothing in this Section requires the Commissioner to grant the request for modification.
5. If the Commissioner grants a modification under this paragraph, the Commissioner shall promptly notify the Portland Police Bureau's Records Division and the Parks Director of the modification decision.

**CHAPTER 20.20 - MUNICIPAL GOLF
COURSE RATES**

Sections:

- 20.20.010 Playing Rates.
- 20.20.020 Collection and Use of Fees.
- 20.20.030 Holders of Life Certificates.
- 20.20.040 Delegation of Authority.

20.20.010 Playing Rates.

(Replaced by Ordinance No. 173286, effective January 1, 1999.) Green fees shall be charged and collected for the privilege of playing golf at the Eastmoreland, Rose City, Progress Downs and the Greenback and Great Blue courses at Heron lakes. In addition, fees shall be charged and collected for the use of other golf facilities and equipment such as driving ranges and golf carts. The Director of Portland Parks and Recreation or his or her designee shall determine the appropriate rates related to the use of golf courses, their facilities, and equipment. Those rates and charges, as well as other necessary regulations, shall be listed in the "City of Portland Golf Operations Manual."

20.20.020 Collection and Use of Fees.

(Amended by Ordinance No. 139221, effective January 20, 1975.) It shall be the duty of the concessionaire contracted by the City to collect at the municipal golf courses and account for the fees herein provided. It will be the duty of City employees to collect and account for the fees where no such concessionaire contract is provided. All fees and charges received on account of the issuance of the tickets shall be devoted to administrative purposes of the City's golfing facility with the understanding that participants in the games are subject to prescribed rules and regulations, that they assume their own risks, and that no obligation on the part of the City shall obtain other than what may apply to the City in its governmental capacity.

20.20.030 Holders of Life Certificates.

(Amended by Ordinance Nos. 139221 and 186275, effective November 1, 2013.) Any person who has been employed by the Bureau of Parks in connection with the municipal golf courses for a period of 25 years or more, shall be granted a lifetime certificate entitling him/her to use without charge and at all times any golf facility operated by the City. Such certificates shall be issued by the Bureau of Parks and shall not be transferable. Employees hired after August 31, 2013 will not be granted this certificate.

The holder of a life certificate, however obtained, possesses no playing rights superior or prior to any person playing on a single green fee or otherwise in accordance with the rules of golf courses.

20.20.040 Delegation of Authority.

(Added by Ordinance No. 141276, effective February 5, 1976.) The privilege of playing under any rate established herein may be suspended or terminated and cancelled immediately without refund by the Commissioner In Charge for any violation of course

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rules or regulations, or for any conduct which interferes with the proper administration of the golf course or its enjoyment by the public. The Commissioner In Charge is authorized to delegate his authority to the person in charge of each municipal golf course.

**CHAPTER 20.24 - PORTLAND ZOO
ADMISSION CHARGES**

(Chapter repealed by Ordinance No. 186795,
effective October 3, 2014.)

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**CHAPTER 20.28 - RENTAL CHARGES FOR
CIVIC STADIUM**

(Chapter repealed by Ordinance No. 186795,
effective October 3, 2014.)

**CHAPTER 20.30 - PORTLAND INDOOR
TENNIS CENTER**

(Chapter repealed by Ordinance No. 164427,
effective July 10, 1991.)

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CHAPTER 20.32 - PITTOCK MANSION

Sections:

- 20.32.010 Admission Charges for Viewing Interior of Mansion.
- 20.32.030 Pittock Mansion Society.
- 20.32.040 Photography at Pittock Mansion-General Provisions.
- 20.32.050 Fees for Commercial Photography.

20.32.010 Admission Charges for Viewing Interior of Mansion.

(Amended by Ordinance Nos. 144250, 147839, 152225, 157277, 157649, 158387 and 161281, effective October 1, 1988.) Fees for admission to Pittock Mansion during its regular viewing hours shall be reviewed by Pittock Mansion Advisory Commission, approved by the Superintendent of Parks and established by rule by the Commissioner In Charge of the Bureau of Parks according to Section 20.04.050.

