

UPDATE INFORMATION

Vols. I & II – Portland City Code

March 31, 2020 – 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>
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Contact the Auditor's Office Council Clerk/Contracts
Section if you have questions: 503-823-4082.

Previous Update Packet December 31, 2019

CODE OF THE CITY OF PORTLAND, OREGON
Insertion Guide for Code Revisions
Office of the City Auditor 503-823-4082
1st Quarter 2020 (March 31, 2020)

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**TITLE 2
LEGISLATION AND ELECTIONS**

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.

**TITLE 2
LEGISLATION AND ELECTIONS**

- 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.

(Amended by Ordinance No. 189881, effective March 4, 2020.)

- 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 or, for special elections only, reduce 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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CLAIMS UNDER ORS CHAPTER 197

- 5.75.010 Purpose.
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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.
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- 5.33.080 Sustainable Procurement.
- 5.33.085 Preference for Goods Fabricated or Processed within State or Services Performed Within State.

- 5.33.090 Use of Price Agreements.
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5.33.010 Definitions.

(Amended by Ordinance Nos. 181547, 183445, 185898, 187373, 187974 and 189878, effective March 4, 2020.)

- 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. **“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.
 - 3. **Advantageous:** In the City’s best interests, as assessed according to the judgment of the City.
 - 4. **Affected Person/Offeror:** A Person or Offeror whose ability to participate in a Procurement or Public Improvement Contract is adversely affected by the City.
 - 5. **Amendment:** A change to a Contract made by addition, deletion, or correction.
 - 6. **Authorized Representative:** A person with legal authority to execute, amend, or terminate a Contract.
 - 7. **Award:** The decision of the City to enter into a Contract with an Offeror.
 - 8. **Bid:** A response to an Invitation to Bid.
 - 9. **Bid or Proposal Bond/Bid or Proposal Security/Offer Security:** A means of securing execution of an Awarded Contract.
 - 10. **Bidder:** An Offeror who submits a Bid in response to the City’s Invitation to Bid.
 - 11. **Chief Procurement Officer:** The person in charge of the Procurement Services Division of the Office of Management and Finance.
 - 12. **City:** The City of Portland, Oregon.

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13. **City Council:** The City’s governing body of elected officials comprised of the Mayor and Commissioners.
14. **Closing:** The date and time announced in the City’s Solicitation Document as the deadline for submitting Offers.
15. **COBID Certified Firm:** a company that has been certified by the State of Oregon Certification Office for Business Inclusion and Diversity (COBID) as a minority-owned, woman-owned, emerging or other business entity. The City recognizes the following certifications: Disadvantaged Business Enterprise (DBE), Minority-owned Business Enterprise (MBE), Women-owned Business Enterprise (WBE), Emerging Small Business Enterprise (ESB) Service-Disabled-Veteran-owned Business Enterprise (SDVBE).
16. **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.
17. **Competitive Bidding:** A selection process that involves an advertised public notice, issuance of a 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.
18. **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.
19. **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.
20. **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 or Consultant to undertake design phase involvement, constructability reviews, value engineering, scheduling, estimating and acquiring subcontracting services, establishing a Guaranteed Maximum Price (GMP) to complete the Contract Work, acting as General Contractor, coordinating and managing the building process, and providing General Contractor expertise.

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21. **Contract:** See definition for Public Contract.
22. **Contract Amount:** The total of the Awarded Bid or Proposal amount, including any approved alternates. The original Contract or Price Agreement Amount is, depending on the context, the maximum amount that the City will pay for work performed pursuant to the Contract or Price Agreement or an estimated amount when the amount is based on unit prices. The final Contract or Price Agreement Amount is the amount that the City pays to the Contractor or Consultant after execution of change orders, Amendments, or variations in unit prices, which cause the original Contract or Price Agreement to increase or decrease.
23. **Contract Execution:** Contract Execution occurs when the Contract or Price Agreement is signed by any mark, word, or symbol, in ink, or using Electronic means by an Authorized Representative of an Offeror and the City.
24. **Contractor or Consultant:** The Person with whom the City executes a Contract or Price Agreement.
25. **Cooperative Procurement:** means a Procurement conducted on behalf of more than one governmental body. Cooperative Procurement includes but is not limited to multiagency Contracts and Price Agreements. 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.
26. **Cooperative Procurement Group:** means a group of governmental bodies joined through an intergovernmental agreement for the purposes of facilitating Cooperative Procurements.
27. **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.
28. **Days:** Calendar days, including weekdays, weekends and holidays, beginning at midnight and ending at midnight 24 hours later, unless otherwise specified by these rules or the Solicitation Document.
29. **Descriptive Literature:** Informational materials concerning available products or services submitted by Offerors in response to the City's Solicitation Document.

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- 30. 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.
- 31. Electronic:** Any means of transmission of information by electronic device, including but not limited to electronic mail.
- 32. Electronic Advertisement:** A notice of the City’s Solicitation Document available through the City’s Electronic Procurement System.
- 33. Electronic Offer:** A response to the City’s Solicitation Document via the City’s Electronic Procurement System.
- 34. Electronic Procurement System:** A 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.
- 35. 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.
- 36. Emergency Procurement Contract:** A Contract Awarded and executed in response to an Emergency.
- 37. 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.
- 38. 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.

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39. **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.
40. **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.
41. **Interstate Cooperative Procurement:** 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.
42. **Invitation to Bid (ITB):** The written document that invites offers from prospective contractors pursuant to either ORS 279B.055 or 279C.335.
43. **“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.
44. **Life Cycle:** consecutive and interlinked stages of a Goods or Services system, from cradle to grave, e.g. from resource generation and raw material acquisition through production, use, and final disposal.
45. **Life Cycle Analysis or Life Cycle Assessment:** a comprehensive method for assessing a range of environmental impacts across the full life cycle of a Goods or Services system. It is a tool that can be used to evaluate the environmental impacts of a product, material, process, or activity.
46. **Life Cycle Costing:** a method for calculating the costs of Goods or Services throughout their life cycle. It includes total cost of ownership and positive or negative externalities which can be monetized, both to the City and society.
47. **Local Contract Review Board:** The Portland City Council.
48. **Nonresident Bidder:** A Bidder who is not a State of Oregon Resident Bidder.
49. **Offer:** A Bid or Proposal in response to a Solicitation Document.

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50. **Offeror:** A Person who submits an Offer.
51. **Opening:** The date, time and place announced in the Solicitation Document for the public unsealing of sealed Offers.
52. **Original Contract** means the initial Contract or Price Agreement solicited and Awarded during a Cooperative Procurement by an Administering Contracting Agency.
53. **Permissive Cooperative Procurement** means a Cooperative Procurement in which the Purchasing Contracting Agencies are not identified.
54. **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 or Price Agreement.
55. **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.
56. **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.
57. **Price** means the cost to the City of the Goods and/or Services under Contracts procured under the procurement Code of the City of Portland.
58. **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 or Consultant obligation to provide Goods or Services, in which the City or other contracting agency does not guarantee a minimum or maximum additional purchase.
59. **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 or Price Agreement, administer a Contract or Price Agreement and obtain performance against a Contract or Price Agreement.
60. **Procurement List** means a listing of those nonprofit agencies for Disabled Individuals that currently are qualified to participate in the program created

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by ORS 279.835 to 279.850 and includes a list of the products and Services offered by such agencies and determined by the State Procurement Office to be suitable for purchase by the City.

61. **Procurement Services:** A division of the Bureau of Revenue and Financial Services in the City of Portland.
62. **Product Sample:** The exact goods, or a representative portion of the exact goods requested by a Solicitation Document.
63. **Project:** All components of a City's planned undertaking that gives rise to the need for Goods or Services.
64. **Proposal:** A Written response to a Request for Proposals.
65. **Proposer:** A Person who submits a Proposal in response to the City's Request for Proposals.
66. **Public Contract:** A sale or other disposal, or the 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."
67. **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.
68. **Public Notice: (also Notice and Notice of Intent)** A notice in written or electronic format by the City of its intention to perform an action such as, but not limited to, issuing a solicitation or entering into a contract.
69. **Procuring 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.
70. **Qualified Rehabilitation Facility (QRF):** A nonprofit community rehabilitation facility certified as a community rehabilitation program or a vocational service provider through the Oregon Department of Human Services through ORS 278.835 to 278.850 whose purpose is to assist and encourage disabled individuals and which:

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- 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 as a QRF; i.e., is listed as a current certificate holder in the annual QRF Directory, published by that Department.
71. **QRF Contract:** A Contract entered into under the program created by ORS 279.835 to 279.850.
72. **Repair and Maintenance:** Ordinary repairs and maintenance necessary to preserve a public improvement. Typically such repairs and maintenance do not prolong the lifespan of a public improvement nor increase its value beyond what was originally constructed.
73. **Request for Proposals (RFP):** All documents, paper or electronic, used for soliciting Proposals in accordance with these rules, or when permitted by Chapter 5.34 and 5.68.
74. **Request for Qualifications (RFQ):** A Written document, issued by the City to prospective Contractors or Consultants, 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.
75. **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.
76. **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.

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77. **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.
78. **Scope:** The range and attributes of the Goods or Services described in the applicable Solicitation Document.
79. **Services:** All services other than personal or PTE services covered by Portland City Code Chapter 5.68.
80. **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 or Price Agreement.
81. **Social Cost of Carbon:** the net present value of climate damages (with harmful damages expressed as a positive number in dollars per metric ton of CO₂-equivalent) from one or more tons of CO₂ or CO₂-equivalent emissions. The social cost of carbon is meant to be a comprehensive estimate of climate change damages and includes, among other things, changes in net agricultural productivity, human health, property damages from increased climate risks, changes in energy system costs, and the value of ecosystem services.
82. **Solicitation:** A request by the City for prospective Contractors or Consultants to submit Offers.
83. **Solicitation Document:** An Invitation to Bid, Request for Proposals or other document issued to invite Offers from prospective Contractors or Consultants pursuant to ORS Chapter 279B or 279C. All documents referenced by the Solicitation Document are included in, and considered part of, the Solicitation Document.
84. **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 or Price Agreement. 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.
85. **Subcontractor/Subconsultant:** A Person, other than the Contractor or Consultant's employee, hired by the Contractor or Consultant to perform a portion of the Work required by the Contract.

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- 86. Sustainable Procurement:** procurement that has the greatest positive environmental, social and economic impacts possible over the entire life cycle.
- 87. Total Cost of Ownership:** the comprehensive accounting of the total cost of acquiring a good or service, including initial costs, energy and operational costs, regulatory costs, longevity and efficacy of service, and disposal costs.
- 88. Work:** The act of furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item in a Contract or Price Agreement or, in context, the entire Contract or Price Agreement and the timely successful completion of all duties and obligations imposed by the Contract.
- 89. Writing:** Letters, characters and symbols inscribed by hand, print type or any other method of impression, intended to represent or convey particular ideas or meanings.

5.33.020 City Council as Local Contract Review Board.

(Amended by Ordinance Nos. 184403, 185065, 185898, 187373 and 189878, effective March 4, 2020.)

- 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, Chapter 5.34, and 5.68 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 Chapters 5.33 and 5.68 apply to those Procurements. Similarly, the Attorney 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, 5.34 and 5.68 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 Contracts and Price Agreements and Amendments to Contracts and Price Agreements that exceed the contracting authority delegated to the Chief Procurement Officer or other City official by ordinance or City Code.

5.33.030 Application of Purchasing Code.

(Amended by Ordinance Nos. 181547, 183445, 185065, 185898 and 189878, effective March 4, 2020.)

- 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 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;

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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;
 - (2) The assistance received by the City is from a grantor for the purpose of supporting or stimulating a program or activity of the City; and
 - (3) No substantial involvement by the grantor is anticipated in the program or activity other than involvements associated with monitoring compliance with grant conditions; or
 - b. An agreement under which:
 - (1) The City provides moneys, property or other assistance, including, but not limited to, federal assistance that is

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characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets;

- (2) The assistance is provided to a recipient for the purpose of supporting or stimulating a program or activity of the recipient; and
 - (3) No substantial involvement by the City is anticipated in the program or activity of the recipient other than involvement associated with monitoring compliance with the grant conditions.
7. Acquisitions or disposals of real property or interests in real property;
 8. Sole source expenditures when rates are set by law or ordinance for purposes of these rules concerning source selection;
 9. Revenue Generating Contracts: Contracts whose primary purpose is generating revenue and are typically Awarded to the Offeror proposing the most Advantageous or highest monetary Offer to the City, or both, except to the extent of the Chief Procurement Officer's authority as stated in Section 5.33.040. The City Council may designate a particular Contract as a revenue-generating Contract;
 10. Contracts for Sale of Advertising in City Publications. The right to advertise in City publications may be sold without Competitive Bidding. The City may utilize this exclusion when it publishes material and wants to recoup part of the cost by selling advertising to be placed in that publication. The revenue generated from the sale of advertising shall be applied to the cost of the publication;

5.33.040 Authority of Chief Procurement Officer.

(Amended by Ordinance Nos. 181547, 183445, 184403, 185065, 185898, 187373, 187974, 189451 and 189878, effective March 4, 2020.)

- A. For Contracts covered by Chapters 5.33 and 5.34, the Chief Procurement Officer is authorized to:
 1. Advertise for Bids or Proposals 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.

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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 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 and Price 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.
 - c. Execute amendments to Price Agreements if the yearly estimated cost to the City is \$1,250,000 or less.
 - d. Amendments whenever an ordinance approved by the City Council grants additional authority to the Chief Procurement Officer beyond that stated in these rules.
7. Authorize final payment for a Procurement of Goods and Services after confirming that all Work is completed and accepted by the City, as follows:
 - a. Whenever the final Contract Amount does not exceed 25 percent of the original Contract Amount; or
 - b. Whenever the final Contract Amount exceeds 25 percent of the original Contract Amount, provided that the final Contract Amount

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is less than \$1,250,000 and the Director of the Bureau on whose behalf the Contract was issued concurs.

8. Adopt forms, procedures, and administrative rules for all City purchases of Goods and Services regardless of amount. The City shall use the forms, procedures and administrative rules unless they conflict with the City Code.
 9. Establish a procedure providing appropriate financial control over the authorization provided by Sections 5.33.055 and 5.33.060.
 10. Revoke or place conditions on the authority of directors and officers to issue limited purchase orders obligating the City for purchase of materials or services not to exceed \$10,000, in the event of violations of these rules.
 11. Perform such other duties as directed by the Portland City Code, City Council or the Commissioner-in-Charge of Procurement Services.
 12. Delegate the Chief Procurement Officer's authority under this Chapter in accordance with City practices.
 13. Resolve protests of Contract Award decisions and other matters as required by City Code.
- B.** The Chief Procurement Officer is responsible for and shall make all purchases in accordance with State law, City Charter, and the City of Portland's Purchasing Authority, Policies and Rules, Chapters 5.33 and 5.34.
- C.** In addition to the delegation of authority provided in Paragraph A. above, the Chief Procurement Officer is authorized to:
1. Award, execute and amend Revenue Generating Contracts; and
 2. Award, execute and amend any other Contracts or Price Agreements 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.)

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5.33.060 Authority of Directors.

(Amended by Ordinance Nos. 183445, 185898, 187373, 187974 and 189878, effective March 4, 2020.) 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.
- D.** Award, execute, amend, and terminate Intergovernmental Agreements (IGA) whenever the IGA amount is less than \$50,000 unless the IGA creates a new government body.
- E.** Execute nondisclosure agreements (other than those set forth in PCC 3.15.090) between the City and vendors in order for the Bureau to review proprietary, trade secret and confidential information on products, services and technologies that are, or might be, considered for use by the Bureau. A nondisclosure agreement is one that prohibits the release of proprietary, trade secret or confidential information, whether held by the City or the vendor, and does not include any monetary consideration. Non-disclosure agreements must be approved as to form by the City Attorney's Office.
- F.** Execute data grant agreements (other than those set forth in PCC 3.15.090) between the City and grantees in order for the Bureau to share Bureau data. A data grant agreement is one in which the City will grant the use of pertinent City data to other agencies, organizations or individuals for research projects or projects performed under Contract with the City. Data grant agreements may include monetary consideration to the City. Data grant agreements must be approved as to form by the City Attorney's Office.
- G.** Execute intellectual property license agreements between the City and third parties for the sale, license or permission to use City intellectual property, as managed by the Bureau. Develop, adopt and maintain any Bureau policies related to the use of the Bureau's intellectual property, including the maintenance, protection and enforcement of the Bureau's rights in their intellectual property. Intellectual

property license agreements must be approved as to form by the City Attorney's Office.

5.33.065 Authority for Stormwater Improvements.

(Added by Ordinance No. 184403; amended by Ordinance No. 189878, effective March 4, 2020.) The Director of the Bureau of Environmental Services is authorized to execute Contracts for stormwater improvements not to exceed \$500,000 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 \$625,000.

5.33.070 Purchasing Goods, Services and Public Improvements from City Employees.

(Amended by Ordinance Nos. 181547, 183445, 185898, 187373 and 189878, effective March 4, 2020.)

- A. Purchasing from City Employees. The Chief Procurement Officer, City Official or City employee shall not make any Procurements 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, 187974 and 189878, effective March 4, 2020.)

- A. Pursuant to ORS 279A.100, the City may limit competition for Contracts for Goods and Services, or on other Contracts with an estimated cost of \$150,000 or less to carry out affirmative action policies, in accordance with policies and procedures established by the City.
 - 1. COBID firms Direct Contracting: The City may directly enter into Contracts with COBID firms which have been certified by the State of Oregon and are current in their certification at the time of Contract Award,

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without a competitive solicitation process. Each City bureau may have only one active Contract awarded to a COBID firm for a specific service or professional discipline using this procurement authority. The Chief Procurement Officer may make situational exceptions to the contract limitation.

- B.** Pursuant to ORS 279A.105, the City may require a Contractor or Consultant 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.
- C.** A Subcontractor certified under ORS 200.055 as an emerging small business is located in or draws its workforce from economically distressed areas if:
- 1.** Its principal place of business is located in an area designated as economically distressed by the OECDD pursuant to administrative rules adopted by the OECDD; or
 - 2.** The Contractor certifies in Writing to the City that a substantial number of the Subcontractor's employees or Subcontractors that will manufacture the goods or complete the services under the Contract reside in an area designated as economically distressed by the OECDD pursuant to administrative rules adopted by OECDD. For the purposes of making the foregoing determination, the City shall determine in each particular instance what proportion of a Contractor's Subcontractor's employees or Subcontractors constitute a substantial number.
 - 3.** The City shall include in each Solicitation Document a requirement that Offerors certify in their Offers in a form prescribed by the City, that the Offeror has not and will not discriminate against a Subcontractor in the Awarding of a subcontract because the Subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055.

- D. The City may sanction a Person from consideration of Award of the City's Contracts under ORS 200.065 or ORS 200.075 in accordance with these rules.

5.33.076 Equal Employment Opportunity.

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

- A. It is unlawful to discriminate on the basis of race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation or source of income in programs, activities, services, benefits, and employment whether carried out by the City of Portland, directly or through a contractor or any other entity with whom the City of Portland arranges to carry out its programs and activities except as allowed by federal law, rules and regulations.
- B. Any person, vendor, contractor, or entity of any type must be registered with the City of Portland as an EEO Employer in order to be eligible to be awarded any Contract.
- C. Procurement Services has the authority to adopt rules, establish standards and procedures it deems necessary to effectively carry out this program.
- D. Contractors and Subcontractors shall provide all information requested by the City to assist it in performing its duties.
- E. If the City receives a complaint filed by any person or entity that alleges prohibited discrimination by a Contractor or Subcontractor, or when information comes into its possession indicating that a Contractor or Subcontractor may have engaged in prohibited discrimination, the City may conduct an investigation to determine whether the complaint or the information is correct.

5.33.077 Equal Benefits.

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

- A. No contractor on a City Contract shall discriminate by policy or practice in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse, subject to the following exceptions:
- B. Procurement Services has the authority to adopt rules, establish standards and procedures it deems necessary to effectively carry out this program in a manner, but not limited to the following:
 - 1. Examine contractor's benefit programs;
 - 2. Allow for remedial action after a finding of non-compliance;
 - 3. Determine and impose appropriate sanctions or remedies by contractors including, but are not limited to:

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- 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 Sustainable Procurement.