20.32.020 Charges for Special Uses of the Mansion.

(Repealed by Ordinance No. 158992, effective September 11, 1986.)

20.32.030 Pittock Mansion Society.

(Amended by Ordinance No. 148542, effective October 4, 1979.) Members of the Pittock Mansion Society holding a continuing, annual, or individual membership shall have free admission to the Pittock Mansion. Free Admission to such memberships shall include the member and his family. For each continuing, annual, or individual membership, the Pittock Mansion Society shall pay to the City the following amounts:

- A. Continuing and annual memberships \$3
- B. Individual memberships
 - 1. Husband and wife - \$2
 - 2. Adult - \$1
 - 3. Student - \$.50

Remittance to the City shall be made annually by the Society as memberships are old.

20.32.040 Photography at Pittock Mansion.

(Repealed by Ordinance No. 165019, effective January 29, 1992.)

20.32.050 Fees for Commercial Photography.

(Added by Ordinance No. 135182; amended by Ordinance No. 147839, 151528 and 160657, effective April 14, 1988.)

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- A.** All activity of commercial photographers shall be subject to supervision by the Pittock Mansion staff. The Director of the Pittock Mansion shall designate a staff member to supervise all interior photography. The Director may designate a staff member to supervise exterior photography where deemed necessary.
- B.** Fees for photographer location work done within Pittock Acres Park shall be proposed by the Director of Pittock Mansion and approved by the Superintendent of Parks or designated representative.
- C.** Special fees may be charged for commercial photographic work intended for national dissemination, including television productions and motion pictures, or which involves extraordinary circumstances. Such fees shall be negotiated with the Director of Pittock Mansion and approved by the Superintendent of Parks or designated representative.
- D.** Photographic use requiring major staff time, extraordinary circumstances or inordinate demand on the facilities may be referred to the Advisory Commission for their recommendation.
- E.** At the discretion of the Director of Pittock Mansion, fees may be waived for representatives or students of educational institutions, the news media, and projects of State, county or municipal governments.

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**CHAPTER 20.36 - PORTLAND
INTERNATIONAL RACEWAY WEST DELTA
PARK**

(Chapter replaced by Ordinance No. 135855;
effective January 11, 1973.)

Sections:

- 20.36.010 Authority to Issue Permits.
- 20.36.020 Conditions of Permits.
- 20.36.030 Fees.
- 20.36.040 Additional Charges.

20.36.010 Authority to Issue Permits.

(Amended by Ordinance No. 165019, effective January 29, 1992.) The Superintendent of Parks or his or her authorized representatives shall have the authority to allow motor vehicle and motorcycle racing, testing, demonstration, exhibition, or driving training at West Delta Park, hereafter referred to as PIR, and to grant exclusive use of all or part of the park roadways and other facilities in West Delta Park for such events in the park by issuing permits, or by assessing fees as described in Section 20.36.040 or for such other events and uses as the facilities can accommodate.

20.36.020 Conditions of Permits.

The permits issued under the authority granted under Section 20.36.010 hereinabove shall be conditioned by rules and regulations of the Bureau of Parks governing use of PIR, and shall include provisions designating the event which may be staged, the courses and areas to be used and the limit, if any, on the number of vehicles or persons that may participate in the permitted event. The permit shall provide that the Superintendent or his authorized representatives have authority to immediately terminate operations under the permit if permittee fails to comply with orders and regulations of the Superintendent or his authorized representatives or the conditions of the permit. The permit shall require that the permittee lock up and secure the racing facility after each event. The Superintendent or his authorized representatives may require a bond or cash deposit to insure compliance with the conditions of the permit. The permittee shall be required to indemnify and save the City, its officers, agents, and employees harmless from claims for damage to persons or property resulting from the use of PIR under the permit.