(Replaced by Ordinance No. 189878, effective March 4, 2020.)

- A. Sustainable Procurement Policy. Under the direction of the Chief Procurement Officer, Procurement Services shall develop and maintain a Sustainable Procurement Policy that directs action to understand and take responsibility for the environmental, social, and economic impacts of City Procurement decisions using a Life Cycle perspective. All City bureaus and offices shall comply with the Sustainable Procurement Policy and include the Sustainable Procurement Policy directives and best practices in their Procurement planning and decisions.
- B. Consumption Reduction. As part of the City's Sustainable Procurement commitment, City bureaus and offices shall strive to reduce consumption by using strategies such as, but not limited to, the following:
 1. Fully assessing the need;
 2. Reusing, repairing, and repurposing goods and materials on hand;
 3. Purchasing durable goods and materials;
 4. Purchasing goods with minimal packaging;
 5. Utilizing manufacturer leasing and take-back programs;
 6. Purchasing reusable, repairable, and recyclable goods and materials;
 7. Investing in technologies and processes that facilitate reuse, consumption reduction, or lean inventories.

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- C. Life Cycle Costing. As part of the City’s commitment to understanding and taking responsibility for the environmental, social, and economic impacts of City Procurement decisions, whenever feasible City bureaus and offices shall utilize Life Cycle costing methods to determine the full cost of a product, service, or design, and factor these costs into Procurement decisions and Contract award criteria. This includes factoring in the social cost of carbon and similar methodologies that monetize the human health, social, and environmental impacts of the City’s Procurement decisions.
- D. Use of Product or Service Sustainability Standards or Labels.
1. City bureaus and offices shall utilize, as applicable, reputable third-party environmental and/or social product and/or service standards (“sustainability standards”) when specifying or procuring Goods or Services. Reputable sustainability standards are those that:
 - a. Have been developed by a third-party through a public, transparent, and broad stakeholder process;
 - b. The standard criteria are relevant and represent leadership in the applicable issue areas for the covered Goods or Services; preferably addressing multiple environmental or social impacts throughout the product or service Life Cycle.
 2. City bureaus and offices shall utilize, as applicable, reputable third-party environmental and/or social product and/or service labels (“sustainability labels”) when specifying or procuring Goods or Services. Reputable sustainability labels are those:
 - a. That represent product or service compliance to a reputable, third-party sustainability standard;
 - b. Where product or service compliance to the standard is verified by an impartial third-party;
 - c. Where the label is awarded by an impartial third-party;

That satisfy the standards for sustainability certification and label programs developed by the International Organization for Standardization or other recognized standards-setting or accreditation organizations.

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

(Added by Ordinance No. 185898; amended by Ordinance No. 189878, effective March 4, 2020.) Notwithstanding provisions of law requiring the City to award a contract to the

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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, 187373 and 189878, effective March 4, 2020.) If the City Awards a Price Agreement 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, 185898 and 189878, effective March 4, 2020.)

- 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 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.

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- D.** The City may employ methods of Contractor selection for the Procurement of Goods and Services 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.

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- 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;
 - 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.

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- 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 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

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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 Nos. 185898 and 189878, effective March 4, 2020.)

- A.** 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.
- B.** 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.

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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 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.

C. 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.

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- 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.
 - (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

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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.
- D.** 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 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 Nos. 183445 and 189878, effective March 4, 2020.)

- 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; or
 - 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; or
 - 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

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Procurement Services' website at least seven (7) Days before the Contract is Awarded.

5.33.130 Emergency Procurements.

(Amended by Ordinance Nos. 181547, 183445 and 189878, effective March 4, 2020.)

- 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 particular Contractor. The City shall encourage competition for Emergency Procurements to the extent reasonable under the circumstances.
- C.** The Chief Procurement Officer may award, execute, amend, and terminate an Emergency Procurement Contract with authorization from the Commissioner-in-Charge of the City Office, Bureau or Department.
- D.** If the Chief Procurement Officer or person to whom the powers of the Chief Procurement Officer have been delegated is unable to perform the duties of the Chief Procurement Officer position, the director of a City Office, Bureau or Department may award, execute, amend, and terminate an Emergency Procurement Contract with authorization from the Commissioner-in-Charge of the City Office, Bureau or Department.
- E.** For all Emergency Procurement Contracts exceeding \$150,000, the Commissioner-in-Charge shall immediately prepare an ordinance for City Council approval of the Emergency Procurement Contract at its next regularly scheduled session or as soon as possible thereafter.
- F.** If City Council adopts the ordinance, the City will pay for the Work required by the Emergency Procurement Contract. If City Council disapproves the ordinance, the City only will pay for Work performed prior to the date that City Council considered the ordinance for approval. If presentation of the ordinance to City Council is delayed, the City will pay for Work performed prior to the time when the ordinance first was presented to City Council.
- G.** All documentation of Emergency Procurements shall be sent to the Chief Procurement Officer for record keeping purposes.
- H.** Emergency Procurement 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 may pay the Contractor only for Work performed prior to the date of

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termination and the Contractor's unavoidable costs incurred as a result of the termination. The City shall not be liable for Contractor's anticipated lost profits or consequential damages as a result of the termination.

- I. For an emergency procurement of construction services that are not public improvements, the City official authorized to execute an Emergency Procurement Contract under this section 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 official authorized to execute an Emergency Procurement Contract under this section 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 Nos. 183345 and 189878, effective March 4, 2020.)

- A. When the Mayor or person designated to perform the duties of office of the Mayor ("Designee"), proclaims a State of Emergency or Disaster the Mayor or Designee may, by direct appointment, Award Emergency Procurement 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 permits the Mayor to execute, amend, and terminate Emergency Procurement Contracts. 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. 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 Designee 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. Emergency Procurement 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 may pay the Contractor only for Work performed prior to the date of

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termination and the Contractor's unavoidable costs incurred as a result of the termination. The City shall not be liable for Contractor's anticipated lost profits or consequential damages as a result of the termination.

- F.** All documentation of Emergency Procurement Contracts shall be sent to the Chief Procurement Officer for record keeping purposes.
- G.** All Emergency Procurement Contracts Awarded when there was no Emergency or reasonable perception of Emergency are void unless the Emergency Procurement Contract was otherwise valid under another portion of the City's Procurement Rules.
- H.** If an Emergency Procurement 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, 185898 and 189878, effective March 4, 2020.)

- 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.
- 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;

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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.

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.
- 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.

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- 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
 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.

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- 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 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

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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 the terms, conditions and prices of the Original Contract and the Solicitation was advertised in Oregon, or
 - b. is a member of a Cooperative Procurement Group and the Group was listed in the Solicitation of the Administering Contracting Agency as a party that may establish Contracts or Price Agreements under the terms, conditions and prices of the Original Contract and the Solicitation was advertised in Oregon; or
 - c. publishes a Notice of intent to establish a Contract or Price Agreement in the manner required by Subsection 5.33.170 C. below.

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- C. Notice of Intent. If the City is required by this rule to publish a notice of intent to establish a Contract or Price Agreement through an Interstate Cooperative Procurement, the notice shall include:
 - 1. A description of the proposed Procurement;
 - 2. An estimated amount of the proposed Procurement;
 - 3. The name of the Administering Contracting Agency; and
 - 4. A time, place and date by which comments must be submitted to the City regarding its intent to establish a Contract or Price Agreement through an Interstate Cooperative Procurement.
- D. The City shall give public notice at least seven (7) Days before the deadline for submission of comments regarding its intent to establish a Contract or Price Agreement through an Interstate Cooperative Procurement.
- E. If the City receives comments within seven (7) Days after publication of its notice, the City shall make a Written determination that establishing a Contract or Price Agreement through an Interstate Cooperative Procurement is in the best interest of the City and provide a copy of the Written determination to any vendor that submitted comments before a Contract or Price Agreement may be established.

5.33.180 Small Procurements.

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

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

(Amended by Ordinance No. 189878, effective March 4, 2020.)

- A. Generally. For Procurements of Goods and Services not exceeding a Contract Amount of \$150,000, the City may Award a Contract as an Intermediate Procurement pursuant to ORS 279B.070. A Procurement shall not be artificially

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divided or fragmented so as to constitute an intermediate Procurement under this section.

1. Oral Bids: For Procurement of Goods and Services not exceeding \$50,000, the City may Award a Contract after seeking three oral or Written Bids.
 2. Written Bids: 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 Bids.
 3. Written Proposals Only: For Procurements of Goods and Services of any dollar amount not exceeding \$150,000, the City may Award a Contract after seeking three Proposals. All Proposals must be in writing; the City may not seek oral Proposals.
- B.** For all Intermediate Procurements, the City shall seek at least three informally solicited competitive Bids or competitive Proposals from prospective Contractors, and shall keep Written records of the sources of the Bids or Proposals received. If three Bids 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 Bids or Proposals.
- C.** Negotiations: The City may negotiate with an Offeror to clarify its Bid or Proposal or to effect modifications that will make the Bid 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, 185898 and 189878, effective March 4, 2020.)

- 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.
 - a. A time and date by which the Bids must be received as well as a location 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;

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- 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 location 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. 75.;
- m.** Bidder’s certification of nondiscrimination in obtaining required Subcontractors in accordance with ORS 279A.110(4). (See Section 5.33.075); and
- n.** How the City will notify Offerors of Addenda and how the City will make Addenda available. See Section 5.33.430; and

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shall be reasonable estimates based on information the City has available concerning future use.

4. Preference for Goods manufactured from Recycled Materials under Section 5.33.080 and ORS 279A.125;
5. Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the Contract, either in whole or in part, without the City's prior Written consent. Unless otherwise agreed by the City in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the City consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the City for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the City otherwise agrees in Writing.
6. All Contractual terms and conditions in the form of Contract provisions the City determines are applicable to the Procurement. As required by state law, the contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:
 - a. The City's reduction or withholding of payment under the Contract;
 - b. The City's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the statement of work or to meet the performance standards established by the resulting Contract; and
 - c. The City's rights, which the City may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contractor or applicable law.

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

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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 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.

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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
 - 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, (RFP's).

(Amended by Ordinance Nos. 183445, 185065, 185898 and 189878, effective March 4, 2020.)

- 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 Proposers 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;

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- 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;
- 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.
- n.** The successful proposer moving forward from the solicitation phase to the contract phase will be required to be in compliance with all City contracting requirements;
- o.** If 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 criteria shall require the City to purchase the Goods and Services considered most advantageous to the City available from the multiple Contracts;

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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 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.

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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
 - c. The City's rights, which the City may assert individually or in combination, to declare a default of the resulting contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contractor or applicable law.
 7. The City may include the applicable contract terms and conditions in the form of Contract provisions, or legal concepts to be included in the resulting Contract. Further, the City may specify that it will include or use Proposers' terms and conditions that have been pre-negotiated, but the City may only include those terms and conditions in the resulting Contract to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The City shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest filed by the Proposer.
 8. For multiple Award Contracts the City may enter into Contracts with different terms and conditions with each Contractor to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The City shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest filed by the Proposer.
- C. Good Cause. For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards prevalent in

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the industry or business most closely involved in providing the Goods or Services under the Contract, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the City. The City shall document in the Procurement file the basis for the determination of Good Cause for specifying otherwise. The City will have Good Cause to specify otherwise when the City determines:

1. The purpose to which the Goods or Services will be used does not justify a requirement that the Contractor meet the highest prevalent standards in performing the contract;
2. Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with or will operate efficiently or effectively with components, equipment, parts, Services or information technology including hardware, Services or software with which the Goods or Services will be used, integrated, or coordinated;
3. The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evaluation of 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, 185898 and 189878, effective March 4, 2020.)

- 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.

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- 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 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 this Code.
- 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.

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- E.** Award Protest. The 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 of a 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 any administrative remedy made available to the Proposers 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 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.

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1. The City may initiate oral or Written discussions with all “eligible Proposers” on the subject matter within the general scope of the Request for Proposals.
 - a. In conducting discussions, the City:
 - (1) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;
 - (2) May disclose other eligible Proposers’ Proposals or discussions only in accordance with ORS 279B.060(8)(b) or (c);
 - (3) May adjust the evaluation of a Proposal as a result of a discussion under this section discussions. The conditions, terms, or price of the Proposal may be altered or otherwise changed during the course of the discussions provided the changes are within the Scope of the Request for Proposals.
 - b. At any time during the time allowed for discussions, the City may:
 - (1) Continue discussions with a particular eligible Proposer;
 - (2) Terminate discussions with a particular eligible Proposer and continue discussions with other eligible Proposers; or
 - (3) Conclude discussions with all remaining eligible Proposers and provide to the then-eligible Proposers, notice pursuant to Subsection 5.33.211 J. requesting best and final Offers.

H. Negotiations.

1. The City may commence serial negotiations with the highest-ranked eligible Proposer or commence simultaneous negotiations with all eligible Proposers:
 - a. The City may negotiate:
 - (1) The statement of work;
 - (2) The Contract Price as it is affected by negotiating the statement of work other terms and conditions authorized for negotiation in the Request for Proposals or Addenda thereto; and

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- (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:
 - 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.

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- 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.

- 1.** Public Notice. Whenever the City uses multi-step sealed Proposals for Contracts over \$150,000, 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

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- 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.
- 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).

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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 or 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 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 or consultants. 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

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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
 - d.** The timeline for cleanup does not permit the use of intermediate Procurement procedures.

- 9.** Amendments to Contracts and Price Agreements: The City may execute Contract amendments, as follows:

 - a.** An original valid Contract exists between the parties;
 - b.** Unit prices or “add alternates” were provided in the Solicitation Document that established the cost basis for the additional Work or product or in a lump sum Contract the Contractor has provided an estimate of the additional cost which has been verified by the Bureau seeking the amendment; and
 - c.** The Solicitation Document provided for such amendments; or
 - d.** Emergency: The original Contract was let pursuant to a declaration of Emergency, in accordance with Section 5.33.130; or
 - e.** Unplanned Environmental Cleanup: The additional Work is required by reason of existing regulations or ordinances of federal,

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state or local agencies, dealing with the prevention of environmental pollution and the preservation of natural resources, that affect performance of the original Contract and such regulations or ordinances either were not cited in the original Contract or were enacted or amended after submission of the successful Bid or Proposal.

10. Renegotiations of Existing Contracts with Incumbent Contractors.

- a.** Authorization. The City may renegotiate and amend existing Contracts with incumbent Contractors only if it is in the best interest of the City and has the approval of the Chief Procurement Officer prior to negotiation.
- b.** Process and Criteria. The City may renegotiate various items of the Contract, including but not limited to: price, term, delivery and shipping, order size, item substitutions, warranties, discounts, on-line ordering systems, price adjustments, product availability, product quality, and reporting requirements. The City must meet the following conditions in its Renegotiations with incumbent Contractors:
 - (1)** Favorable Result. The City must determine that, with all things considered, the renegotiated Contract is at least as 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 Goods 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 Goods 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

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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 thereby establishing a market norm. If the City determines that a market norm exists, 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.
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

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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:
 - a. When a Contractor or Consultant, such as a court reporter or copy service, has been selected by another person and the City must bear a portion of the cost in order to receive the benefit of the contractor's work, such as deposition transcripts or photocopies; or
 - b. When the Contractor or Consultant, including, but not limited to a mediator, arbitrator, referee or court appointed individual, is selected either by a court, or by joint agreement between the City and another person or persons, in an effort to resolve a claim or dispute that has been or will be asserted by or against the City, regardless of whether litigation has been filed.
19. Seminar, training registration and conference fees. The City may directly purchase, without a competitive solicitation process, seminar registrations and training session fees for attendance at seminars, conferences and training courses hosted by outside entities.
20. Event sponsorship agreements. The City may directly pay to sponsor an event, whether or not the City receives goods or services in return for its payment.
21. Stormwater Improvements. The City may enter into a Contract for stormwater improvements or watershed restoration, or both, without

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obtaining competitive solicitations if all or a significant portion of the improvements or restoration that the City is funding will be performed

- a. on private property; and
 - b. by the property owner or a contractor hired by the property owner.
 - 22. Performing Artists. The City may enter into a Contract for performance art whether vocal, instrumental, or visual required by the City to provide a paid performance of their work for an audience determined by the City.
 - 23. Honoraria. The City may make a one-time payment or gratuity granted in recognition of a special service in which propriety or a competitive selection process is not feasible and made without the service provider recognizing themselves as having any liability or legal obligation for services.
- E. Notice. The City shall give public notice of the City Council’s approval of an Individual or Class Special Procurement on its website as provided in Subsection 5.33.300 A.3. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement. The City shall give such public notice of the approval of a Special Procurement at least seven (7) Days before Award of the Contract. If the Special Procurement leads to a Solicitation Document, then the City will post a Notice of Intent to Award the contract pursuant to Section 5.33.650.
- F. If the City plans to conduct a competitive special Procurement, it shall award the contract to the Offeror the City determines to be the most advantageous to the City and thereafter give notice of intent to Award to all prequalified Offerors who sought the Award of a Contract in the manner provided for competitive sealed Bids.

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

(Amended by Ordinance Nos. 183445, 185898, 187373 and 189878, effective March 4, 2020.)

- 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

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- 3.** Place Notice on the City’s Electronic Procurement System.
- 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;
 - 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 location where Contract terms, conditions and Specifications may be reviewed;
 - f.** The name and title of the person designated for the receipt of Bids or Proposals 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.

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- C. Posting Advertisement for Offers. 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. 183445,185898 and 189878, effective March 4, 2020.)

- 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 makes a Written determination finding that the brand name will meet one or more of the following needs:
 - 1. The use of a brand name Specification is unlikely to encourage favoritism in the Awarding of a Contract or substantially diminish competition for Contracts; or
 - 2. The use of a brand name Specification would result in a substantial cost savings to the City; or
 - 3. There is only one manufacturer or seller of the product of the quality, performance or functionality required; or
 - 4. Efficient utilization of existing goods requires the acquisition of compatible Goods or Services.

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- 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 Nos. 185898 and 189878, effective March 4, 2020.)

- A. Offer and Acceptance. A Bid Proposal 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.

(Repealed by Ordinance No. 189878, effective March 4, 2020.)

5.33.340 Electronic Procurement.

(Amended by Ordinance Nos. 183445, 185898 and 189878, effective March 4, 2020.)

- 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.

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- 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 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.

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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.
- I. Failure of the Electronic 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.

(Amended by Ordinance No. 189878, March 4, 2020.)

- 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 a date and time when the City will begin accepting Offers, and a date and time at which the City intends to stop receiving Offers. The date and time the City intends to stop receiving Offers need not be a fixed point in time but may remain dependent on a variable specified in the Solicitation. At the date and time the City intends to begin accepting Offers, the City must begin accepting real time Electronic Offers. The Solicitation must remain open until the date and time or conditions have been reached for the City to stop accepting Offers. The City may require Offerors to register before the date and time the City intends to begin accepting Offers 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 date and time the City intends to begin accepting Offers, the lowest Offer price or, if Proposals are accepted, the ranking of each Proposer, must be posted Electronically and updated on a real time basis. At any time before the date and time the City intends to stop receiving Offers, an Offeror may lower

the price of its Offer or revise its Proposal except that after the date and time the City intends to begin accepting Offers, an Offeror may not lower its price unless that price is below the then lowest Offer. Offer prices may not be increased after the date and time the City intends to begin accepting Offers. 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 date and time the City intends to stop receiving Offers, 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 date and time the City intends to begin accepting Offers and the new date and time the City intends to stop receiving Offers. 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.

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 Nos. 185898 and 189878, effective March 4, 2020.)

- A. Instructions. An Offeror shall sign and submit 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

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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 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.
- 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, 185898 and 189878, effective March 4, 2020.)

- 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 as defined in Section 5.33.010 and 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

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notice of any Addenda on City's Web site. Addenda may be downloaded from 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 3 Business Days before the Closing unless the Addendum also extends the Closing. For purposes of computing this time, the Addendum shall be deemed issued when it is first posted on the City's Electronic Procurement System 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 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, 185898 and 189878, effective March 4, 2020.)

- 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.
- 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 by Written Addendum.

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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:

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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
 - 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.

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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.

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- 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 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:

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

evidence that permits a correction to ensure the integrity of the competitive process.

5.33.495 Time for City Acceptance.

(Amended by Ordinance No. 189878, effective March 4, 2020.)

- A. An Offeror's Offer is a Firm Offer, irrevocable, valid and binding on the Offeror for not less than 60 Days from Closing unless otherwise specified in the Solicitation Document. After 60 Days the Offer shall lapse unless extended. The extension may occur after the expiration of the 60-Day period.
- B. An Offer may be extended beyond 60 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, 187373 and 189878, effective March 4, 2020.)

- A. Contracts shall be Awarded only to Responsible Offerors. Pursuant to ORS 279B.110, 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 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;

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- 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 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.** 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 tax registration 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 Services within seven (7) Days of the receipt of a Bid or Proposal, unless the City waives that requirement and decides to pursue collection through retention of Contract funds, or through other means; or
 - c.** The Offeror failed to submit a signed affidavit that attests, under penalty of perjury, that the Offeror has complied with the tax laws of the State of Oregon and the City of Portland.
 - 5.** Supplied all necessary information in connection with the inquiry concerning responsibility. If a prospective Offeror fails to promptly supply information requested by the City concerning responsibility, the City shall base the determination of responsibility upon any available information or may find the prospective Offeror non-Responsible;
 - 6.** Not been debarred by the City under ORS 279B.130, Sections 5.33.530 or 5.33.540.
- B.** In the event the City determines an Offeror is not Responsible it shall prepare a Written determination of non-responsibility as required by ORS 279B.110.

- C. Form of Business Entity. 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 Debarment provisions of ORS 279B.130.

5.33.505 Qualified Products Lists.

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

- A. City Bureaus may develop and maintain a qualified products list when it is necessary or desirable to test or examine goods before initiating a Procurement. “Goods” includes products that have associated or incidental service components, such as supplier warranty obligations or maintenance service programs.
- B. When any Bureau begins the initial development of a qualified products list, the Chief Procurement Officer shall give public notice in accordance with Section 5.33.300 of the opportunity for potential Contractors, sellers or suppliers to submit goods for testing and examination to determine their acceptability for inclusion on the list.
 - 1. The Chief Procurement Officer may also solicit in Writing representative groups of potential Contractors, sellers or suppliers to submit goods for the testing and examination.
 - 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.

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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;

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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:
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.

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5.33.540 State of Oregon COBID Certified firms Prohibited Conduct; Sanctions; Appeals.

(Replaced by Ordinance No. 187974; amended by Ordinance No. 189878, effective March 4, 2020.)

- 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:
1. Fraudulently obtaining or retaining certification as COBID Certified Firm;
 2. Attempting to fraudulently obtain or retain certification as a COBID Certified Firm;
 3. Aiding another person to fraudulently obtain or retain certification as a COBID Certified Firm;
 4. Aiding another person to attempt to fraudulently obtain or retain certification as a COBID Certified Firm; or
 5. Knowingly making a false claim that any person is qualified for certification or is certified under ORS 200.055 (Certification of COBID Certified Firm) 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

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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;
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 Certification Office for Business Inclusion and Diversity 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 COBID Certified Firm 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 COBID Certified Firm 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.

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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 COBID Certified Firm 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 COBID Certified Firm 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.
- 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.

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- 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, 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.

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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.
- 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

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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:

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

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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.

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- 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 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, 185898 and 189878, effective March 4, 2020.)

- 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.

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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:
 - 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) unless the Solicitation Document specifically allows such exceptions in order to encourage innovative approaches and ideas;
 - 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:

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- 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 COBID Certified Firms 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.
- 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;

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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, 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.

(Amended by Ordinance No. 189878, effective March 4, 2020.)

- A. **Cancellation in the Public Interest.** The City may cancel a Solicitation or Procurement described in a Solicitation in whole or in part prior to Contract

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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
 - 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

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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 Nos. 185898 and 189878, effective March 4, 2020.)

- 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 Public Records Request accompanied by payment if payment has been determined to be necessary. 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 submitting a Public Records Request and 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.
- 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

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1. Time: A Written protest of the City's approval shall be provided to the Chief Procurement Officer not later than seven (7) Days after the approval of the Special Procurement or class Special Procurement unless a different time period is provided in the Notice. The Chief Procurement Officer shall not consider a protest submitted after the timeline established for submitting such protest under this rule.
 2. Contents. The Written protest must include:
 - a. Sufficient information to identify the Request that is the subject of the protest;
 - b. A detailed statement of all the legal and factual grounds for the protest;
 - c. Evidence or supporting documentation that supports the grounds on which the protest is based;
 - d. A description of the resulting harm to the Affected Person; and
 - e. The relief requested.
- C. Required City Response.** The City shall take the following actions, as appropriate:
1. The City shall inform the Affected Person in Writing if the protest was not timely filed;
 2. The City shall inform the Affected Person if it failed to meet the requirements of Subsection 5.33.700 B.2. and the reasons for that failure;
 3. If the protest was timely filed and provides the information required by Subsection 5.33.700 B.2., the City shall issue a decision in Writing and provide that decision to the Affected Person within a reasonable period of time unless a Written determination is made by the City that circumstances exist that require a shorter time limit.
 4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.
- D. Optional City Response:** In addition to the requirements of Subsection 5.33.700 C., the Chief Procurement Officer may do any of the following:
1. Agree with the protest and take any corrective action necessary;

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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.

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.)

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;

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- 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.
 - 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;

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- 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.
 - 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.

 - 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;

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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;
 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.)

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- 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 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.

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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 5.33.740 B.2. and the reasons for that failure;
 3. If the protest was timely filed and provides the information required by Subsection 5.33.740 B.2. above, the City shall issue a decision in Writing and provide that decision to the Affected Person within a reasonable time of the receipt of the protest.
 4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.
- D. Optional City Response: In addition to the requirements of Subsection 5.33.740 C. above, the Chief Procurement Officer may do any of the following:
1. Agree with the protest and issue a revised Notice of Intent to Award or take any other corrective action that may be necessary to ensure that the Contract is Awarded to the appropriate Offeror;
 2. Issue a Written response to the protest and provide that decision to the Affected Person;
 3. Refer the protest and any response to the Board of Appeals for decision;
 4. Refer the protest and any response to the City Council for decision; or
 5. Take any other action that is in the best interest of the City while giving full consideration to the merits of the protest.
- E. Judicial Review. An Affected Person may not seek judicial review of the Intent to Award a Contract unless it has complied fully with the protest requirements of this section. Judicial review is not available if the City elects not to make an Award.

5.33.750 Protests of Other Violations.

(Amended by Ordinance Nos. 181547, 183445, 185898, 187373 and 189878, effective March 4, 2020.) 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:

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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 7 Days after the date on which the alleged violation occurred and in no event more than 7 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 7 Days after the date on which the alleged violation occurred and in no event later than 7 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.

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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 5.33.750 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;
 - 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

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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, 185898 and 189878, effective March 4, 2020.)

- 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 Procurement sector;
 - b. The City Engineer;
 - c. A member of the general public with affiliation to the Procurement profession.
 - 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 for additional 2-year periods up to a total possible term of 10 years.
 - 4. A member of the board shall serve as chairperson.

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- 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.
- 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."

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- 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.
- 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

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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 Nos. 185898 and 189878, effective March 4, 2020.)

- 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 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:
 - 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,

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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.)

- 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 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

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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.
- 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;

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- 3.** Expense of Completion. The expense incurred by the City shall be as determined and certified by the City;
- G.** Refusal to Perform. In addition to and apart from the above-mentioned right of the City to terminate the Contractor's performance, the Contract may be canceled by the City for any willful failure or refusal on the part of the Contractor and its surety to perform faithfully the Contract according to all of its terms and conditions; however, in such event neither the Contractor nor the surety shall be relieved from damages or losses suffered by the City on account of the Contractor's breach of Contract;
- H.** Remedies Cumulative. The City may, at its discretion, avail itself of any or all of the above rights or remedies and invoke anyone of the above rights or remedies without prejudice and without precluding the City from subsequently invoking any other right or remedy set forth above, or in the Contract, or available at law or in equity.
- I.** Notice. The City shall provide the Contractor Written notice of the grounds for Contract cancellation or Contractor termination and of its intention to cancel the Contract or terminate the Contractor's performance. If the Contractor provided a performance and payment bond, the surety shall also be provided with a copy of the notice of Contract cancellation or Contractor termination. The notice shall include:

 - 1.** The effective date of the intended cancellation or termination,
 - 2.** The grounds for cancellation or termination, and
 - 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

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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.

5.33.950 Unsolicited Proposal Policy.

(Added by Ordinance No. 189878, effective March 4, 2020.)

- A.** Public-private partnerships create opportunities for both the public and private sectors. Recognizing that the structure of these partnerships will be dependent upon the scope and the opportunities that the partnership offers, the involved parties play varying roles and assume varying degrees of responsibility in achieving the intended outcome of any partnership.

The intent of this Policy is to provide a mechanism for the private sector to initiate partnerships with the City outside of the typical procurement process, which requires the City to first issue a solicitation before it can consider proposals or Offers from the private sector for products and/or services. When public-private partnerships are properly conceived and implemented, including having the support of the community and local jurisdictions, they can offer significant advantages to both the public and private sectors.

The City believes that this policy will facilitate more public-private partnerships with the following characteristics:

1. Leveraging the expertise and resources of the private sector and allowing firms to submit innovative, creative and proprietary approaches, plans, processes, procedures, and solutions that have commercial value to the City to assist in delivering products and/or services to the residents of the City of Portland that cannot be achieved through normal methods of procurement or financing;
2. Encouraging and promoting business and employment opportunities with the City of Portland

B. Definition of an Unsolicited Proposal

An unsolicited proposal should be distinguished from the following:

1. Advertising Material – Material designed to acquaint the City with a prospective Offeror’s current off-the-shelf products and/or services or potential capabilities;
2. Commercial Product Offerings – Offers of standard commercial products or services usually sold in substantial quantities to government agencies or the general public which the Offeror desires the City to procure as an alternative or replacement for existing products or services;

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3. Contributions – Concepts, suggestions or mere ideas presented to the City for its use, with no indication on the part of the Offeror that it will continue with its efforts with regard to such concepts, suggestions or ideas on behalf of the City; and
4. Technical Correspondence – Written inquiries regarding the City’s interest in research areas, pre-proposal explorations and technical inquiries.

C. Content of Unsolicited Proposals

Unsolicited proposals should contain the following information in order to permit consideration in an objective and timely manner:

1. Basic information – this shall include the name and address of the Offeror; type of organization e.g. for profit, nonprofit, educational, small business, etc...; names and telephone number of the Offeror’s technical and business personnel whom the City may contact for evaluation or negotiation purposes; identification of any proprietary data which the Offeror intends to be used by the City only for evaluation purposes; names of any other Federal, State or Local agencies or other parties receiving the proposal and/or funding the proposed effort or activity; date of submission; and signature of a responsible official or representative of the organization.
2. Technical information – this includes a concise title and an abstract of the proposed products and/or services; a reasonably complete discussion stating the objectives of the effort or activity; the method of approach and extent of effort to be employed, the nature and extent of the anticipated results; the manner in which the effort or activity will help support the accomplishment of the services the City provides to the residents of the City of Portland; the names and brief biographical information of the Offeror’s key personnel who would be involved; and the type of support or effort, if any, that the City would be expected to provide or perform.
3. Supporting information – this includes a proposed price or total estimated cost; a cost estimate for the proposed effort or activity sufficiently detailed by elements of cost for meaningful evaluation; the type of contract preferred; the period of time for which the proposal is valid; the proposed duration of effort; statements, if applicable, regarding cost sharing and the level of investment to be made by the Offeror; organizational conflicts of interest; environmental impacts; and brief descriptions of the organization, previous work or experience in the field of the proposal and facilities to be utilized for the work, where appropriate for understanding the unsolicited proposal.

D. Advance Guidance

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Organizations or individuals interested in submitting an unsolicited proposal are encouraged to first contact the City to make preliminary inquiries as to the general need for the products and/or services contemplated. Prior contact with City personnel is permissible and should be encouraged with the limited objective of conveying to the prospective Offeror an understanding of the City's needs relative to the product or service contemplated by the prospective Offeror. Contact shall be conducted in a manner that

1. precludes a bureau commitment regarding acceptance of an unsolicited proposal;
2. avoids providing the prospective Offeror a competitive advantage for any planned competitive solicitation.

E. Process and Evaluation Description

The City will follow a three step evaluation process in determining whether to accept an unsolicited proposal. A favorable comprehensive evaluation will not, in itself, result in the awarding of a contract to the Offeror. The three step process shall be as follows:

1. Step One – Initial Evaluation
 - a. A prospective Offeror shall submit its unsolicited proposal to Procurement Services at the following address:
 - (1) City of Portland
 - (2) Procurement Services Division
 - (3) Attn: Chief Procurement Officer
 - (4) Unsolicited proposals shall be submitted well in advance of the Offeror's desired beginning of the proposed effort or activity in order to allow the City sufficient time to evaluate the proposal and negotiate a contract if the unsolicited proposal is accepted by the City.
 - b. An initial evaluation shall be conducted by the appropriate City staff to determine that the proposal contains sufficient technical and cost information to permit a meaningful evaluation and that it was submitted by a responsible official or authorized representative of the organization submitting the proposal or a person who is authorized to contractually obligate the organization.

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- c. In evaluating an unsolicited proposal, the following criteria will be considered in addition to other criteria relevant to the offer:
 - (1) Unique, innovative, or meritorious methods, approaches, ideas or solutions that have originated with or have been assembled together by the Offeror that are contained in the unsolicited proposal.
 - (2) Overall merits of the proposed products and/or services.
 - (3) Potential contribution that the proposed effort or activity is expected to achieve for the City, if pursued.
 - (4) Capabilities related to experience, facilities, techniques or unique combinations thereof, which the Offeror possesses and offers, and which are considered integral factors for achieving the objective(s) of the unsolicited proposal.
 - (5) Qualifications, capabilities and experiences of the proposed principal, team leader or key personnel who are considered to be critical in achieving the objectives of the unsolicited proposal.
 - (6) The financial benefit to the City in implementing the unsolicited proposal.
- d. Upon completion of the initial evaluation, City staff performing the evaluation shall prepare a memo setting forth the evaluation results and submit to the Chief Procurement Officer. The memo shall also recommend further action, if any.
- e. The City is not required to conduct a secondary evaluation if, upon application of the above described criteria, the proposal is deemed not to be within the purview of the City's interests. In such cases, the Offeror shall be furnished a reply stating how the document is being interpreted by the City and the reasons for not continuing with subsequent evaluation.

2. Step Two – Secondary Evaluation and Publication

- a. Prior to performing a secondary evaluation or negotiation regarding an unsolicited proposal, the City will publicize its, "Intent to Negotiate a Contract Offered by an Unsolicited Proposal" for a period of 30 days. The purpose of such publication is to ascertain whether other parties have a desire and the ability to offer products

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and/or services similar to what is contemplated in the unsolicited proposal. The City's publication will give notice of the basic business elements of the unsolicited proposal and inform/invite the public that interested parties may inquire about, provide comments and/or express a statement that they can provide similar products and/or services to the City. The publication will not disclose proprietary information from the unsolicited proposal. If, based on the City's publication, interest is expressed by other parties who also desire an opportunity to submit a proposal for similar products and/or services of those contemplated in the unsolicited proposal, then the City will withdraw its, "Intent to Negotiate a Contract Offered by an Unsolicited Proposal" and work with the City bureau to figure out whether or not the City will issue a competitive solicitation.

- b.** If, based on review of inquiries, comments and/or expressions of interest from other, interested parties, the City determines that those other, interested parties are not offering equal products and/or services in a similar offer to that of the unsolicited proposal, the City reserves the right to continue in the process and enter into negotiations with the Offeror that submitted the unsolicited proposal.
- c.** If no inquiries, comments and/or expressions of interest are received during the 30 day publication period, the City will continue the process and enter into negotiations with the Offeror that submitted the unsolicited proposal.

3. Step Three – Negotiation

- a.** Upon making a determination that an unsolicited proposal has merits to the City and that it meets all of the requirements contained herein, the Chief Procurement Officer will seek authorization from Council by an Ordinance to enter into negotiations with the Offeror of the unsolicited proposal regardless of the amount.
- b.** The City reserves the right to require the submission of supplemental material or information that will assist the City in negotiating a final contract and in determining that the Offeror has the technical capability and financial resources to perform the contract as contemplated.
- c.** An unsolicited proposal that results in a recommendation of the City that a contract be awarded is subject to all other applicable contract award and approval requirements.

F. Use of Information

All unsolicited proposals submitted to the City are subject to the applicable public records laws. Offerors are advised to familiarize themselves with the provisions of these laws. If the Offeror has concerns about proprietary information that it would like to make available to the City, the Offeror may suggest for the City's consideration, prior to submission of its unsolicited proposal, methods for safeguarding such information from disclosure consistent with applicable public records laws. Nothing herein precludes the City from using any data, concepts or ideas, which it may have intended to use had the unsolicited proposal not been submitted. Subject to this policy, any information submitted to the City shall be held in confidence until such time that the City accepts the unsolicited proposal and it becomes necessary to commence the contract award process.

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**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.
- 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.
- 5.34.340 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 COBID Certified Firm 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.
- 5.34.630 Reciprocal Preferences.
- 5.34.640 Negotiation When Bids Exceed Cost Estimate.
- 5.34.645 Rejection of Offers.
- 5.34.650 Notice of Intent to Award.

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- 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.
- 5.34.685 Availability of Award Decisions.
- 5.34.690 Performance and Payment Security; Waiver.
- 5.34.695 Notification to State of Nonresident Contractor.
- 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.
- 5.34.760 Procurement Board of Appeals.
- 5.34.770 Powers of the Board.
- 5.34.780 Appeal to Board.
- 5.34.800 Purpose.
- 5.34.810 Definitions for Alternative Contracting Methods.
- 5.34.820 Use of Alternative Contracting Methods.
- 5.34.830 Findings, Notice and Hearing.
- 5.34.840 Competitive Proposals; General Procedures.
- 5.34.845 Requests for Qualifications (RFQ)
- 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, 187974 and 189878, effective March 4, 2020.)

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- 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 COBID Certified Firm 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 Chapter. However, some portions of ORS 279C and this chapter may still be applicable to the resulting Contracts.
- C. Authority and Ethics

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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, 187974 and 189878, effective March 4, 2020.)

- 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 a COBID Certified Firm; or
 2. A business enterprise that is:
 - a. Certified under ORS 200.055 as a COBID Certified Firm; 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.
- C. A Subcontractor certified under ORS 200.055 as a COBID Certified Firm is located in or draws its workforce from economically distressed areas if:

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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 COBID Certified Firm 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;
- 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, 184403 and 189878, effective March 4, 2020.)

- 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.080 and Chapter 5.33 of this Code. Emergency Procurement 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 Contract shall document the nature of the Emergency and describe the method used for the selection of the particular Contractor. The City shall encourage competition for Emergency Procurement Contracts to the extent reasonable under the circumstances.
- C. The Chief Procurement Officer may award, execute, amend, and terminate an Emergency Procurement Contract if the original value of the Emergency Procurement Contract is \$500,000 or less with authorization from the Commissioner-in-Charge of the City Office, Bureau or Department.
- D. If the Chief Procurement Office or person to whom the powers of the Chief Procurement Officer have been delegated is unable to perform the duties of the Chief Procurement Officer position, the director of a City Office, Bureau or Department may award, execute, amend, and terminate an Emergency Procurement Contract if the original value of the Emergency Procurement Contract is \$500,000 or less with authorization from the Commissioner-in-Charge of the City Office, Bureau or Department.
- E. A Commissioner-in-Charge of a City Office, Bureau or Department may award, execute, amend, and terminate an Emergency Procurement Contract subject to the following procedures over \$500,000.
 - 1. The Commissioner-in-Charge shall immediately prepare an ordinance for City Council approval of the Emergency Procurement Contract at its next regularly scheduled session or as soon as possible thereafter.
 - 2. If City Council adopts the ordinance, the City will pay for the Work required by the Emergency Procurement Contract. If City Council disapproves the ordinance, the City only will pay for Work performed prior to the date that City Council considered the ordinance for approval. If presentation of the

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ordinance to City Council is delayed, the City will pay for Work performed prior to the time when the ordinance first was presented to City Council.