The Superintendent or his authorized representatives may, depending upon the nature of the event, require the permittee to furnish evidence of liability insurance covering his operations under the permit, which insurance shall provide coverage of not less than \$100,000 for personal injury for each person, \$300,000 for personal injury for each event, and \$50,000 property damage. The City, its officers, agents, and employees shall be named as additional insureds. Such evidence of insurance shall be in form satisfactory to the City Attorney.

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20.36.030 Fees.

(Amended by Ordinance Nos. 141335, 145146, 148765, 150854, 152673, 156919, 159303, 161474 and 165019, effective January 29, 1992.) The Superintendent of Parks is authorized to establish, maintain and modify a schedule of fees for the events and uses the Superintendent allows under Section 20.36.010 of this Code. It shall be unlawful for any person to use the facilities described in Section 20.36.010 without first paying the fee established by the Superintendent for that use or event.

20.36.040 Additional Charges (No Permit Will Be Issued.)

(Amended by Ordinance Nos. 139567, 145146, 150854, 152673, 156919, 159303 and 161474 effective January 1, 1989.)

- A.** Testing of cars on the road course, on the days set aside by the Superintendent will be \$100 per car, per day. Testing of cars on the on the drag strip on the days set aside by the Superintendent will be \$75 per car per day. Private testing on nonscheduled test days will be \$650 per day for up to two cars and an additional charge of \$150 per car for each vehicle over two. For C.A.R.T. Indy car teams and I.M.S.A. GTP teams that require private testing, the charge will be \$1200/per day for up to two cars and \$200 per car for each vehicle over two.
- B.** Recreational riding in the motorcycle area on days set aside by the Superintendent will be \$5 per rider per day, persons under 12 years of age will be free.
- C.** For miscellaneous events, not listed above, the Superintendent will set the rental rate according to the size and description of the event and considering the facilities to be provided which shall return to the City at least minimum operational costs.
- D.** Users of the raceway or other facilities who require use of the raceway lights will be charged at the rate of \$65 per day in addition to any other charges or permit fees.
- E.** The Superintendent or his/her authorized representatives is authorized to sell advertising space within the raceway, hereby waiving Section 20.12.030 of the City Code. The rates will vary depending on the size of the sign, the location of the sign, and the length of the agreement, with charges subject to approval by the Commissioner In Charge.
- F.** A \$200 surcharge will be made to any user who violates established raceway noise regulations.

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CHAPTER 20.38 - MULTNOMAH CENTER

(Chapter added by Ordinance No. 152710; effective
January 13, 1982.)

Sections:

- 20.38.010 Term Leases and Facilities Use Permits.
- 20.38.020 Authority to Issue Permits for Short Term Use.
- 20.38.030 Rules and Regulations.
- 20.38.040 Conditions of Permits.
- 20.38.050 Charge for Use of Facilities.
- 20.38.060 Waiver of Charges.
- 20.38.070 Policies on Use.
- 20.38.080 Priority for Users.

20.38.010 Term Leases or Facilities Use Permits.

The City Council may authorize leases or facilities use permits with non-profit organizations for rental of space in the Center for a period not to exceed 5 years.

20.38.020 Authority to Issue Permits for Short Term Use.

(Amended by Ordinance No. 153957, effective December 6, 1982.) The Superintendent of Parks or an authorized representative shall have authority to issue permits to non-profit and commercial organizations for short term use of facilities which have not been rented on a long term basis by lease or permit. The purpose of the commercial organizations must be compatible with the community services provided by the Multnomah Center. Issuance of such permits shall be in accordance with the provisions of this Chapter.

20.38.030 Rules and Regulations.

The Superintendent of Parks, subject to approval of the Commissioner In Charge, may adopt rules and regulations relating to use of the Center which shall not be inconsistent with the provisions of this Chapter. Such rules and regulations shall not conflict with the provisions of any pre-existing lease or permit.

20.38.040 Conditions of Permits.

The permits issued under the authority granted under Section 20.38.020 shall be conditioned by rules and regulations of the Bureau of Parks governing use of the Center, and shall include provisions designating the nature of the use and the areas or facilities to be used. The permit shall provide that the Superintendent or his authorized representatives have the authority to immediately terminate the use under the permit if permittee fails to comply with the rules and regulations or the conditions of the permit. The permittee shall be required to indemnify and save the City, its officers, agents, and employees harmless from claims for damages to persons or property resulting from the use of the Center under the permit.

The Superintendent or his authorized representative may, depending on the nature of the use, require the permittee to furnish evidence of liability insurance covering the use under

the permit, which insurance shall provide coverage of not less than \$100,000 for personal injury for each person, \$300,000 for personal injury for each occurrence and \$300,000 property damage for each occurrence. The City, its officers, agents, and employees shall be named as additional insureds. Such evidence of insurance shall be in form satisfactory to the City Attorney.

20.38.050 Charge for Use of Facilities.

(Amended by Ordinance Nos. 153957 and 159171, effective December 15, 1986.) Charges will be made for the use of the following Multnomah facilities by permit issued pursuant to Section 20.38.020: class rooms, conference rooms, kitchenette, gym, auditorium, and kitchen. There will be a minimum charge, a refundable cleaning deposit, a kitchen cleanup deposit, and a liquor deposit. There will be additional staff charges for use of the facility at times other than regular hours of the Multnomah Center operation. Various set-up and take-down charges will be applied if existing table and seating arrangements are altered. Specific charges and fee rules and regulations will be determined and adjusted periodically by the Superintendent of Parks or an authorized representative.

20.38.060 Waiver of Charges.

The Superintendent of Parks or his authorized representatives may waive the charges specified in Section 20.38.050 for use of multi-purpose rooms by community groups which provide information to the community relating to the community's health, education, or welfare. Such groups shall not charge members of the public to attend any such function and such function shall be open to the public. Groups eligible for fee waiver shall not be commercial, partisan, political, or religious groups and shall not use the Center to advocate for or against any candidate for public office, or for or against any measure or proposition to be voted upon by the voters.

20.38.070 Policies on Use.

(Amended by Ordinance No. 153957, effective December 6, 1982.) The proposed use must be in accordance with the provisions of the City Code and Ordinances and the rules and regulations relating to use of the Multnomah Center established pursuant to this Chapter. Events which involve political, religious, or income generating activities must be approved by the Commissioner In Charge of the Bureau of Parks.

Organizations using Multnomah Center facilities by permit issued pursuant to Section 20.38.020 shall be allowed to serve alcoholic beverages within the Center with the following restrictions:

- A. Alcoholic beverages served by a licensed and insured caterer; or
- B. The renting organization must obtain the appropriate OLCC license and provide the Multnomah Center with a certificate of comprehensive general liability insurance for \$300,000 naming as insured the City of Portland, its officers, agents, and employees, and sign a "Hold Harmless" agreement with the City of Portland for any liability; and

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- C. All supplies and materials or other property brought on the premises will be the sole responsibility of the user.

20.38.080 Priority for Users.

(Repealed by Ordinance No. 159171, effective December 15, 1986.)

**CHAPTER 20.40 - STREET TREE AND
OTHER PUBLIC TREE REGULATIONS**

(Chapter repealed by Ordinance No. 184522;
delayed by Ordinance No. 185448 and 186053,
effective January 1, 2015.)

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CHAPTER 20.42 - TREE CUTTING

(Chapter repealed by Ordinance No. 184522;
delayed by Ordinance No. 185448 and 186053,
effective January 1, 2015.)

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**CHAPTER 20.44 - NONRESIDENT
PARTICIPATION FEES**

(Chapter repealed by Ordinance No. 158454,
effective May 1, 1986.)

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**CHAPTER 20.48 - ST. JOHNS RACQUET
CENTER**

(Chapter repealed by Ordinance No. 164427,
effective July 10, 1991.)

**CHAPTER 20.50 - COLUMBIA SOUTH
SHORE SLOUGH TRAIL**

(Chapter added by Ordinance No. 166785, effective
July 21, 1993.)