- F.** All documentation of Emergency Procurement Contracts shall be sent to the Chief Procurement Officer for record keeping purposes.
- G.** Emergency Procurement 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 may pay the Contractor only for Work performed prior to the date of termination and the Contractor's unavoidable costs incurred as a result of the termination. The City shall not be liable for Contractor's anticipated lost profits or consequential damages as a result of the termination.
- H.** Pursuant to ORS 279C.380(4) and this rule, the Emergency Procurement Contract may also state that the City waives the requirement of furnishing a performance bond and payment bond for the Emergency Procurement Contract. Waiving those bonding requirements 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 bonds from 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:

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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
 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.

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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;
- 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.

(Amended by Ordinance Nos. 181547, 183445, 185898 and 189878, effective March 4, 2020.)

- A.** Public Improvement Contracts estimated by the City not to exceed \$100,000, may be Awarded through the requirements of this rule.
- B.** All Solicitation Documents for public improvements 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.

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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 Offers exceed \$50,000, then the Solicitation shall be cancelled and a new Solicitation Document, containing the BOLI provisions regarding prevailing wage, shall be included.
- C. Solicitation Document 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.
- D. The City shall Award the Contract to the prospective Contractor whose Offer 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 may be increased above the original amount of Award by Change Order 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, 187373 and 189878, effective March 4, 2020.)

- 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;

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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 location 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 Electronic means (see Section 5.34.340 regarding Electronic Procurement);
6. The time, date and place of Opening;
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 location 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.75.;
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;

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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 tax registration account, if required.
- B.** The Solicitation Document shall also contain the following information about the evaluation process:
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;

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- 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));
 - 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));

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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);
 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, 185898 and 189878, effective March 4, 2020.)

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- 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
 - 3.** Placing Notice on the City’s Electronic Procurement System.
- 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

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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;
 - (2) The location 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.

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- 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”.
- 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.

(Repealed by Ordinance No.189878, effective March 4, 2020.)

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.

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- 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.
- 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

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the Solicitation Document, may be rejected and excluded from consideration, as otherwise provided by this Chapter.

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:

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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 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 Nos. 185898 and 189878, effective March 4, 2020.)

- 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 documented to be or have been 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.

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5.34.430 Addenda to Solicitation Documents.

(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 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.)

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- 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 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, 185898 and 189878, effective March 4, 2020.)

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- 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 60 Days from closing unless otherwise specified in the Solicitation Document. After the 60 Days the Offer may lapse unless extended. The extension may occur after the expiration of the 60-Day period.
- B.** The Offer may be extended beyond 60 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” a period of not less than 90 days unless the solicitation document states a different time period. 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

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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.

- 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.** Electronic Submissions. If the City permits Electronic Offers in the Solicitation Document, the Offeror may submit Electronic Offers in accordance with the Solicitation Document. The City shall not consider 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

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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.

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- 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 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, 185898 and 189878, effective March 4, 2020.)

- 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.

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- D. 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;
 - 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

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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 Nos. 183445 and 189878, effective March 4, 2020.)

- 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

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\$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
- 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,

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- (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 COBID Certified Firms are also subject to the City's Solicitation Document.

5.34.500 Responsibility of Offerors.

(Amended by Ordinance Nos. 181547, 183445, 185898 and 189878, effective March 4, 2020.)

- A.** Contracts shall be Awarded only to Responsible Offerors. Pursuant to ORS 279C.375, 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 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 tax registration account from the City. Procurement Services may determine that a Person is not legally qualified if:
 - a. The Person does not have a business tax registration account with the City; or

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qualified, notification shall be sent stating the Bidder's qualified bidding limits, classes of work and the validity period of the Bidder's prequalification.

- 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 Chief Procurement Officer, a Special Prequalification would be of assistance in the selection of qualified contractors.
- E.** Updates. From time to time, the Chief Procurement Officer may update the Administrative Rules which govern the Prequalification of Contractors process. The Administrative Rules will determine the rules, policies, and practices by which Contractors are determined to be prequalified for City projects. City Council hereby delegates its authority to create and maintain this Prequalification program to the Chief Procurement Officer. The Chief Procurement Officer will review and adjust, if necessary, the Rules at least once each year.

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, 187974 and 189878, effective March 4, 2020.)

- 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 COBID Certified Firm Prohibited Conduct; Sanctions; Appeals.

(Added by Ordinance No. 187974; amended by Ordinance No. 189878, effective March 4, 2020.)

- 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, 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, 187373 and 189878, effective March 4, 2020.)

- 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 in compliance with all of the City's contracting requirements, including having a current City business tax registration account and EEO/EB certification. Procurement Services may determine that such a Person is not legally qualified if:
 - a. The Person does not have a business tax registration account 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;

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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 Nos. 185898 and 189878, effective March 4, 2020.)

- 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 re-solicitation 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, 187974 and 189878, effective March 4, 2020.)

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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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, 185898, effective March 4, 2020.)

- 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.
 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:
 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 Nos. 185898 and 189878, effective March 4, 2020.)

- A.** Time for Offer Acceptance. An Offer submitted as a Firm Offer is irrevocable, valid and binding on the Offeror for not less than 60 Days from Closing unless otherwise specified in the Solicitation Document. After 60 Days, or such other period of time specified in the Solicitation Document, the Offer may 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 60-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.

(Repealed by Ordinance No. 189878, effective March 4, 2020.)

5.34.760 Procurement Board of Appeals.

(Amended by Ordinance Nos. 183445, 185898 and 189878, effective March 4, 2020.)

- 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 procurement sector;
 - b.** The City Engineer or designee;
 - c.** A member of the general public with affiliation to the public procurement 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 for additional 2-year terms up to a total maximum of 10 years 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.

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- 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.)

- 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.

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- 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.

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.

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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 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

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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 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.

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- 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

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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
 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

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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:
 - 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;

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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.

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

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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.

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

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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:

- (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

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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 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

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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 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.

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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;
 - 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.

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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.
 - (3) The process for discussions or negotiations that is outlined and explained in Subsections 5.34.850 E.2. and 5.34.850 F. does not apply to this limited negotiation.
2. Discussions; Negotiations. If the City permitted discussions or negotiations in the Request for Proposals, the City shall evaluate Proposals and establish the Competitive Range, and may then conduct discussions and negotiations in accordance with this rule.
 - a. If the Solicitation Document provided that discussions or negotiations may occur at City's discretion, the City may forego discussions and negotiations and evaluate all Proposals in accordance with this rule.
 - b. If the City proceeds with discussions or negotiations, the City shall establish a negotiation team tailored for the acquisition. The City's

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team may include legal, technical, auditing and negotiating personnel.

3. Cancellation. Nothing in this rule shall restrict or prohibit the City from canceling the Solicitation at any time.

D. Competitive Range; Protest; Award.

1. Determining Competitive Range.

a. If the City does not cancel the Solicitation, after the Opening the City will evaluate all Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the City will rank the Proposers based on the City's scoring and determine the Competitive Range.

b. The City may increase the number of Proposers in the Competitive Range if the City's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial Competitive Range are closely Competitive, or have a reasonable chance of being determined the best Proposer after the City's evaluation of revised Proposals submitted in accordance with the process described in this rule.

2. **Protesting Competitive Range.** The City shall provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Proposer that is not within the Competitive Range may protest the City's evaluation and determination of the Competitive Range in accordance with Section 5.34.710.

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

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

(1) An unsuccessful Proposer may protest the City's intent to Award in accordance with Section 5.34.740.

(2) After the protest period provided in accordance with Section 5.34.740 expires, or after the City has provided a final response to any protest, whichever date is later, the City shall

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response to any protest, whichever date is later, the City shall commence final Contract negotiations.

F. Negotiations.

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

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- a.** The Proposer is not discussing or negotiating in good faith; or
- b.** Further discussions or negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner that will be in the best interests of the City. The determination of a timely manner and the best interests of the City are matters solely within the discretion of the City.

5.34.860 RFP Pricing Mechanisms.

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

- A.** A Request for Proposals may result in a Contract with a lump sum Contract Price or a fixed Contract Price, as in the case of Competitive Bidding. Alternatively, a Request for Proposals may result in a cost reimbursement Contract with a GMP or some other maximum price specified in the Contract.
- B.** Economic incentives or disincentives may be included to reflect stated City purposes related to time of completion, safety or other Public Contracting objectives, including but not limited to, total least cost mechanisms such as Life Cycle Costing.
- C.** A Guaranteed Maximum Price (GMP) may be used as the pricing mechanism for Contracts for CM/GC Services where a total Contract Price is provided in the design phase in order to assist the City in determining whether the project Scope is within the City's budget, and allowing for design changes during preliminary design rather than after final design services have been completed.
 - 1.** If this collaborative process is successful, the Contractor shall propose a final GMP, which may be accepted by the City and included within the Contract.
 - 2.** If this collaborative process is not successful, and no mutually agreeable resolution on GMP can be achieved with the Contractor, then the City shall terminate the Contract. The City may then proceed to negotiate a new Contract (and GMP) with the firm that was next ranked in the original selection process, or employ other means for continuing the project under ORS Chapter 279C.
- D.** When cost reimbursement Contracts are utilized, regardless of whether a GMP is included, the City shall provide for audit controls that will effectively verify rates and ensure that costs are reasonable, allowable and properly allocated.

5.34.870 Design-Build Contracts.

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

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- 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 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)

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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 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 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

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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 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,

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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.
- 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

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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 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

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Specifications required to implement the ECMs that have been agreed to by the parties to the ESPC, and the ESCO performs all construction, commissioning, construction administration and related Personal Services or Work to actually construct the project; and

- (4) A final phase of the Work, whereby the ESCO, independently or in cooperation with an independent consultant hired by the City, performs M & V services to ensure that the Energy Savings Guarantee identified by the ESCO in the earlier phases of the Work and agreed to by the parties has actually been achieved.
2. Design-Build Contracting Requirements in ESPCs. At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the City shall conform its Design-Build contracting practices to the Design-Build contracting requirements set forth in Subsection 5.34.870 G. above.
3. Pricing Alternatives. The City may utilize one of the following pricing alternatives in an ESPC:

 - a. A fixed price for each phase of the Personal Services and Work to be provided by the ESCO;
 - b. A cost reimbursement pricing mechanism, with a maximum not-to-exceed price or a GMP; or
 - c. A combination of a fixed fee for certain components of the Personal Services to be performed, a cost reimbursement pricing mechanism for the construction Work to be performed with a GMP, a single or annual fixed fee for M & V services to be performed for an identified time period after final completion of the construction Work, and a single or annual Energy Savings Guarantee fixed fee payable for an identified time period after final completion of the construction Work that is conditioned on certain energy savings being achieved at the facility by the ECMs that have been implemented by the ESCO during the project (in the event an annual M & V services fee and annual Energy Savings Guarantee fee is utilized by the parties, the parties may provide in the Design-Build Contract that, at the sole option of the City, the ESCO's M & V services may be terminated prior to the completion of the M & V/Energy Savings Guarantee period and the City's future obligation to pay the M & V services fee and Energy Savings Guarantee fee will likewise be terminated, under terms agreed to by the parties).

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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 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

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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;
 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

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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. 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.

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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 .)
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

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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.
- 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

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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 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

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- (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.
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

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Affiliate or subsidiary of the CM/GC. If required by the City, the CM/GC's proposal to perform the construction Work must be supported by at least one independent cost estimate prior to the Work being included in the Contract.

- 14.** Unsuccessful Subcontractor Briefing. ORS 279C.337(3)(e) is designed to allow a subcontractor who was not selected by the CM/GC to perform a particular element of the construction Work to obtain specific information from the CM/GC, and meet with the CM/GC to discuss the subcontractor qualification and selection process involved and the CM/GC's subcontractor selection decisions, in order to better understand why the subcontractor was not successful in being selected to perform the particular element of the Work and to improve the subcontractor's substantive qualifications or the subcontractor's methods in competing for elements of the Work for the particular project involved, or for future projects. The briefing meetings may be held with individual subcontractors or, if the subcontractors agree, in groups of subcontractors, with those groups established by bid package or other designation agreed to by the City and the CM/GC. Nevertheless, the CM/GC is not obligated to provide this briefing opportunity unless the CM/GC receives a written request from a subcontractor to discuss the subcontractor qualification and selection process involved. Unless the City and the CM/GC agree on a different schedule, the CM/GC Contract should include provisions:

 - a.** Allowing a Subcontractor 60 days from the CM/GC's notice of award of a subcontract for a particular Work package to request, in writing, a post-selection meeting with the CM/GC under this section; and
 - b.** Requiring the CM/GC to set a meeting with the subcontractor under this section within 45 days of the Subcontractor's written request.
- 15.** Performance and Payment Bonds. Provided no construction Work is included with the preconstruction services to be performed under the initial form of the CM/GC Contract, no performance bond or payment bond is required to be provided by the CM/GC at the time of Contract signing, consistent with ORS 279C.380. Once construction Work is included in the Contract and authorized by the City to be performed by the CM/GC, however, the CM/GC must provide a performance bond and payment bond in the full amount of any Early Work to be performed by the CM/GC, or the full amount of the amount of the GMP, fixed price or other maximum Contract Amount, as applicable. Furthermore, in the event additional Early Work is added to the CM/GC Contract after the initial Early Work or in the event an amendment to the CM/GC Contract is made so that the GMP, fixed price or other maximum Contract Amount must be increased, the

performance bond and the payment bond must be increased in an amount equal to the additional Early Work or the increased GMP, fixed price or other maximum Contract Amount.

16. Independent Review of CM/GC Performance: Conflicts of Interest. If the City requires independent review, monitoring, inspection or other oversight of a CM/GC's performance of pre-construction Professional, Technical and Expert Services, construction Work or both pre-construction and construction Work, the City must obtain those independent review services from a Contractor independent of the CM/GC, the CM/GC's Affiliates and the CM/GC's Subcontractors, pursuant to the requirements of ORS 279C.307. However, ORS 279C.307 does not prohibit the following:
 - a. The CM/GC's performance of both pre-construction Professional, Technical and Expert Services and construction Work that are included within the definition of CM/GC Services, consistent with ORS 279C.307(2); or
 - b. The CM/GC's performance of internal quality control services, quality assurance services or other internal peer review of CM/GC work product that is intended to confirm the CM/GC's performance of the CM/GC Contract according to its terms.
17. Socio-Economic Programs. The Contract shall clearly identify conditions relating to any required socio-economic programs, including the manner in which such programs affect the CM/GC's subcontracting requirements, the enforcement mechanisms available, and the respective responsibilities of the CM/GC and City.

5.34.900 Required Contract Clauses.

(Amended by Ordinance No. 185898, effective February 20, 2013.) The City shall include in all formal Solicitations for Public Improvement Contracts all of the ORS Chapter 279C required Contract clauses, as set forth in the checklist contained in Section 5.34.300 regarding Solicitation Documents. The following series of rules provide further guidance regarding particular Public Contract provisions.

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.

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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.
- 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:

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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:
 - (1) As to bonds or securities for which the “Bid” and “asked” prices are published on a regular basis in the Wall Street Journal or in the New York Times, the value shall be the average of the “Bid” and “asked” prices for the bonds or securities so published on (or most recently prior to) the date value is determined;

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;
 - 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.

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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.
- 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

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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.
- 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:

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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 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.)

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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, 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
 - g.** If the Contractor should disregard laws, rules, or the instructions of the City or its Authorized Representative.

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

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- 3.** Notice of the amount of time (if any) in which the City shall permit the Contractor to correct the failure to perform.
- J.** The Contract documents may provide Contract cancellation or Contractor termination procedures that are different from, or in addition to, those provided 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

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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 Definitions.
- 5.68.015 General Requirements – PTE Manual.
- 5.68.020 Special Procurements.
- 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 Consultant's Compliance with Workers' Compensation Requirements.

5.68.010 Definitions.

(Amended by Ordinance Nos. 182213, 184427, 185065, 187373 and 189878, effective March 4, 2020.) In addition to the definitions in PCC 5.33, the following definitions apply:

- 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, such as, but not limited to: architects, engineers, lawyers, accountants, doctors, owner’s representatives, and counselors in investments or insurance. 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.** "Estimated Fee" means City's reasonably projected fee to be paid for a Consultant's services under the anticipated Contract, excluding all anticipated reimbursable or other non-professional fee expenses. The Estimated Fee is used solely to determine the applicable Contract solicitation method and is distinct from the total amount payable under the Contract.

5.68.015 General Requirements – PTE Manual.

(Amended by Ordinance Nos. 182213, 184427 and 189878, effective March 4, 2020.) 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 Consultants 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 Consultants and shall provide the exclusive means by which selection decisions may be protested before the Contract is executed.

5.68.020 Special Procurements.

(Amended by Ordinance Nos. 179802, 182213, 184427, 187373 and 189878, effective March 4, 2020.)

- A. This Chapter applies to City procurement of professional, technical and expert services.
- B. The following services are designated as classes of Special Procurements, and 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. 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.
 - 6. Modifications, including updates, upgrades, and enhancements by the licensor of intellectual property licensed to the City; or an authorized provider if the licensor does not directly provide the services.
 - 7. The City Attorney’s retention of expert witnesses and Consultants to assist the City Attorney’s Office in providing legal advice to the City, and outside legal counsel.
- C. If any emergency exists, as defined in PCC 5.33.130, the Chief Procurement Officer may authorize selection of a Consultant in accordance with PCC 5.33.130.
- 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

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authorize selection of a contractor without following the requirements of this Chapter or any Chapter of Portland City Code, but subject to the procedures outlined in the PTE Manual.

- 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, 184427 and 189878, effective March 4, 2020.) The PTE Manual shall set forth the procedures to be followed by all bureaus in announcing and advertising City PTE Solicitations. The procedures in the PTE Manual shall be designed to make information about such solicitations readily available to interested PTE Consultants, including firms certified by the State of Oregon Certification Office for Business Inclusion and Diversity (COBID) as Disadvantaged, Minority owned, Women owned, Emerging Small Businesses, and Service-disabled Veteran owned Business Enterprises (D/M/W/ESB/SDVB) as defined in ORS 408.225(hereafter referred to collectively as COBID Certified Firms). 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 Consultants wishing to enter into contracts with the City are aware of the requirements for such programs.

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. 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.

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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, 187373 and 189878, effective March 4, 2020.)

- A. The Chief Procurement Officer or designee shall review and approve the form of all Requests for Proposals, Requests for Qualifications and other similar Solicitation Documents for all PTE Contracts or Price Agreements 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, 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, 184427 and 189878, effective March 4, 2020.)

- 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.

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1. All City bureaus, agencies, or offices wishing to contract for legal services not provided by the City Attorney's Office shall submit for approval in writing to the City Attorney all requests 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 allowed by this Chapter specifically Subsection 5.68.020 B.7. 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 Nos. 182213 and 189878, effective March 4, 2020.)

- A.** At the time a bureau determines it will need bond counsel for a project or series of projects, the bureau will notify the City Attorney. The City Attorney or designee shall notify each counsel listed in the Oregon Section of the Bond Buyer's Directory of Municipal Bond Dealers (Red Book), requesting that those interested in serving as bond counsel for the project or series of projects submit proposals.

The notice shall indicate the nature of the project or series of projects, the type and approximate amount of bonds, the approximate date for the sale or sales of bonds, the bond counsel services required, and the date proposals are due.

- B.** Those counsel interested shall provide the following information to the City Attorney:
1. A statement of the fee arrangement proposed by the firm.
 2. Such other information as the City Attorney deems appropriate.
- C.** On receipt of the proposals the City Attorney shall refer them to a consultant selection committee (Committee) consisting of the City Attorney or designee; the

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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 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 Consultant's Compliance with Workers' Compensation Requirements.