Section:

20.50.010 Prohibited Activities.

20.50.010 Prohibited Activities.

It shall be unlawful to ride a bicycle or to have domestic animals leashed or unleashed on the Columbia South Shore Slough Trail. The trail area is defined by Title 33, Map 515-2. This provision does not apply to police officers who may have the need for the use of horses or bicycles during their official performance of duties.

**TITLE 24
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- C. Single story, light frame metal and light wood frame buildings, not more than 20 feet in height from the top surface of the lowest floor to the highest interior overhead finish and ground area of 4,000 square feet or less.

A previously prepared seismic study may be submitted for consideration by the Director as equivalent to an ASCE 41 evaluation.

24.85.065 Seismic Strengthening of Unreinforced Masonry Bearing Wall Buildings.

(Added by Ordinance No. 169427; amended by Ordinance Nos. 170997, 178831, 187192, 189201, 189399 and 189479, effective May 1, 2019.) When any building alterations or repairs occur at an Unreinforced Masonry Bearing Wall Building, all seismic hazards shall be mitigated as set forth in Subsections 24.85.065 A. and B. A previously permitted seismic strengthening scheme designed in accordance with FEMA 178/310/ASCE 31 may be submitted for consideration by the Bureau Director as equivalent to the ASCE 41 improvement standard.

- A. Roof Repair or Replacement. When a roof covering is repaired or replaced, as defined in 24.85.020, the building structural roof system, anchorage, and parapets shall be repaired or rehabilitated such that, at a minimum, the wall anchorage for both in-plane and out-of-plane forces at the roof and parapet bracing conform to the ASCE 41-BPOE improvement standard. In-plane brick shear tests are not required as part of the ASCE evaluation under this subsection.

- B. Additional Triggers.

1. Building alterations or repair. When the cost of alteration or repair work which requires a building permit exceeds the following criteria, then the building shall be improved to resist seismic forces such that the entire building conforms to the ASCE 41-BPOE improvement standard.

Table 24.85-C		
Building Description	Cost of Alteration or Repair in a 5-Year Period	Cost of Alteration or Repair in a 15-Year Period (including the first 5 years)
Single Story Building	\$60 per square foot	\$120 per square foot
Buildings Two Stories or Greater	\$45 per square foot	\$90 per square foot
Special building hazard: buildings in a relative hazard category 5 or with vertical or plan irregularities	\$45 per square foot	\$90 per square foot

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2. Special building hazards. Where an Unreinforced Masonry Building of any size contains any of the following hazards, the building shall be seismically improved if the cost of alteration or repair exceeds \$45 per square foot:
 - a. The Building possesses an Occupancy Classification listed within the Relative Hazard Category 5 as determined in Section 24.85.040 of this Chapter; or
 - b. The building is classified as possessing either vertical or plan irregularities as defined in the OSSC.
3. Exclusions from cost calculations. Costs for site improvements, eco-roofs, mandated FM41 agreements, mandated ADA improvements, mandated non-conforming upgrades under Title 33, mandated elevator improvements and mandated or voluntary seismic improvements or work exempted from permit as described in Chapter 1 of the OSSC will not be included in the dollar amounts listed in Subsections 24.85.065 B.1. and 2.
4. Live/Work spaces in Unreinforced Masonry buildings. See Section 24.85.040 B for requirements when a Unreinforced Masonry building is converted to contain live/work spaces.
5. Automatic cost increase. The dollar amounts listed in Subsections 24.85.065 B.1. and 2. shall be modified each year after 2018 by the percent change in the R.S. Means of Construction Cost Index for Portland, Oregon. The revised dollar amounts will be made available at the Development Services Center.

C. Placard requirement for unreinforced masonry buildings.

On or before the dates set forth in the timetable below, all unreinforced masonry buildings that have not been retrofitted to the standard specified in Subsection 24.85.065 F. below must be posted with a placard in a conspicuous place on the exterior at the main entrance of the building. The criteria for the placard are as follows:

1. Font. The font must be at least 50-point bold type, legible sans serif.
2. Size. The placard must be at least 8 inches by 10 inches.
3. Material. The placard must be constructed of a durable material that can withstand the elements and must be maintained to ensure that it is not defaced, removed, damaged, or degraded to the point where the placard is no longer legible.