(Amended by Ordinance No. 189878, effective March 4, 2020.) Prior to the performance of any work under a professional, technical or expert services Contract awarded by the City, a Consultant shall comply with the Workers' Compensation Law, ORS Chapter 656, as it may be amended, and if Workers' Compensation Insurance is required by ORS Chapter 656, shall maintain coverage for all subject workers as defined by ORS Chapter 656, and shall maintain a current, valid certificate of Workers' Compensation Insurance on file with the City Auditor for the entire period during which work is performed under the contract.

5.68.090 Selection of Architectural, Engineering and Land Surveying Consultants for PTE Contracts.

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

5.68.100 Direct Contracts with Architects, Engineers and Land Surveyors.

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

5.68.110 Two-Tiered Selection Process.

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

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**CHAPTER 5.72 - ECONOMIC
DEVELOPMENT PROJECTS**

(Chapter added by Ordinance No. 145441; amended
by Ordinance Nos. 149771, 155942, 157012; and
157226 effective May 13, 1985.)

Sections:

- 5.72.010 Purpose.
- 5.72.020 Definitions.
- 5.72.030 Economic Development - Applications.
- 5.72.040 Economic Development - Initial Review, Standards.
- 5.72.050 Housing - Applications.
- 5.72.060 Housing - Initial Review, Standards.
- 5.72.070 Initial Determination of Eligibility, Final Approval, Appeals.
- 5.72.080 General Conditions; Document Preparation and Review.
- 5.72.090 Application Processing, Financial Considerations.
- 5.72.100 Administrative Fees.
- 5.72.110 Bond Issuance.
- 5.72.120 Reporting Requirements.

5.72.010 Purpose.

The purpose of this Chapter is to provide necessary procedures and standards to carry out the powers granted to the City by Chapter 772, Oregon Laws of 1977 (ORS 280.410 to 280.485) as amended. This Chapter shall be liberally construed in order to carry out this purpose.

5.72.020 Definitions.

(Amended by Ordinance Nos. 166682 and 172567, effective August 12, 1998.) As used in this Chapter unless the context requires otherwise:

- A. “Economic development project”** includes any properties, real or personal, used or useful in connection with a revenue producing enterprise. “Economic development project” shall not include any facility or facilities designed primarily for the operation, transmission, sale, or distribution of electrical energy. “Economic development project” also includes multiple unit residential housing development on land having an assessed valuation of \$8 per square foot or more on September 13, 1975, land within a designated urban renewal or redevelopment area formed pursuant to ORS Chapter 457, land within an area designated as a Housing and Community Development target neighborhood pursuant to the Housing and Community Development Act of 1974, or projects which benefit low or moderate income tenants, or address slum and blight as defined by the 1974 Housing and Community Development Act.

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- B.** “**Eligible project**” means an economic development project found by the City to meet standards adopted pursuant to this Chapter. “Eligible project” includes multiple unit residential housing development which increases available housing units through new construction, rehabilitation of nonresidential buildings, or provides for rehabilitation of residential buildings.
- C.** “**City**” means the City of Portland.
- D.** “**Costs**” as applied to any project must conform to all applicable Internal Revenue Service regulations and may include:
1. The cost of construction and reconstruction.
 2. The cost of acquisition of property, including rights in land and other property, both real and personal and improved and unimproved and the cost of site improvements.
 3. The cost of demolishing, removing or relocating any buildings or structures on lands so acquired, including the cost of acquiring any lands to which the buildings or structures may be moved or relocated.
 4. The cost of eligible machinery and equipment and related financing charges.
 5. The cost of engineering and architectural surveys, plans and specifications.
 6. The cost of financing charges and interest prior to and during construction, and if deemed advisable by the City for a period not exceeding 1 year after completion of construction.
 7. The cost of consultant and legal services, other expenses necessary or incident to determining the feasibility or practicability of constructing a project, administrative and other expenses necessary to or incident to the construction of the project, including, but not limited to, costs of relocation and moving expenses according to a project plan developed by the City, and the financing of the construction of the project thereof, including reimbursement to any state or other governmental agency or any lessee of such project for the expenditures made with the approval of the City that would be costs of the project under this Chapter had they been made directly by the City, and any costs incurred after bond issuance by the City for audits or monitoring.
- E.** “**Qualified historic project**” shall mean a project which includes the restoration or rehabilitation of a structure or structures designated as a City of Portland Historic Landmark. Such rehabilitation or restoration shall require the approval of the City

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of Portland Landmarks Commission to assure conformance with the Secretary of the Interior's standards for historic preservation projects.

5.72.030 Economic Development - Applications.

- A.** The Portland Development Commission shall be responsible for receipt of applications and review and processing thereof. Applications shall be in a form established by the Portland Development Commission and shall include, in addition to other information deemed necessary by the Portland Development Commission:
1. Company/applicant information.
 2. Project information.
 3. Description of labor force at existing and proposed locations.
 4. Financial information.
 5. Environmental control information.
 6. Any information required by law or otherwise which is reasonable and necessary to effectuate the purposes of this Chapter.
 7. An agreement to indemnify and hold harmless the Portland Development Commission and the City of Portland, its officers and employees, from any and all liability for loss or damage to the company or any third person or entity arising from or alleged to have arisen from the processing of this application or any error or omission in any official statement or representation related to the contemplated financing.
- B.** The applicant must certify by letter that the issuance of revenue bonds is an inducement to locate, retain, or expand the project in Portland.
- C.** The requirements herein shall be considered to be minimums, and the Portland Development Commission and the City reserve the right to add additional requirements on a case-by-case basis. Likewise, the requirements herein stated pertain only to the Commission and the City and are not exclusive. Qualified bond counsel or the original purchaser may make additional requirements.

5.72.040 Economic Development -Initial Review, Standards.

- A.** Upon receipt of an application, the Portland Development Commission shall review the application to determine whether the application should be further processed. In reaching such a determination, the Portland Development Commission staff may request additional information from the applicant as well as assemble any and all data deemed relevant to the decision.

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- B.** The Portland Development Commission shall consider the following:
1. Economic feasibility and general benefits to the City of the proposed project.
 2. Density of use and potential impact in the area affected by the proposed project.
 3. Land use, transit, and transportation facilities in the vicinity of the proposed project.
 4. City's ability to supply or support other needed services resulting from the Economic Development Project.
 5. Effect of proposed project on balanced economic development of the City.
 6. Employment and property tax income from the project.
 7. Employment opportunities. City and Portland Development Commission will use employment agreements when and where appropriate.
 8. Suitability of proposed area in the City for the particular type of proposed development project.
 9. Conformance with Internal Revenue Service regulations and the Oregon Revised Statutes.
- C.** No application shall be recommended for City Council approval unless the Portland Development Commission determines that the proposed project does not conflict with adopted City plans and policies, and conforms to the following uses:
1. Manufacturing or other industrial production.
 2. Agricultural development or food processing.
 3. Transportation or freight facilities.
 4. Warehousing or distribution.
 5. A project for the primary purpose of reducing air, water, or solid waste pollution.
 6. Other activities that represent new technology or types of economic enterprise that the City determines are needed to diversify the economic base of the community.

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7. Parking in close proximity to the Portland Performing Arts Center. Such a parking facility may include space for retail and commercial uses in addition to parking.
8. Commercial uses when a part of a qualified historic project or publicly initiated urban development project.

5.72.050 Housing - Applications.

- A. The Portland Development Commission shall be responsible for receipt of applications and review and processing thereof, including, but not limited to, advice of bond counsel and legal advice. Applications shall be in a form established by the Portland Development Commission and shall include, in addition to other information deemed necessary by the Portland Development Commission:
 1. The applicant's name, address and telephone number.
 2. A brief description of the applicant's company history and past relevant performance.
 3. A legal description of the property upon which the project will be located.
 4. A detailed description of the project including the number, size and type of dwelling units; dimensions of structures; parcel size, proposed lot coverage with buildings, and amount of open space; type of construction; public and private access; parking and circulation plans; water, sewer, and other utility plans; landscaping; expected uses; and economic feasibility studies and market information including rent levels proposed.
 5. A description of the existing use of the property including a proposed relocation plan for any persons who would be displaced from existing housing by the project; and for any businesses which would be displaced.
 6. A site plan and supporting maps, which show in detail the development plan of the entire project, showing streets, driveways, sidewalks, pedestrian ways, off-street parking and loading areas; location and dimension of structures; use of the land and structure; major landscaping features; design of structures; and existing and proposed utility systems including sanitary sewers, storm sewers, water, electric, gas and telephone lines.
 7. Any other information required by law or otherwise which is reasonable and necessary to effectuate the purposes of this Chapter.
 8. The approximate amount of bond proceeds and allocation to eligible costs.

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9. An agreement to indemnify and hold harmless the Portland Development Commission and the City of Portland, its officers and employees, from any and all liability for loss or damage to the company or any third person or entity arising from or alleged to have arisen from the processing of this application or any error or omission in any official statement or representation related to the contemplated financing.

5.72.060 Housing - Initial Review, Standards.

(Amended by Ordinance No. 177259, effective February 19, 2003.)

- A. Upon receipt of an application, the Portland Development Commission shall review the application to determine whether the application should be further processed. In reaching such a determination, the Commission may request additional information from the applicant as well as assemble any and all data deemed relevant to the decision.
- B. The Portland Development Commission shall, after review and comment by all relevant City bureaus, recommend approval, approval with conditions, or denial of the application, after consideration of the following:
 1. The economic feasibility of the project, with and without the use of revenue bonds.
 2. The need for housing resulting from the project.
 3. The general benefits to the City of the proposed project.
 4. The City's ability to supply or support other needed services required by the project.
 5. Employment and property tax income from the project.
 6. Suitability of the project as proposed in the specific proposed location.
 7. (Amended by Ordinance No. 157998; Nov. 21, 1985.) Projects applying for permanent financing must be determined to provide housing at rent or price levels 85 percent of which shall be affordable by households with incomes up to 150 percent of the area median income.
 8. Projects in the downtown, particularly the RX Zone, designated urban renewal or redevelopment areas shall receive highest priority.
 9. Conformance with Internal Revenue Service Regulations and the Oregon Revised Statutes.

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10. No application shall be recommended for approval unless the Portland Development Commission, after review and comment by all relevant City bureaus, determines that the project does not conflict with adopted City plans and policies.
 11. Projects applying for construction financing may be at rent or price levels up to 150 percent of median income, but must have available a firm commitment for long-term project financing.
- C. No project may be approved which would result in the conversion of existing occupied residential rental units to condominium or cooperative projects.
- D. The applicant, to be eligible for financing assistance under this program, must agree not to discriminate against any purchaser or tenant who is a parent or legal guardian with whom a child resides or is expected to reside, except in projects designed exclusively for households, the heads of whom are 62 years of age or older; or in projects designed for households, the heads of whom are 55 years of age or older, if the project meets the requirements of the applicable federal law.
- E. Revenue bonds may be issued secured by revenues from mortgage payments from individual owners of condominium and cooperative units within multiple unit housing projects which are newly constructed, rehabilitated from other uses or rehabilitated in abandoned residential buildings. Applications for such projects shall be considered by the Portland Development Commission if:
1. No individual or company may have more than one loan outstanding at any one time under this program for individual condominium or cooperative units.
 2. No mortgage loan funds under this program may be used for refinancing by existing owners, and no loans may be assumed by persons not eligible for condominium or cooperative units.
- F. The applicant shall submit a relocation plan for any households, individuals, or businesses which may be displaced by the proposed project. The Portland Development Commission will be responsible for analysis of that proposal and recommendation of that plan, that plan with amendments, or an alternative plan. The relocation plan shall assure that such households, individuals, or businesses are relocated to affordable housing of comparable or better quality.

5.72.070 Initial Determination of Eligibility, Final Approval, Appeals.

- A. The Portland Development Commission staff, within 60 days after a complete application is filed with the Commission, shall prepare a written recommendation of approval, approval with conditions or denial of the application.

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- B.** If Portland Development Commission staff recommends approval or approval with conditions of the application, the Commission shall, within 60 days of receipt of the application and recommendation, recommend by resolution that City Council approve, approve with conditions, or deny the application. This resolution shall include consideration of any required relocation plan. The Council shall, by resolution, approve, approve with conditions, or deny the application. Council approval or conditional approval of an application shall authorize the Portland Development Commission to process the application and to execute a letter of intent with the applicant.
- C.** Final approval shall take place after receipt and review by the Portland Development Commission of all requested and required final documents. All documents to be approved by the Portland Development Commission must be received in final form and received by the Commission 14 days prior to a scheduled Commission meeting. If the Commission determines that the documents comply with the rules and policies established within this Chapter, the Commission shall, by resolution, recommend issuance of the bonds in accordance with those final documents and further recommend that City Council adopt an ordinance authorizing issuance of the bonds in accordance with those documents.
- D.** If the Portland Development Commission staff recommends denial of the application, they shall notify the applicant in writing. The applicant may appeal by filing written notice thereof with the Portland Development Commission staff within 14 days of receipt of the notice of rejection. Upon receipt of the appeal, the Portland Development Commission shall, within 45 days, recommend by resolution, approval, approval with conditions or denial of the appeal.

5.72.080 General Conditions; Document Preparation and Review.

(Amended by Ordinance No. 166682, effective June 30, 1993.)

- A.** The following general conditions prevail in the issuance of all industrial development revenue bonds:

 - 1.** City of Portland economic development revenue bonds may be sold at public or private sale, and the bonds may mature at any time or times within the useful life of the project. For public sales, special approval may be required.
 - 2.** Any bond authorized under this Chapter which is to be sold by public sale must be rated by either a nationally recognized rating agency as Investment Grade.
 - 3.** Bonds sold through a private sale do not require a rating. For purposes of this Chapter, “private sale” means a sale of all of the bonds to persons or entities that qualify as “accredited investors” under 15 USC Section 77b

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(15) (I) or 17 CFR Section 230.215. The purchasers must also certify, in a manner satisfactory to the City, that they have the financial sophistication, knowledge and experience in financial matters to evaluate the investment in the bonds and the appropriateness of that investment for them, and that they have received all the information required to make an informed judgement about the purchase of the bonds. Bonds which are sold through a private sale may be resold or transferred only to persons or entities that qualify as accredited investors and that provide the certification described in the preceding sentence.

4. The City of Portland does not guarantee the bonds and is not subject to any liability for their repayment.
 5. The terms and conditions of the issuance and purchase of an industrial revenue bond issue are to be agreed upon by the applicant and bond purchaser with the concurrence of the Portland Development Commission (acting on behalf of the City.)
 6. Where residential rental property is assisted under this Chapter, construction of the project must begin within 9 months from the date of bond issuance.
 7. Applicant will be required to keep the Portland Development Commission advised of the schedule for document preparation and approval, and to provide drafts of documents to the Commission upon request of the Commission.
- B.** The following general conditions prevail regarding the preparation of all bond documents:
1. Bond counsel will be designated by the Portland Development Commission. Procedures for selecting bond counsel established by Section 5.68.080 of this Code shall not apply to projects initiated pursuant to this Chapter. The applicant will submit their recommendation of bond counsel.
 2. Bond counsel will advise the Portland Development Commission of all federal and state procedural requirements as they apply to issuance of the bonds.
 3. Bond counsel must be an Oregon law firm or other mutually acceptable bond counsel recognized in the Bond Buyers Directory of Municipal Bond Dealers of the United States.
 4. The trustee chosen by the applicant, and approved by the Commission, must be a bank or trust company doing business in the State of Oregon with trust powers.

5. All documents to be approved by the Portland Development Commission must be in final form and received by the Portland Development Commission 14 days before the Commission meeting at which it will be acted upon.

5.72.090 Application Processing, Financial Considerations.

- A. Upon receipt of a resolution approving the application, the Portland Development Commission shall consider:

1. The bond market for the types of bonds proposed for issuance.
2. The terms and conditions of the proposed issue.
3. Whether the applicant is financially responsible and fully capable and willing to fulfill its obligations under the agreement of lease, or contract, including the obligation to pay rent in the amounts and at the times required, the obligation to operate, repair and maintain at its own expense the project leased, or sold, and to serve the purposes of this Chapter and such other responsibilities as may be imposed under the lease or contract. In determining financial responsibility of the applicant consideration shall be given to the lessee's or purchaser's ratio of current assets to current liabilities, net worth, earning trends, coverage of all fixed charges, the nature of the industry or business involved, its inherent stability, any guarantee of the obligations by some other financially responsible corporation, firm or person, and other factors determinative of the capability of the lessee or purchaser, financially and otherwise, to fulfill its obligations consistently with the purposes of this Chapter and Chapter 772, Oregon Laws of 1977 (ORS 280.410 to 280.485.)
4. Such other relevant factors as the Development Commission considers necessary to protect the financial integrity of the City.

If the Development Commission shall determine that a bond issue is financially feasible it shall designate the underwriter, trustee and bond counsel and shall enter into appropriate agreements with each to carry out the provisions of this Chapter and Chapter 772, Oregon Laws of 1977 (ORS 280.410 to 280.485) subject to the approval of the Council pursuant to Section 5.72.110 of this Chapter. In reaching its determination, the Development Commission may appoint a Bond Review Committee to assist it in its deliberations, and may set administrative procedures from time to time as necessary.

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5.72.100 Administrative Fees.

(Amended by Ordinance Nos. 160540, 160608; and 166996, effective September 29, 1993.)

- A.** The applicant agrees to pay all applicable City and Portland Development fees and expenses associated with the application whether or not the bonds are issued. A minimum application fee of \$500 shall be assessed to all projects at the time of filing the formal application with the Commission. In addition, the Commission shall be reimbursed in full for all direct and indirect costs incurred in the project. The fees shall be paid as follows:
1. \$500 at the time of filing a formal application with the Portland Development Commission.
 2. The balance at the time of closing of the bond issue. In the event the financing is not completed, costs incurred to date by the Commission shall be subject to immediate reimbursement.
- B.** Upon issuance of the bond, the applicant will pay the Portland Development Commission a one-time issuance fee equal to seven dollars per 1,000 dollars of the face amount of the bonds for ongoing administration of the bonds. On bonds issued prior to March 23, 1988, the annual administration fee will henceforth be seventy-five cents per 1,000 dollars of the outstanding principal, billed yearly in advance. On bonds issued prior to March 23, 1988, the Portland Development Commission and applicants of outstanding issues may enter into an agreement to pay a one-time fee in lieu of the annual administration fee.
1. For refunding bonds issued under ORS Chapter 280 for economic development projects, if the one-time issuance fee has been paid in accordance with subsection (b) for the bonds being refunded, and the Portland Development Commission determines the refunding will not generate additional ongoing administration costs, the fee or an equitable portion thereof may be waived. Nothing in this subsection (1), however, should be construed to eliminate or limit the applicant's responsibility to pay all fees and expenses of the City and the Portland Development Commission described in subsection (a) of this section in connection with issuing the refunding bonds.

5.72.110 Bond Issuance.

Upon receipt of the recommendation of the Portland Development Commission, the Council may by ordinance authorize the issuance of bonds in an amount equal to the costs of the proposed project, pursuant to Chapter 772, Oregon Laws of 1977, if it determines that the proposed issue meets the requirements of said Act and this Chapter.

5.72.120 Reporting Requirements.

- A.** Beginning no later than 12 months following the issuance of bonds by the City, and continuing annually for a period as long as the bonds are outstanding, the Portland Development Commission shall require each project owner of the assisted project to submit a written report which describes:
 - 1.** Number of current employees by job category.
 - 2.** Total assessed value and property taxes paid during the most recent period for the assisted facility or facilities.

- B.** In addition to the foregoing, owners of multi-family projects assisted under this Chapter are required to report annually the number of residential units occupied by individuals or families who, at the date of reporting, have low or moderate incomes.

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**CHAPTER 5.73 - ARTS EDUCATION AND
ACCESS INCOME TAX**

(Chapter added by Resolution No. 36939 (approved at November 6, 2012 election); effective December 5, 2012.)

Sections:

- 5.73.010 Definitions.
- 5.73.020 Tax Imposed.
- 5.73.030 Net Revenues Distribution.
- 5.73.040 Intergovernmental Agreements.
- 5.73.050 Citizen Oversight Committee.
- 5.73.060 Audits.
- 5.73.070 Effective Dates.
- 5.73.080 Revenue Division Responsibilities.
- 5.73.090 Limitation on Costs.
- 5.73.100 Confidentiality.
- 5.73.110 Frivolous Filing, False Filing and Hacking.

5.73.010 Definitions.

(Amended by Ordinance Nos. 185827, 185960, 187339 and 187610, effective April 1, 2016.) For the purposes of this paragraph, the following definitions apply unless the context requires a different meaning.

- A. “Catchment” means the geographical area from which an elementary school within a District draws its students.
- B. “Charter School” means a school offering a comprehensive institutional program as defined under ORS Chapter 338. The charter school will be included in the School District if sponsored by the School District or the State Board of Education, provided that the School District is the Fiscal Agent for state school funds for the Charter School and the Charter School has both Portland catchment and Portland k-5 students.
- C. “Director” means the Director of the Revenue Division, or authorized designee.
- D. “Gross Revenues” means the total of all revenue received by the City of Portland from the Arts Education and Access Income Tax without regard to collection, administrative or other costs.
- E. “Income-earning resident” means a resident who has income of \$1,000 or more in the tax year.

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- F.** “Net Revenues” means the revenue remaining after interest, collection, administrative and other costs and refunds are deducted from Gross Revenues.
- G.** “Portland K-5 Students” means students that reside within the geographical boundary of the City of Portland, Oregon that attend Kindergarten through 5th grade in public schools.
- H.** “Resident” or “resident of the City” means:
- 1.** An individual who is domiciled in this City unless the individual:
 - a.** Maintains no permanent place of abode in the City;
 - b.** Does maintain a permanent place of abode elsewhere; and
 - c.** Spends in the aggregate not more than 30 days in the taxable year in the City; or
 - 2.** An individual who is not domiciled in the City but maintains a permanent place of abode in the City and spends in the aggregate more than 200 days of the taxable year in the City unless the individual proves that the individual is in the City only for a temporary or transitory purpose. For purposes of this Subsection, a fraction of a calendar day shall be counted as a whole day.
- I.** “Resident” or “resident of the City” does not include:
- 1.** An individual who is a qualified individual under section 911(d)(1) of the Internal Revenue Code for the tax year;
 - 2.** A spouse of a qualified individual under section 911(d)(1) of the Internal Revenue Code, if the spouse has a principal place of abode for the tax year that is not located in the City; or
 - 3.** A resident alien under section 7701(b) of the Internal Revenue Code who would be considered a qualified individual under section 911(d)(1) of the Internal Revenue Code if the resident alien were a citizen of the United States.
- J.** “Schools” means those educational institutions defined as schools by the Oregon Department of Education, but do not include on-line schools.
- K.** “School Districts” means the Portland Public, David Douglas, Centennial, Parkrose, Reynolds and Riverdale school districts.

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5.73.020 Tax Imposed.

A tax of \$35 is imposed on the income of each income-earning resident of the City of Portland, Oregon who is at least eighteen years old. No tax will be imposed on filer(s) within any household that is at or below the federal poverty guidelines established by the federal Department of Health and Human Services for that tax year.

5.73.030 Net Revenues Distribution.

(Amended by Ordinance No. 187339, effective October 16, 2015.) Net Revenues will be paid by the Revenue Division to the Arts Education and Access Fund for distribution by the City as follows:

- A.** First, funds shall be distributed to the School Districts for the purpose of hiring certified arts or music education teachers for elementary school students for Kindergarten through 5th grade (K-5). Distribution shall be based on a ratio of one teacher for every 500 K-5 students at schools that serve Portland K-5 students, except that Charter schools shall be funded based on a ratio of one teacher for every 500 Portland K-5 students served by the Charter school. Students attending schools that receive no distribution of funds shall not be counted. In the event that a school has less than 500 K-5 students, or in the case of Charter schools, less than 500 Portland K-5 students, funds shall be distributed on a pro rata basis based on the number of students attending that school. Funds shall not be distributed to:

 - 1.** Elementary schools within the School Districts that have no Portland K-5 students; and
 - 2.** Elementary schools within the School Districts that have Portland K-5 students enrolled, but whose catchment does not overlap with the City of Portland's geographical boundaries.
- B.** Any funds remaining after distribution to the School Districts shall be distributed to the Regional Arts & Culture Council (RACC). The City shall execute a contract amendment with RACC to ensure the funds are spent as follows:

 - 1.** Up to 95 percent of the remaining funds shall be distributed to RACC for grants to support non-profit Portland arts organizations that demonstrate artistic excellence, provide service to the community, show administrative and fiscal competence and provide a wide range of high-quality arts programs to the public. RACC will make the determination as to which arts organizations shall be supported, in accordance with their contract with the City. In the event that RACC distributes less than 95 percent of the funds to non-profit Portland arts organizations, the remaining funds shall be distributed for the purpose of providing grants and programs as described in Subsection 2. below.

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2. A minimum of 5 percent of the remaining funds shall be distributed to RACC for the purpose of providing grants and programs to non-profit arts organizations, other nonprofits and schools that will give access to high-quality arts experiences to Kindergarten through 12th grade students (K-12) and for grants and programs that will make arts and culture experiences available to Portland residents, with particular emphasis on programs directed to communities who are underserved by local arts providers.
3. These funds are in addition to existing and ongoing financial support from the City to RACC.

5.73.040 Intergovernmental Agreements.

The City will execute Intergovernmental Agreements (IGAs) with the School Districts and will amend its contract with RACC and require them to provide independently audited financial statements each year that show how the funds received pursuant to this program are spent.

5.73.050 Citizen Oversight Committee.

(Amended by Ordinance No. 185827, effective December 19, 2012.) The City will appoint a citizen oversight committee that is representative of the City's diverse communities to ensure the Arts Education and Access Fund is being implemented as required, to review expenditures made and to report their findings in a public record to the City Council on an annual basis. The committee shall be comprised of a minimum of 10 and a maximum of 20 members, including, if possible, a member of the Tax Supervising and Conservation Commission.

5.73.060 Audits.

The City will receive copies of annual independent audits or other documentation regarding expenditures by RACC and the School Districts each year. The Arts Education and Access Fund also will be part of the City's independent annual audit report, the results of which will be made available to the public.

5.73.070 Effective Dates.

This tax will be effective beginning with the tax year 2012 and shall continue each year thereafter. Payment of the tax each year is due on the date on which state taxes are due, not including any extensions of time that might be requested or received.

5.73.080 Revenue Division Responsibilities.

(Amended by Ordinance No. 187339, effective October 16, 2015.) The Revenue Division shall:

- A. Receive the Gross Revenues derived from the Arts Education and Access Income Tax and distribute the Net Revenues in accordance with the IGAs and RACC contract;

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- B.** Keep accurate records of the funds;
- C.** Report to the City Council by way of a public record on all funds received and directed to the School Districts and RACC;
- D.** Adopt administrative rules necessary to implement tax collection and administration.
- E.** If necessary, contract with public or private agencies to fulfill any of its duties in regard to this Arts Education and Access Income Tax and the Arts Education and Access Fund; and
- F.** Accept any and all gifts and donations to the Arts Education and Access Fund.

5.73.090 Limitation on Costs.

(Amended by Ordinance Nos. 185960, 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.

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**CHAPTER 5.74 - ACQUISITION OF PUBLIC
ART**

(Chapter replaced by Ordinance No. 161537;
amended by Ordinance Nos. 168591 and 179869,
effective February 10, 2006.)

Sections:

- 5.74.010 Purpose.
- 5.74.020 Definitions.
- 5.74.030 Dedication.
- 5.74.040 Public Art Trust Fund.
- 5.74.045 Funds for Creative Space.
- 5.74.050 Siting.
- 5.74.060 Guidelines.
- 5.74.070 Ownership.
- 5.74.080 Decisions.
- 5.74.090 Implementation.

5.74.010 Purpose.

(Amended by Ordinance No. 189611, effective August 23, 2019.) 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 Public Art. Public Art contributes to experiences that enrich the social, physical and cultural environment of Portland and promotes dialogue among people of all ages and backgrounds. This Chapter shall be implemented in a manner that benefits all Portlanders, including historically underserved communities and neighborhoods.

5.74.020 Definitions.

(Amended by Ordinance Nos. 178946 and 189611, effective August 23, 2019.)

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.** Artist-in-Residence means an artist in any discipline who explores new working methods to develop socially engaging, interactive art experiences with City Bureaus through either permanent or temporary artworks.
- C.** Creative Space means a physical location or a mobile location like a truck that is owned, leased, rented by, donated to, or otherwise made available to the City of Portland that has the exclusive purpose of facilitating the creation or display of visual, performing, cultural or other artworks.
- D.** 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: 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.
- E.** 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.
- F.** Public Art means original creative work, 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. This definition shall be liberally construed to support this Chapter's purpose, including but not limited to physical art works, Artists-in-Residence and Creative Space.
- G.** Participating Bureau means a City of Portland Bureau or Commission that funds an Improvement Project within the meaning of this Chapter.
- H.** Selection Panel means a group responsible for reviewing proposed Public Art. The Selection Panel will make a recommendation on the selection of Public Art to the Regional Arts & Culture Council. Selection Panels shall include a representative of

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the Participating Bureau, the Improvement Project architect or engineer, one or more artist(s), and one or more Portland resident.

5.74.030 Dedication.

(Amended by Ordinance Nos. 187570 and 189611, effective August 23, 2019.) 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 except as provided herein for funds used to generate Creative Space, 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 (2%) of the total Eligible Funds of the Improvement Project, whichever is less. When all or a portion of the funds are used to generate Creative Space, the Participating Bureau will not disburse those funds to the Regional Arts & Culture Council; rather, those funds used to generate Creative Space will stay with the Improvement Project.

- A. The Participating Bureau representative shall authorize using the contribution of Eligible Costs or Eligible Funds for:
 - 1. Public Art sited in, on or about the subject Improvement Project; or
 - 2. Public Art on another property owned, leased, rented by, donated to or otherwise made available to the City of Portland; or
 - 3. Artists-in-Residence; or
 - 4. Creative Space; or
 - 5. Any combination of Subsections 1. through 4.
- B. The Office of Management and Finance shall 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.
- C. The Regional Arts & Culture Council shall develop project plans for Eligible Costs or Eligible Funds that take into account the views of the Participating Bureau, with final approval of the project plans from the Commissioner-in-Charge of the Participating Bureau.

5.74.040 Public Art Trust Fund.

(Amended by Ordinance No. 189611, effective August 23, 2019.) The Regional Arts & Culture Council shall maintain a special fund called the Public Art Trust Fund into which funds dedicated to Public Art, excluding Creative Space, 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:

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1. For all Public Art that is not Creative Space, as follows:
 - a. 63 percent shall be used by the Regional Arts & Culture Council for costs associated with acquisition and production of Public Art including, but not limited to the procurement, creation, fabrication, and installation of Public Art.
 - b. 27 percent shall be used by the Regional Arts & Culture Council for costs of administration and management associated with Public Art, including, but not limited to costs of selection, project management, community education and registration of Public Art.
 - c. 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 and as requested to Participating Bureaus on the disbursement of funds from the Public Art Trust Fund.

5.74.045 Funds for Creative Space.

(Added by Ordinance No. 189611, effective August 23, 2019.) Participating Bureaus wishing to dedicate Eligible Costs or Eligible Funds towards the creation or improvement of Creative Space must obtain written approval from the Bureau's Commissioner-in-Charge. Requests must be submitted to the City Arts Manager at the Office of Management and Finance. Funds may not be used for programming or staffing.

Bureaus are responsible for operations and maintenance of Creative Space generated through this program and must submit an operations plan, 5-year programming plan, estimated annual budget and equity statement for the Creative Space.

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If any part of an Improvement Project is a Creative Space, the Participating Bureau may, after obtaining written approval from the Bureau's Commissioner-in-Charge, opt to dedicate its Eligible Costs or Eligible Funds for future maintenance of the Creative Space. The Office of Management and Finance shall 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.

5.74.050 Siting.

Public Art selected pursuant to this Chapter may be sited in, on or about any Improvement Project or other property owned, leased, or rented by, donated to, or otherwise made available to the City of Portland in accordance with any restrictions placed on siting by the Participating Bureau.

5.74.060 Guidelines.

(Amended by Ordinance No. 189611, effective August 23, 2019.) The Regional Arts & Culture Council shall, after consultation with Participating Bureaus, and after receiving written approval from the Office of Management and Finance and Arts Commissioner, adopt guidelines to:

- A. Provide for annual reporting to Participating Bureaus;
- B. Provide a method for the appointment of representatives to Selection Panels;
- C. Determine a method or methods of selecting and contracting with artists for the design, execution and siting of Public Art;
- D. Determine the dedication and disbursement process for the Public Art Trust Fund;
- E. Determine a process for the ongoing care, maintenance and conservation of Public Art;
- F. Determine a process to deaccession art;
- G. 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.

(Amended by Ordinance No. 189611, effective August 23, 2019.) Except as limited by other sections of this Chapter, the Regional Arts & Culture Council shall make decisions as to the management and registration of Public Art, and disbursement of the Public Art Trust Fund. Notwithstanding the above, the Director of the Office of Management and Finance, in consultation with the Arts Commissioner and Participating Bureau, has exclusive final decision-making authority.

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5.74.090 Implementation.

(Amended by Ordinance Nos. 187570 and 189611, effective August 23, 2019.) The Regional Arts & Culture Council, or its designee, shall implement and be held accountable for the provisions of this Chapter, in cooperation with the Office of Management and Finance and all Participating Bureaus.

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**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 or property and reduced its value, or, in the alternative, authorized the government to remove, modify, or not apply one or more challenged regulations.
- G. Owner.** A person who is:
1. The owner of fee title to the property as shown in the deed records of the county where the property is located;
 2. The purchaser under a land sale contract, if there is a recorded land sale contract in force for the property; or
 3. If the property is owned by the trustee of a revocable trust, the settlor of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner.
- H. Program Manager.** The person authorized to administer and oversee the processing of claims under this Chapter.
- I. Protection of Public Health and Safety.** A law, rule, ordinance, order, policy or permit or other governmental authorization that restricts a use of property in order to reduce the risk or consequence of fire, earthquake, landslide, flood, storm, pollution, disease, crime or other natural or human disaster or threat to persons or property including, but not limited to, building and fire codes, health and sanitation regulations, solid or hazardous waste regulations and pollution control regulations.
- J. Reduction in Value.** A decrease in fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after enactment, plus interest, adjusted by any ad valorem property taxes not paid as a result of any special assessment of the property under ORS 308A.050 to 308A.128, 321.257 to 321.390, 321.754 or 321.805 to 321.855, plus interest, offset by any severance taxes paid by the claimant and by any recapture of potential additional tax liability that the claimant has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703.

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- K. Waiver.** Action by the Portland City Council to modify, remove or not apply one or more land use regulations found to have caused a reduction in value.

5.75.030 Filing an Amended Claim.

- A.** A person may amend a Measure 37 claim that was filed with the City of Portland on or before June 28, 2007.

- B.** To qualify for compensation or waiver, a person filing an amended claim under this section must establish that:

1. The claimant is an owner of the property;
2. All owners of the property have consented in writing to the filing of the claim;
3. The property is located, in whole or in part, within the City of Portland;
4. On the claimant's acquisition date, the claimant lawfully was permitted to establish at least the number of single family dwellings on the property that are authorized under Measure 49;
5. The property is zoned for residential use;
6. A land use regulation prohibits the establishment of a single-family dwelling;
7. The establishment of a single-family dwelling is not prohibited by a land use regulation described in ORS 197.352(3);
8. The land use regulation described in paragraph 6 of this section was enacted after the date the property, or any portion of it, was brought into the Metro Urban Growth Boundary;
9. The land use regulation described in paragraph 6 of this section was enacted after the date the property, or any portion of it, was annexed to the City of Portland;
10. The enactment of the land use regulation caused a reduction in the fair market value of the property; and
11. The highest and best use of the property was residential use at the time the land use regulation was enacted.

- C.** A person filing an amended Measure 37 claim under this section must submit the following information:

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1. The name, street address and telephone number of the claimant and all other persons and entities with an interest in the property;
 2. A title report issued no more than 30 days prior to submission of the claim that shows the claimant's current real property interest in the property, the deed registry of the instrument by which the claimant acquired the property, the location and street address and township, range, section and tax lot number(s) of the property, and the date on which the owner acquired the property interest;
 3. A written statement signed by all owners of the property, or any interest in the property, consenting to the filing of the claim;
 4. A reference to any and all specific, existing land use regulations the claimant believes reduced the value of the property and a description of the manner in which the regulation prohibits the residential use of the property;
 5. A copy of the city land use regulations that applied to the property at the time the challenged land use regulations became applicable to, or were enforced against, the property;
 6. An appraisal showing the fair market value of the property one year before the enactment of the land use regulation and one year after enactment, and expressly determining the highest and best use of the property at the time the land use regulation was enacted;
 7. A description of the claimant's proposed use of the property if the Council chooses to waive a land use regulation instead of paying compensation;
 8. If the property is or has been enrolled in one or more of the special assessment programs listed in Section 5.75.020 J., information regarding tax amounts not paid as a result of the program or programs; and
 9. A statement whether the claimant filed a claim with other public entities on or before June 28, 2007, involving the same property and a copy of any decision made by the entity on the claim.
- D.** The Program Manager shall notify all claimants who filed claims on or before June 28, 2007, and whose claims were not decided by the City Council prior to December 6, 2007, that they may amend their claims under this section and shall provide a form for amended claims. A claimant must submit an amended claim under this section to the Program Manager within 120 days after the date of notice under this paragraph or the claimant is not entitled to relief.

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5.75.040 Review of Amended Claim by Program Manager.

- A.** The Program Manager shall review a claim filed under Section 5.75.030 to ensure that it provides the information required by Subsection 5.75.030 C. If the Program Manager determines that the claim is incomplete, the Program Manager shall, within 21 days after the filing of the claim, provide written notice of the incompleteness to the claimant. If the Program Manager does not notify the owner that the claim is incomplete within the prescribed 21 days, the claim shall be considered complete on the date it was filed with the City of Portland.
- B.** The Program Manager shall review the claim for compliance with the requirements of Subsection 5.75.030 B. and prepare a tentative determination of compliance not later than 90 days after the filing of a complete claim. The Program Manager shall provide written notice to the claimant, the Department, and owners of property within 200 feet of the claim property of the tentative recommendation as to whether the claimant qualifies for the number of single-family dwellings the City of Portland proposes to authorize. The written notice shall inform recipients they have 15 days to submit evidence or argument to the Program Manager in response to the tentative recommendation. The Program Manager shall make a final recommendation on the claim within 135 days of the date the claimant notifies the Program Manager of the claimant's intent to continue the claim.
- C.** The Program Manager's recommendation to approve or deny a claim under Subsection B of this section shall be in writing and shall be supported by a brief explanation for the basis of the recommendation.

5.75.050 Hearing on Amended Claim by City Council.

- A.** The Auditor shall schedule each amended claim for consideration by City Council at a regularly scheduled City Council meeting. After considering the report and final recommendation by the Program Manager and any other material the Council determines is relevant, the Council shall make its final determination and adopt a final decision and order that explains the determination.
- B.** The City Council shall take final action within 180 days of receipt of a claim.
- C.** The City Council's decision shall be in writing and shall be supported by a brief explanation of the basis for the decision.
- D.** The Program Manager shall provide notice of the date, time and location of the public hearing at least 30 days before the hearing to the claimant, the Department, and owners of property within 200 feet of the claim property.