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4. Content. The placard must contain the following language: “THIS IS AN UNREINFORCED MASONRY BUILDING. UNREINFORCED MASONRY BUILDINGS MAY BE UNSAFE IN THE EVENT OF A MAJOR EARTHQUAKE. P.C.C. 24.85.065”
5. Duration. The placard must remain in place until the building is either: retrofitted and the Bureau of Development Services confirms that the retrofit specified in Subsection 24.85.065 F. has been completed and approved by BDS; or the building is demolished.
6. Timeline. Placards must be posted according to the following timeline:
 - a. Publicly-owned buildings. Publicly-owned URM buildings must post the required placard on or before January 1, 2019.
 - b. All other buildings. All other URM buildings that do not fall into a. above must post the required placard on or before November 1, 2020.

D. Tenant notification for unreinforced masonry buildings.

Applications for leases and rental. Every application for lease or rental supplied to a prospective tenant after June 1, 2019 involving a building subject to the requirements of Subsection 24.85.065 C., must contain a statement that: the building is an unreinforced masonry building, and unreinforced masonry buildings may be unsafe in the event of a major earthquake.

E. Documentation of compliance.

The owner of a building subject to Subsections 24.85.065 C. and D. must not remove the placard required in Subsection 24.85.065 C. and must acknowledge compliance with the placarding requirements outlined in Subsection 24.85.065 C. and prospective tenant notification requirements outlined in Subsection 24.85.065 D. on a form provided by the Bureau of Development Services. This documentation of compliance must be submitted to the Bureau by November 1, 2020.

F. Evidence that a building is exempt from placard requirements.

The following are evidence that an unreinforced masonry building meets the required retrofit standards and will exempt the building owner from complying with Subsections 24.85.065 C., D., and E.

1. Buildings that have been fully retrofitted to or shown to meet or exceed the following standards:

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The Basic Performance Objective for Existing Buildings (BPOE) or better as defined in ASCE 41-17 or ASCE 41-13 for collapse prevention structural performance level under BSE-2E seismic hazard or life safety structural performance level under BSE-1E seismic hazard; and URM parapets, cornices and chimneys for life safety non-structural performance level under BSE-1E seismic hazard. The seismic hazards BSE-1 and BSE-2 are as previously defined in Section 24.85.020; or

2. Buildings that have previously been fully retrofitted prior to January 1, 2018 to one of the following standards:
 - a. Life Safety performance level or better using FEMA-178, FEMA 310, or ASCE 31, including bracing of parapets, cornices and chimneys; or
 - b. Oregon Structural Specialty Code, 1993 edition or later.

G. Enforcement.

1. Fire Marshal Inspections. As part of Portland Fire & Rescue's periodic inspections program outlined in Chapter 31.50, the Portland Fire Marshal is granted authority to inspect unreinforced masonry buildings for compliance with the provisions of Subsection 24.85.065 C. If the Fire Marshal determines there is a violation of Subsection 24.85.065 C., the Fire Marshal will issue a notice of violation to the owner of the building. The building owner will have 40 calendar days from the date of the notice of violation to comply with the requirements of Subsection 24.85.065 C., and the Fire Marshal will re-inspect the building for compliance. If the violation still exists at the time of the re-inspection, the Fire Marshal will charge a re-inspection fee and turn the case over to the Bureau of Development Services for further enforcement.
2. Bureau of Development Services' enforcement. BDS will use its existing enforcement authority as outlined in Section 3.30.040 to enforce the provisions of Subsections 24.85.065 C., D., and E.

H. Appeals.

1. Appeals of determination that building is unreinforced masonry or whether the building has been retrofitted: if the building owner disagrees with the determination that the building is an unreinforced masonry building or that the building was retrofitted to the standards outlined in Subsection 24.85.065 F., the building owner may appeal that determination as provided in Section 24.85.095.