5.75.060 Filing a New Claim.

- A.** A person may file a claim after June 28, 2007, and will qualify for compensation or waiver, if:
1. The claimant is an owner of the property and all owners of the property have consented in writing to filing of the claim;
 2. The claimant's desired use of the property is a residential use;
 3. The claimant's desired use of the property is restricted by a land use regulation enacted after January 1, 2007;
 4. The enactment of the land use regulation has reduced the fair market value of the property; and
 5. The highest and best use of the property was residential use at the time the land use regulation was enacted.
- B.** A person filing a claim under this section must submit the fee for processing the claim prescribed in Section 5.75.090 and the following information:
1. The name, street address and telephone number of the claimant and all other owners of the property;
 2. A title report issued no more than 30 days prior to submission of the claim that shows the claimant's current real property interest in the property; the deed registry of the instrument by which the claimant acquired the property; the location and street address and township, range, section and tax lot number(s) of the property; the date on which the owner acquired the property interest; and any exceptions and encumbrances to title;
 3. A written statement signed by all owners of the property consenting to the filing of the claim;
 4. A citation to the land use regulation the claimant believes is restricting the claimant's desired use of the property;
 5. A description of the specific single-family residential use of the property that the claimant desires to carry out, but cannot because of the land use regulations;
 6. An appraisal showing the fair market value of the property one year before the enactment of the land use regulation and one year after enactment, and expressly determining the highest and best use of the property at the time the land use regulation was enacted;

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7. If the property is or has been enrolled in one or more of the special assessment programs listed in Measure 49, Section 9(6), information regarding taxes not paid as a result of the program or programs; and
 8. A statement whether the claimant filed a claim with other public entities on or before June 28, 2007, involving the same property and a copy of any decision made by the entity on the claim.
- C. A person filing a claim under this section must file the claim within five years after the challenged land use regulation was enacted.

5.75.070 Review of New Claim by Program Manager.

- A. The Program Manager shall review the claim to ensure that it provides the information required by Section 5.75.060. If the Program Manager determines that the claim is incomplete, the Program Manager shall, within 60 days after the filing of the claim, provide written notice of the incompleteness to the claimant. If the Program Manager does not notify the owner that the claim is incomplete within the prescribed 60 days, the claim shall be considered complete on the date it was filed with the Program Manager.
- B. A claim filed under this section shall not be considered complete until the claimant has submitted the information required by this section. If the claimant fails to submit a complete claim within 60 days after the notice prescribed in Subsection A, the claim shall be deemed withdrawn.
- C. The Program Manager shall conduct a preliminary review of a claim to determine whether it satisfies all of the following prerequisites for full evaluation of the claim:
1. The property lies within the City of Portland's jurisdictional boundary;
 2. The land use regulation that is the basis for the claim is a provision of a city land use regulation; and
 3. The claimant acquired an interest in the property before the effective date of the land use regulation and has continued to have an interest in the property since the effective date.
- D. If the claim fails to satisfy one or more of the prerequisites in subsection C of this section, the Program Manager shall prepare a report to that effect and recommend to the City Council that it dismiss the claim following a public hearing under Section 5.75.080.
- E. If the claim satisfies each of the prerequisites in Subsection C of this section, the Program Manager shall complete the review of the claim to determine whether it satisfies the criteria in Section 5.75.060.

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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.

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- D. After the close of the public hearing the City Council shall make its final determination on the claim and enter an order with findings of fact and conclusions of law, based upon the record made before the City of Portland, that explain the determination. The Program Manager shall mail a copy of the final determination to the claimant, Multnomah County, and any person who submitted written or oral testimony prior to the close of the public hearing.
- E. The City Council will make its final determination within 180 days of the date the claim is complete.

5.75.090 Claim Processing Fee.

A claimant shall pay a \$250 fee to file a claim under Sections 5.75.030 and 5.75.060 of this Chapter. A claim will not be considered complete until the fee is paid. For any claims submitted on or after December 2, 2004 for which a fee was not paid at the time of claim submittal, the Program Manager may bill the owner for the fee at any time during the claim review process and prior to a final decision on the claim.

5.75.100 Determination of Common Law Vested Right.

- A. A person with an approved Measure 37 claim may apply for a determination that the person has a common law vested right to continue and complete a use or development allowed by an approved Measure 37 claim consistent with Measure 49.
- B. An applicant seeking to establish a common law vested right for an approved Measure 37 claim must submit the following information:
 - 1. The name, mailing address, and telephone number of the applicant.
 - 2. A legal description and tax lot numbers of the subject property as well as a street address for the property, if any.
 - 3. A copy of the approved Measure 37 claim decision from the City of Portland and, if appropriate, the State of Oregon.
 - 4. Additional information sufficient to address each of the factors listed in Subsection C of this Section.
- C. The factors to be considered by the Program Manager and the City Council in determining whether the applicant has a common law vested right to continue and complete a use or development allowed by an approved Measure 37 claim are:
 - 1. The amount of money spent on developing the use in relation to the total cost of establishing the use.
 - 2. The good faith of the property owner.

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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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- G.** Any person whose only business transactions are exclusively limited to the following activities:
- 1.** Raising, harvesting and selling of the person's own crops, or the feeding, breeding, management and sale of the person's own livestock, poultry, furbearing animals or honeybees, or sale of the produce thereof, or any other agricultural, horticultural or animal husbandry activity carried on by any person on said person's own behalf and not for others, or dairying and the sale of dairy products to processors. This exemption does not apply if, in addition to the farm activities described in this subsection, the person does any processing of the person's own farm products which changes their character or form, or the person's business includes the handling, preparation, storage, processing or marketing of farm products raised or produced by others; or the processing of milk or milk products whether produced by said person or by others for retail or wholesale distribution.
 - 2.** Operating within a permanent structure a display space, booth or table for selling or displaying merchandise by an affiliated participant at any trade show, convention, festival, fair, circus, market, flea market, swap meet or similar event for less than 14 days in any tax year.
- H.** Gross revenues subject to Chapters 7.12 or 7.14. Unless otherwise prohibited by law, gross revenue which is not otherwise subject to Chapters 7.12 or 7.14 is subject to the Business License Law.

7.02.500 Tax Rate.

(Amended by Ordinance Nos. 187743, 188129, 189017, 189261, 189389, 189794 and 189861, effective March 13, 2020.)

- A.** The tax established by the Business License Law is 2.2 percent of adjusted net income, for tax years beginning on or before December 31, 2017. For tax years beginning on or after January 1, 2018, the tax is 2.6 percent of adjusted net income, except as provided in Subsections B., C., D. and E. of this Section.
- B.** Surcharges applicable to Tax Years 2002 through 2005. The following surcharges are imposed in addition to the 2.2 percent tax established in Subsection A. above. The proceeds of the surcharges are dedicated to supplementing the funding provided by the State to the public schools within the City, and allocated to all of the public school districts within the City of Portland.
- 1.** For the tax year beginning on or after January 1, 2002, a surcharge is imposed in the amount of 1 percent.
 - 2.** For tax year beginning on or after January 1, 2003, a surcharge is imposed in the amount of 0.4 percent.

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3. For tax year beginning on or after January 1, 2004, a surcharge is imposed in the amount of 0.4 percent.
- C. Surcharge applicable to Tax Years 2006 through 2007. The following surcharges are imposed in addition to the 2.2 percent tax established in Subsection A. above. The proceeds of the surcharges are dedicated to supplementing the funding provided by the State to the public schools within the City, and allocated to all of the public school districts within the City of Portland. The proceeds of the surcharges must be used by the school districts only for programs and activities on which the City is authorized to expend funds pursuant to its charter and state law.
1. For the tax year beginning on or after January 1, 2006, a surcharge is imposed in the amount of 0.14 percent.
 2. No penalties or interest for failure to make quarterly estimated payments in the amount of the surcharge will be charged or imposed for the 2006 tax year.
 3. For the tax year beginning on or after January 1, 2007, a surcharge is imposed in the amount of .07 percent.
 4. If the surcharges raise more than \$9 million plus City costs but less than \$9.5 million plus City costs for the 2006 and 2007 tax years combined, the excess over \$9 million, less City costs, will be dedicated to public schools within the City as provided in Subsection C. of this Section. If the surcharges raise more than \$9.5 million plus City costs for the 2006 and 2007 tax years combined, the excess over \$9 million, less City costs, will be retained as a credit for taxes due in a later tax year. The Director will apply the credit to taxes due no later than the 2010 tax year. The Director has the sole discretion to determine the method of calculating and distributing credits.
- D. Heavy Vehicle Use Tax applicable to Tax Years 2016 through 2023. The following tax is imposed in addition to the tax established in Subsection A. above. The proceeds of this tax are dedicated to supplementing the funding of City of Portland street maintenance and safety and shall be deposited in a Street Repair and Traffic Safety Program of the Transportation Operating Fund where street repair and traffic safety expenditures are recorded.
1. For the tax years 2016 through 2023, a Heavy Vehicle Use Tax is imposed on taxpayers who operate one or more Heavy Vehicles on streets owned or maintained by the City of Portland. For the purposes of this tax, a Heavy Vehicle is any vehicle that is subject to the Oregon Weight-Mile Tax pursuant to ORS 825.450 et seq. For the tax years beginning on or after January 1, 2016, January 1, 2017, January 1, 2018 and January 1, 2019, this

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tax is 2.8 percent of the total Oregon Weight-Mile Tax calculated for all periods within the tax year. For the tax years beginning on or after January 1, 2020, this tax is 3 percent of the total Oregon Weight-Mile Tax calculated for all periods within the tax year.

2. The minimum Heavy Vehicle Use Tax due for a tax year is \$100. The minimum tax would be in addition to the \$100 minimum tax described in Section 7.02.545, if applicable.
 3. No penalties or interest for failure to make quarterly estimated payments in the amount of the Heavy Vehicle Use Tax will be charged or imposed for the 2016 tax year only. Thereafter, penalties and interest will be calculated as provided for in the Code.
 4. The Heavy Vehicle Use Tax shall have a 4 year revenue target, beginning with tax year 2020, of \$11 million plus City costs. If at the end of tax year 2021, the City projects 4 year revenues to be above or below the target by an amount that is more than 10 percent of the target, the City will adjust the rate for subsequent tax years to reach the 4 year target. The Revenue Division of the Bureau of Revenue and Financial Services is authorized to adopt an administrative rule to implement this change, if needed.
- E.** Pay ratio surtax applicable to publicly traded companies subject to U.S. Securities and Exchange Commission pay ratio reporting requirements. The following surtax is imposed in addition to the tax established in Subsection A. above.
1. For tax years beginning on or after January 1, 2017, a surtax of 10 percent of base tax liability is imposed if a company subject to this section reports a pay ratio of at least 100:1 but less than 250:1 on U.S. Securities and Exchange Commission disclosures.
 2. For tax years beginning on or after January 1, 2017, a surtax of 25 percent of base tax liability is imposed if a company subject to this section reports a pay ratio of 250:1 or greater on U.S. Securities and Exchange Commission disclosures.
- F.** Clean Energy Surcharge applicable to Large Retailers with Retail Sales within the City. The following surcharge is imposed in addition to the tax established in Subsection A. above. The proceeds from this surcharge are to support the City of Portland's Climate Action Plan and shall be deposited into the Portland Clean Energy Community Benefits Fund.
1. Filing Requirement. All businesses with total gross income of \$1 billion or more and Portland gross income of \$500,000 or more, as reported on the

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Combined Tax Return per Section 7.02.610, shall file a schedule with their Combined Tax Return.

2. Imposition of Surcharge and Rate. Large Retailers shall pay a 1 percent surcharge on Retail Gross Revenue within the City. This surcharge is not a tax imposed directly on the purchaser (consumer). If a Large Retailer itemizes its cost of doing business for the purchaser (consumer), these amounts are still considered Retail Sales subject to the Clean Energy Surcharge.
3. Calculation of Retail Gross Revenue. In calculating the amount of Retail Gross Revenue for purposes of this Clean Energy Surcharge, a deduction from Retail Sales within the City is allowed for the following:
 - a. The amount of the Portland Business License Tax attributable to revenue subject to this surcharge, if any, paid to the city;
 - b. Retail Sales of Qualified Groceries;
 - c. Retail Sales of Qualified Medicine or Drugs;
 - d. Retail Sales of Qualified Health Care Services;
 - e. Retail Sales of Qualified Residential Garbage and Recycling Services; and
 - f. Retail Sales from the administration of Qualified Retirement Plans.
4. Effective Date and Penalties. The Clean Energy Surcharge will apply for all tax years beginning on or after January 1, 2019. Payments will be made consistent with the schedule required in Section 7.02.530. No underpayment interest for failure to make quarterly estimated payments for the Clean Energy Surcharge will be charged or imposed for the 2019 tax year. Thereafter, penalties and interest will be calculated separately from other taxes and surcharges as provided for in Sections 7.02.700 and 7.02.710.

7.02.510 Registration Form and Tax Return Due Dates.

(Amended by Ordinance Nos. 183727 and 187339, effective October 16, 2015.)

- A. All persons subject to the requirements of this Chapter must register with the Division on a form provided or approved by the Division. Thereafter, taxfilers must file tax returns with the Division. The following timing requirements apply:
 1. Registration forms must be filed within 60 days of the person beginning business in the City.

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2. Tax returns must be filed by the 15th day of the fourth (4th) month following the end of the tax year. For cooperatives and non-profit corporations that have later due dates under Oregon tax law, the due date for filing tax returns with the Division must conform to the due date under Oregon tax law.
- B. The Division may, for good cause, grant extensions for filing tax returns, except that no extension may be granted for more than six (6) months beyond the initial filing due date. This extension does not extend the time to pay the tax.
- C. Registration forms and tax returns must contain a written declaration, verified by the taxfiler, to the effect that the statements made therein are true.
- D. The Bureau will prepare blank registration forms and tax returns and make them available at its office upon request. Failure to receive or secure a form does not relieve any person from the obligation to pay a business tax.

7.02.520 Quarterly Estimates.

Every taxfiler expecting to have a tax liability under Section 7.02.500 of \$1,000 or greater must make an estimate of the tax based upon the taxfiler's current tax year and pay the amount of tax determined as provided in Section 7.02.530.

7.02.530 Schedule for Payment of Estimated Tax.

(Amended by Ordinance No. 187339, effective October 16, 2015.) A taxfiler required under Section 7.02.520 to make payments of estimated business taxes must make the payments in installments as follows:

- A. One quarter or more of the estimated tax on or before the 15th day of the fourth (4th) month of the tax year; and
- B. One quarter or more of the estimated tax on or before the 15th day of the sixth (6th) month of the tax year; and
- C. One quarter or more of the estimated tax on or before the 15th day of the ninth (9th) month of the tax year; and
- D. The balance of the estimated tax must be paid on or before the 15th day of the twelfth (12th) month of the tax year.
- E. Any payment of the estimated tax received by the Division for which the taxfiler has made no designation of the quarterly installment to which the payment is to be applied, will first be applied to underpayments of estimated taxes due for any prior quarter of the tax year. Any excess amount will be applied to the installment that next becomes due after the payment was received.

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7.02.545 Tax Returns.

(Authorized by Ordinance No. 189389, effective February 21, 2019.) Each tax return must be accompanied by a tax payment at the rate established in Section 7.02.500, provided that each such tax return must be accompanied by a minimum tax of \$100 plus any amount due as a result of the temporary surcharge established in Section 7.02.500 B. and D. The minimum payment may have previously been paid by quarterly payments, an extension payment, or credit available from a prior tax year.

7.02.550 Presumptive Tax.

(Amended by Ordinance No. 187339, effective October 16, 2015.)

- A. If a person fails to file a tax return, a rebuttable presumption exists that the tax payable amounts to \$500 for every license tax year for which a tax return has not been filed.
- B. Nothing in this Section prevents the Division from assessing a tax due which is less than or greater than \$500 per license tax year.
- C. Presumptive taxes assessed under this subsection are considered filed documents and are subject to the time limitations for deficiencies and refunds as described in Section 7.02.280.
- D. Taxes determined under this subsection are subject to penalties and interest from the date the taxes should have been paid as provided in Section 7.02.510 in accordance with Sections 7.02.700 and 7.02.710. The Division will send notice of the determination and assessment to the taxfiler.

7.02.560 Payment Plan Fee.

(Amended by Ordinance No. 187339, effective October 16, 2015.) If a person fails to pay the business tax when due, the Division may establish a payment plan and charge a set up fee pursuant to written policy.

7.02.600 Income Determinations.

(Amended by Ordinance Nos. 183727, 185781, 186331, 187339, 189017 and 189389, effective February 21, 2019.)

- A. **Owners Compensation Deductions.** “Owners Compensation Deduction” is defined as the additional deduction allowed in Subsections B., C. and D. below. The owners compensation deduction is indexed (beginning in January 1999) by the Consumers Price Index - All Urban Consumers (CPI-U) US City Average as published by the US Department of Labor, Bureau of Labor Statistics, using the September to September index, not seasonally adjusted (unadjusted index). The Division determines the exact deduction amount and publishes the amount on forms. Any increase or decrease under this paragraph that is not a

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multiple of \$500 will be rounded up or down to the next multiple of \$500 at the Division's discretion.

1. For tax years beginning on or after January 1, 2007, the Owners Compensation Deduction cannot exceed \$80,000 per owner as defined in Subsections B., C. and D. below. For tax years beginning on or after January 1, 2008, the Owners Compensation Deduction will be indexed as described above.
 2. For tax years beginning on or after January 1, 2013, the Owners Compensation Deduction cannot exceed \$90,500 per owner as defined in Subsections B., C. and D. below.
 3. For tax years beginning on or after January 1, 2014, the Owners Compensation Deduction cannot exceed \$100,000 per owner as defined in Subsections B., C. and D. below. For tax years beginning on or after January 1, 2015, the Owners Compensation Deduction will be indexed as described above.
 4. For tax years beginning on or after January 1, 2018, the Owners Compensation Deduction cannot exceed \$125,000 per owner as defined in Subsections B., C. and D. below. For tax years beginning on or after January 1, 2019, the Owners Compensation Deduction will be indexed as described above.
- B. Sole Proprietorships.** In determining income, no deduction is allowed for any compensation for services rendered by, or interest paid to, owners. However, 75 percent of income determined without such deductions is allowed as an additional deduction, not to exceed the amounts listed in Subsection A. per owner.
- C. Partnerships.** In determining income, no deductions are allowed for any compensation for services rendered by, or interest paid to, owners of partnerships, limited partnerships, limited liability companies, limited liability partnerships, or family limited partnerships. Guaranteed payments to partners or members are deemed compensation paid to owners for services rendered. However:
1. For general partners or members, 75 percent of income determined without such deductions is allowed as an additional deduction, not to exceed the amounts listed in Subsection A. per general partner or member.
 2. For limited partners or members of LLCs who are deemed limited partners by administrative rule or policy, 75 percent of income determined without such deductions is allowed as an additional deduction, not to exceed the lesser of actual compensation and interest paid or the amounts listed in Subsection A. per compensated limited partner.

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- D. Corporations.** In determining income, no deduction is allowed for any compensation for services rendered by, or interest paid to, controlling shareholders of any corporation, including but not limited to, C and S corporations and any other entity electing treatment as a corporation, either C or S. However, 75 percent of the corporation's income, determined without deduction of compensation or interest, is allowed as a deduction in addition to any other allowable deductions, not to exceed the lesser of the actual compensation and interest paid or the amounts listed in Subsection A. for each controlling shareholder.
1. For purposes of this Subsection, to calculate the compensation for services rendered by or interest paid to controlling shareholders that must be added back to income, wages, salaries, fees or interest paid to all persons meeting the definition of a controlling shareholder must be included.
 2. For purposes of this Subsection, in determining the number of controlling shareholders, a controlling shareholder and that person's spouse, parents and children count as one owner, unless such spouse, parent or child individually control more than five (5) percent ownership of outstanding stock or securities in their own name. In that case, each spouse, parent or child who owns more than five (5) percent of stock is deemed to be an additional controlling shareholder.
 3. For purposes of this Subsection, joint ownership of outstanding stock or securities is not considered separate ownership.
- E. Estates and Trusts.** In determining income for estates and trusts, income is measured before distribution of profits to beneficiaries. No additional deduction is allowed.
- F. Non-business Income.** In determining income under this Section, an allocation is allowed for non-business income as reported to the State of Oregon. However, income treated as non-business income for State of Oregon tax purposes may not necessarily be defined as non-business income under the Business License Law. Interest and dividend income, rental income or losses from real and personal business property, and gains or losses on sales of property or investments owned by a trade or business is treated as business income for purposes of the Business License Law. Income derived from non-unitary business functions reported at the State of Oregon level may be considered non-business income. Non-unitary income will not be recognized at an intrastate level. The taxfiler has the burden of showing that income is non-business income.
- G. Nondeductible Taxes and Surcharges.** In determining income, no deduction is allowed for taxes based on or measured by net income. No deduction is allowed for the federal built-in gains tax. No deduction is allowed for the Clean Energy Surcharge.