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2. If a building owner appeals the determination that the building is an unreinforced masonry building or that it has been retrofitted to the standards outlined in Subsection 24.85.065 F., and the Director upholds the URM determination, then the building owner has until the relevant date set forth in the timetable in Subsection 24.85.065 C.6., or two months from the written determination, whichever is later, to install the placard in accordance with Subsection 24.85.065 C. and complete the prospective tenant notification outlined in Subsection 24.85.065 D.
3. Appeals related to BDS enforcement actions under Section 3.30.040 that do not fall under Subsection 24.85.065 H.1.-2. will follow the procedures laid out in that Chapter.

I. Future-discovered unreinforced masonry buildings.

If the Bureau of Development Services discovers that a building is an unreinforced masonry building that has not been retrofitted to the standards outlined in Subsection 24.85.065 F. after the relevant date set forth in the timetable in Subsection 24.85.065 C.6., the Bureau will provide written notice to the building owner that the building must comply with the provisions of Subsections 24.85.065 C., D., E, and F. The building owner will have three months from the Bureau's written determination and notice to property owner to either comply or file an appeal as described in Subsection 24.85.065 H.

24.85.067 Voluntary Seismic Strengthening.

(Added by Ordinance No. 178831, effective November 20, 2004.) Subject to permit approval, a building may be strengthened to resist seismic forces on a voluntary basis provided all of the following conditions are met:

- A. Mandatory seismic strengthening is not required by other provisions of this Title;
- B. The overall seismic resistance of the building or elements shall not be decreased such that the building is more hazardous;
- C. Testing and special inspection are in accordance with the OSSC and the City of Portland Administrative Rules;
- D. The standard used for the seismic strengthening is clearly noted on the drawings along with the pertinent design parameters; and
- E. A written narrative shall be clearly noted on the drawings summarizing the building lateral system, seismic strengthening and known remaining deficiencies. The summary information shall reflect the level of analysis that was performed on the building.

TITLE 24
BUILDING REGULATIONS

24.85.070 Phasing of Improvements.

(Amended by Ordinance No. 178831, effective November 20, 2004.)

- A. The Director may approve a multi-year phased program of seismic improvements when the improvements are pre-designed and an improvement/implementation plan is approved by the Director. The maximum total time allowed for completion of phased improvements shall be ten years. A legal agreement between the building owner and the City of Portland shall be formulated outlining the phased seismic improvements and shall be recorded with the property deed at the County.
- B. Upon review, the Director may extend the maximum time for the phased improvements. The Director shall adopt rules under Section 3.30.035 describing the process for granting an extension.

24.85.075 Egress Through Existing Buildings.

(Added by Ordinance No. 178831, effective November 20, 2004.) The building structure and seismic resistance of an egress path through, under or over an existing building must meet the required seismic improvement standard specified in Section 24.85.040, Table 24.85-A, under any of the following conditions:

- A. The egress path is from an adjacent new building or addition and the new building or addition area equals 1/3 or more of the existing building area; or,
- B. The egress path is from an adjacent existing building that undergoes alterations or a change of occupancy requiring its egress path(s) meet the seismic improvement standards as required by this Chapter; or
- C. The additional occupant load, as determined by the OSSC, using the egress path through the existing building is 150 people or more.

24.85.080 Application of Other Requirements.

(Amended by Ordinance No. 178831, effective November 20, 2004.) Building permit applications to improve the seismic capability of a building shall not trigger: accessibility improvements so long as the seismic improvement does not lessen accessibility; fire life safety improvements so long as the seismic improvement does not lessen the buildings fire resistance or exiting capability; landscape improvements required by Chapter 33; street tree improvements required by Section 20.40.070.

Conformance with these regulations may not exempt buildings from future seismic regulations.

24.85.090 Fee Reductions.

(Amended by Ordinance No. 178831, effective November 20, 2004.) Building permit, plan review and fire life safety review fees for structural work related to seismic strengthening covered by this Chapter will be waived when such fees total less than \$2,500, and will be and reduced by 50 percent when such fees would total \$2,500 or more.