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- H. Ordinary Gain or Loss.** In determining income, gain or loss from the sale, exchange or involuntary conversion of real property or tangible and intangible personal property not exempt under Subsections 7.02.400 G. and H. must be included as ordinary gain or loss.
- I. Net Operating Loss.** In determining income, a deduction is allowed equal to the aggregate of the net operating losses incurred in prior years, not to exceed 75 percent of the income determined for the current license tax year before this deduction, but after all other deductions from income allowed by this Section and apportioned for business activity both within and without the City of Portland.
1. When the operations of the taxfiler from doing business both within and without the City result in a net operating loss, such loss will be apportioned in the same manner as the net income under Section 7.02.610. However, in no case may a net operating loss be carried forward from any license tax year during which the taxfiler conducted no business within the City or the taxfiler was otherwise exempt from payment of the business license tax.
 2. In computing the net operating loss for any license tax year, the net operating loss of a prior year is not allowed as a deduction.
 3. In computing the net operating loss for any license or tax year, no compensation allowance deduction is allowed to increase the net operating loss. "Compensation allowance deduction" is defined in Subsection 7.02.600 A.
 4. The net operating loss of the earliest license tax year available must be exhausted before a net operating loss from a later year may be deducted.
 5. The net operating loss in any license tax year is allowed as a deduction in the five (5) succeeding license tax years until used or expired. Any partial license tax year will be treated the same as a full license tax year in determining the appropriate carry-forward period.

7.02.610 Apportionment of Income.

(Amended by Ordinance Nos. 182427, 184597 and 187339, effective October 16, 2015.)

- A.** "Jurisdiction to tax" occurs when a person engages in business activities in a jurisdiction that are not protected from taxation by Public Law 86-272. Public Law 86-272 applies to interstate sales of tangible personal property. For purposes of the Business License Law, the limits imposed by Public Law 86-272 for interstate jurisdiction to tax shall also be presumed to apply on an intrastate basis. If a taxpayer's business is based in Portland, a taxpayer must have business activity outside Portland that results in a jurisdiction to tax outside Portland to apportion

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the income of the business. Without jurisdiction to tax outside Portland, all income of a business is taxable by Portland.

- B.** “Business activity” means any of the elements of doing business. The income reportable as income earned from business activity within the City of Portland will include all business incomes from sources within the City of Portland that are taxable incomes under Oregon tax laws and regulations unless otherwise exempted or excluded in this Chapter.
- C.** In computing the business license tax, taxfilers that have income from business activity both within and without the City must determine the income apportioned to the City by multiplying the total net income from the taxfiler’s business by a fraction, the numerator of which is the total gross income of the taxfiler from business activity in the City during the tax year, and the denominator of which is the total gross income of the taxfiler from business activity everywhere during the tax year.
- D.** In determining the apportionment of gross income within the City under Subsection 7.02.610 C.:

 - 1.** Sales of tangible personal property are deemed to take place in the City if the property is delivered or shipped to a purchaser within the City regardless of the f.o.b. point or other conditions of sale. If sales of tangible personal property are shipped from the City to a purchaser located where the taxfiler is not taxable, those sales are not apportioned to the City.
 - 2.** Sales other than sales of tangible personal property are deemed to take place in the City if the income producing activity is performed in the City.
- E.** Certain industries or incomes are subject to specific apportionment methodologies. Such methodologies are described in administrative rules adopted in accordance with Section 7.02.210. Industry specific or income specific apportionment methodologies required by Oregon Revised Statutes for apportionment of gross sales, will be used in cases where no rule has been adopted by the Division regarding the apportionment of such industry or income. When gross sales as reported to Oregon are used for apportionment purposes, such gross sales will be defined as gross income for apportionment purposes herein. All apportionment methodologies directed under this Subsection will be a single factor gross income apportionment as directed under Subsections 7.02.610 C. and 7.02.610 D. In those specific cases where Oregon has directed allocation of income, such income will be apportioned for purposes of this Chapter, unless allocation is otherwise allowed in this Chapter.
- F.** If the apportionment provisions of Subsection C. do not fairly represent the extent of the taxfiler’s business activity in the City and result in the violation of the

taxfiler's rights under the Constitution of this State or the United States, the taxfiler may petition the Division to permit the taxfiler to:

1. Utilize the method of apportionment used by the taxfiler under the applicable laws of the State of Oregon imposing taxes upon or measured by net income; or
2. Utilize any other method to effectuate an equitable apportionment of the taxfiler's income.

7.02.620 Changes to Federal and/or State Tax Returns.

(Amended by Ordinance No. 187339, effective October 16, 2015.)

- A. If a taxfiler's reported net income under applicable Oregon laws imposing a tax on or measured by income is changed by the federal Internal Revenue Service or the Oregon Department of Revenue, or amended by the taxfiler to correct an error in the original federal or state return, a report of such change must be filed with the Division within 60 days after the date of the notice of the final determination of change or after an amended return is filed with the federal or state agencies. The report must be accompanied by an amended tax return with respect to such income and by any additional tax, penalty, and interest due.
- B. The Division may assess deficiencies and grant refunds resulting from changes to federal, state, city or county tax returns within the time periods provided for in Section 7.02.280, treating the report of change in federal, state, city or county tax returns as the filing of an amended tax return.
- C. The Division may assess penalties and interest on the additional tax due as provided in Subsection 7.02.700 A. and 7.02.710 A., or may refuse to grant a refund of business taxes as a result of the amended tax return if the amended tax return is not filed with the Division within the time limits set forth in Subsection A.

7.02.630 Income Long Term Construction Contract Methods.

- A. A taxfiler reporting income using a long term construction contract method must file an additional tax return for the taxfiler's income earned during the last license tax year, not later than the 15th day of the fourth (4th) month following the end of the prior license tax year during which either:
 1. The taxfiler ceases to do business in the City; or
 2. The taxfiler ceases to receive income from such long term construction contracts.
- B. Net income for such taxfiler must include apportioned income arising from all contracts completed during such license tax year.

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7.02.700 Penalties.

(Amended by Ordinance Nos. 187339 and 189389, effective February 21, 2019.)

- A.** A penalty will be assessed if a person:
- 1.** Fails to file a tax return or extension request at the time required under Subsections 7.02.510 A. or 7.02.620 A.; or
 - 2.** Fails to pay the tax when due.
 - 3.** The penalty under Subsection A. is:
 - a.** Five percent (0.05) of the total tax liability, but not less than \$5, if the failure is for a period less than four (4) months;
 - b.** An additional penalty of 20 percent (0.20) of the total tax liability if the failure is for a period of four (4) months or more; and
 - c.** An additional penalty of 100 percent (1.00) of the total tax liability of all license tax years if the failure to file is for three (3) or more consecutive license tax years.
- B.** A penalty will be assessed if a person who has filed an extension request:
- 1.** Fails to file a tax return by the extended due date; or
 - 2.** Fails to pay the tax liability by the extended due date.
 - 3.** The penalty under Subsection B. is:
 - a.** Five percent (0.05) of the total tax liability, but not less than \$5, if the failure is for a period less than four (4) months; and
 - b.** An additional penalty of 20 percent (0.20) of the total tax liability if the failure is for a period of four (4) months or more.
- C.** A penalty will be assessed if a person:
- 1.** Fails to pay at least 90 percent (0.90) of the total tax liability, but not less than \$100, by the original due date; or
 - 2.** Fails to pay at least 100 percent (1.00) of the prior year's total tax liability by the original due date.
 - 3.** The penalty under Subsection C. is five percent (.05) of the tax underpayment, but not less than \$5.

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- D.** A penalty of \$100.00 may be assessed if a person fails to file a registration form at the time required under Subsection 7.02.510 A.
- E.** The Director may impose a civil penalty of up to \$500 for each of the following violations of the Business License Law:
 - 1.** Failure to file any tax return within 60 days from the due date as further outlined in Section 7.02.510 of this Chapter; or
 - 2.** Failure to pay any tax within 60 days of the Division's original written notice for payment; or
 - 3.** Failure to provide either documents or information (as required by Section 7.02.260) within 60 days of the Division's original written notice to provide the documents or information; or
 - 4.** Failure to fully complete any form required under this Chapter.
 - 5.** Failure to fully comply with the requirements of any section of PCC 7.02 unless such section has a separate penalty calculation.
- F.** The Director may impose a civil penalty under Subsections E.2. and E.3. only if the Division gave notice of the potential for assessment of civil penalties for failure to comply or respond in the original written notice.
- G.** The Division may waive or reduce any penalty determined under Subsections A. through E. for good cause, according to and consistent with written policies.

7.02.710 Interest.

(Amended by Ordinance No. 187339, effective October 16, 2015.)

- A.** Interest will be assessed on any unpaid business tax 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 tax to the 15th day of the month following the date of payment.
- B.** Interest will be assessed on any unpaid or underpaid quarterly estimated payment required by Sections 7.02.520 and 7.02.530 at the rate of .833 percent simple interest per month or fraction thereof (10 percent per annum), computed from the due date of each quarterly estimated payment to the original due date of the tax return to which the estimated payments apply.
- C.** Notwithstanding Subsection B. there is no interest on underpayment of quarterly estimated payments if:
 - 1.** The total tax liability of the prior license tax year was less than \$1,000; or

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2. An amount equal to at least 90 percent (0.90) of the total tax liability, but not less than \$100, for the current license tax year was paid in accordance with Section 7.02.530; or
 3. An amount equal to at least 100 percent (1.00) of the prior year's total tax liability was paid in accordance with Section 7.02.530.
- D.** For purposes of Subsection B., the amount of underpayment is determined by comparing the 90 percent of the current total tax liability amount to quarterly estimated payments made prior to the original due date of the tax return. However, if 100 percent of the prior year's total tax liability is paid to the Division by the due date of the fourth quarterly payment, the Division may use the prior year's tax liability if doing so will reduce the amount of interest owed.
- E.** For purposes of Subsection A. of this Section, the amount of tax due on the tax return will be reduced by the amount of any tax payment made on or before the date for payment of the tax in accordance with Subsection 7.02.510 A. or Section 7.02.530.
- F.** Interest at the rate specified in Subsection A. of this Section accrues from the original due date without regard to any extensions of the filing date.
- G.** Any interest amounts properly assessed in accordance with this section may not be waived or reduced by the Division, unless specifically provided for by written policy.

7.02.715 Payments Applied.

(Amended by Ordinance No. 187339, effective October 16, 2015.) Business taxes received will be applied first to any penalty accrued, then to interest accrued, then to business taxes due, unless the Division determines in accordance with its written policies that a more equitable method exists for a particular taxfiler's account.

7.02.720 Interest on Refunds.

(Amended by Ordinance No. 187339, effective October 16, 2015.) When, under a provision of the Business License Law, taxfilers are entitled to a refund of a portion of the business tax paid to the Division, they will receive simple interest on such amount at the rate specified in Subsection 7.02.710 A., subject to the following:

- A.** Any overpayments will be refunded with interest for each month or fraction thereof for a period beginning four (4) months after the later of:
1. the original due date of the tax return, or
 2. the date the tax return was filed or the refund was otherwise requested, or
 3. the date the business tax was paid to the date of the refund; and

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- B.** Any overpayments of taxes that are the result of an amended tax return being filed will be refunded with interest for each month or fraction thereof for the period beginning four (4) months after the date the taxfiler filed the amended tax return. This Subsection applies to tax returns that are amended due to a change to the federal, state, city or county tax return.

7.02.730 Criminal Penalties for Violation of the Business License Law by City Employee or Agent.

Anyone knowingly violating Section 7.02.230 may be punished, upon conviction thereof, by a fine not exceeding \$500.00 or by imprisonment for a period not exceeding six (6) months, or by both fine and imprisonment. Any City employee that is convicted will be dismissed from employment and is ineligible for holding any position of employment or office in the City for a period of five (5) years thereafter. Any agent of the City that is convicted is ineligible for participation in any City contract for a period of five (5) years thereafter.

7.02.800 Refundable Credit.

(Amended by Ordinance Nos. 187339 and 189389, effective February 21, 2019.) For tax years beginning on or after January 1, 2005, a maximum of four (4) refundable credits of \$500 each are allowed for qualifying businesses that employ disconnected youth. For the purpose of this credit, the terms used in this section are defined below or as defined in written policies adopted under Section 7.02.210 unless the context requires otherwise.

- A. “Local Business”** means a business operating in the pursuit of profit, gain or the production of income that:
1. has at least one physical location (such as an office, warehouse, store or restaurant) within the geographic boundaries of the State of Oregon and/or Clark County, Washington; and
 2. is registered to do business in the State of Oregon and said registration has not expired or otherwise been dissolved; or is a sole proprietorship that is not legally required to register to do business in the State of Oregon ; and
 3. has a current account with the City of Portland and has complied with all filing and payment requirements of Portland ’s Business License Law and the Multnomah County Business Income Tax Law.
- B. “Disconnected Youth”** means a youth that is
1. a resident of the City of Portland,
 2. is 16-24 years old on the date on which the youth begins working with the local business,

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3. has a household income that is at or below 50 percent of the HUD Portland Area Median Income, and
4. one or more of the following apply:
 - a. is receiving (or has received in the last six months) or is a member of a family receiving Temporary Assistance for Needy Families or Aid to Families with Dependent Children or Supplemental Security Income; or
 - b. is a 16-24 year old member of a family that is receiving (or has received in the last six (6) months) food stamps; or
 - c. is a custodial parent; or
 - d. is a high school drop-out; or
 - e. is an adjudicated youth, meaning that they are or have been, in the Oregon Juvenile Justice System or the equivalent thereof in another state.
- C. **“Qualified Youth Employment Organization”** means an organization that is qualified and funded to operate youth employment and training programs by the youth certifying agency.
- D. **“Credit Certificate”** means a pre-numbered certificate issued by the Youth Certifying Agency upon fulfillment of the employment contract. A separate certificate is required for each credit granted to a business.
- E. **“Youth Certifying Agency”** means an agency that has entered into an agreement or other memorandum of understanding with the Division to act as the Youth Certifying Agency for the purpose of this program.
- F. **“2005 Tax Year”** means a tax year that begins on or after January 1, 2005 and ends on or before November 30, 2006, but does not exceed a 12 month period.
- G. **“2006 Tax Year”** means a tax year that begins on or after January 1, 2006 and ends on or before November 30, 2007, but does not exceed a 12 month period.
- H. **“Non-exempt”** means that the local business has not claimed an exemption from the requirements of the Business License Law as defined and provided for in 7.02.400.

7.02.810 Credits Issued.

- A.** For the 2005 tax year, a total of 100 refundable credits of \$500 each will be available to non-exempt local businesses. For the 2006 tax year, a total of 100 refundable credits of \$500 each will be available to non-exempt local businesses. The credit is non-refundable if the local business was exempt during the tax year in which it claimed the credit. The credit cannot be used to offset amounts due under the Multnomah County Business Income Tax.
- B.** The 100 refundable credits allocated per year will be issued on a first come, first served basis as measured by the date on which the youth certifying agency completes the certification process for any particular business.
- C.** A maximum of four (4) credits can be claimed on the tax return based on the taxable income for the tax year in which the credit is claimed. If a consolidated, combined or joint return is required to be filed under Section 7.02.110 B., the consolidated, combined or joint group is limited to a maximum of four (4) credits.
- D.** Credit certificates can only be used in the tax year in which they are claimed and cannot be used in any other tax year.
- E.** For the 2005 tax year, only hours worked after June 30, 2005 may be counted towards the 300 hour minimum requirement.
- F.** Businesses cannot count reimbursable or otherwise subsidized hours (wages) toward the 300 hours.
- G.** A business may claim a credit for the same disconnected youth in successive tax years, provided that the youth works the required minimum 300 hours in each tax year.
- H.** The 300 hour requirement must be completed during the business' fiscal tax year rather than the calendar year.

7.02.820 Obligations of Participating Businesses.

To be eligible to receive a refundable credit and participate in the program, a local business must do each of the following:

- A.** Submit an application to the youth certifying agency that includes an intent to employ an eligible disconnected youth for an average of 25 hours per week and a minimum of 300 hours within four months.
- B.** Contact one or more qualified youth employment organizations for assistance in identifying youth, enrolling a specific youth in one of the qualified youth employment programs in order to pursue eligibility of the youth in the program,

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and/or seek assistance working with a youth to increase his/her opportunity for employment success.

- C. Complete employee evaluations or conduct reviews of employees that fall under this program;
- D. Report employment data for each youth to the participating qualified youth employment organization or the youth certifying agency.

7.02.830 Collection and Remittance of Donations to “Work for Art,” a Program of the Regional Arts & Culture Council.

(Amended by Ordinance No. 187339, effective October 16, 2015.) The Revenue Division is authorized to collect and remit donations from taxfilers to “Work for Art,” a program of the Regional Arts & Culture Council.

- A. Taxfilers may donate to “Work for Art” by either
 - 1. paying a sum above what is owed for their City business taxes, or
 - 2. by designating that all or some of any refund due to them be instead donated to “Work for Art.”
- B. To indicate a desire to donate, the taxfiler must check the appropriate donation box on their tax return for the tax year in question. In addition, the taxfiler must indicate the amount that is to be donated.
- C. Once the tax return is filed with the Division, the taxfiler may not cancel the donation or request that it be instead credited to any other outstanding receivable owed to the Division.

7.02.840 Frivolous Filing.

A \$500.00 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) are hereby adopted by direct reference.

7.02.850 Hacking.

(Amended by Ordinance Nos. 187339 and 189389, effective February 21, 2019.)

- A. Any individual who intentionally accesses the Division’s computer database without authorization will be fined:
 - 1. \$10,000 if the individual acquires any information regarding any business account found in the database;

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2. \$10,000 or the cost of the loss (whichever is greater) if the individual uses or attempts to use the acquired information for financial gain of any kind; or
3. \$10,000 or the cost of the loss (whichever is greater) if the individual causes the transmission of a program, information, code, or command to the Division's computer database, and, as a result of such conduct, causes damage to the database.

B. Definitions. As used in this Section:

1. the term "Division's computer database" means computer application(s) used by the Division to calculate and store business and financial data collected under the authority granted by the Business License Law;
2. the term "loss" means any reasonable cost incurred by the City of Portland, including but not limited to the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other consequential damages incurred because of interruption of service;
3. the term "damage" means any impairment to the integrity or availability of data, a program, a system, or information.

7.02.860 First Year Adjustment Credit.

(Amended by Ordinance Nos. 182427 and 187339, effective October 16, 2015.)

- A. Any taxfiler that was assessed a "First Year Adjustment" fee on a prior tax filing and has been licensed in all consecutive years since is entitled to receive a credit equal to that amount. The credit will be applied towards future City tax filings as a prepayment.
- B. If the amount of the credit cannot be determined from Division records, a rebuttable presumption exists that the credit amount is equal to the amount of the minimum fee payment due for the tax year in which the City assessed the "First Year Adjustment" fee. A taxfiler may present evidence to the Division showing that its First Year Adjust fee was higher than the minimum fee amount due for a particular tax year.
- C. Once the credit amount is determined, the Division will apply 100 percent of that amount towards tax payments due and owing for the 2008 license tax year. If that credit amount exceeds the tax amount due for the 2008 license tax year, the City will issue a refund for the difference or credit the overpayment forward to the next tax year if requested by the taxpayer.

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7.02.870 Business Retention Credit for Qualifying Investment Management Firms.

(Added by Ordinance No. 183330, effective December 12, 2009.)

- A.** An Investment Management Firm is entitled to a credit against the total amount of its business license tax due. The business retention credit is determined by subtracting from the business license tax due the greater of
- 1.** \$6,000 times the number of owners, not including limited partners, subject to the Compensation Deductions allowed in Section 7.02.600 or
 - 2.** 30 percent of the total business license tax otherwise due. If the resulting difference is a negative number, the amount of the credit will be zero. Any allowed credit not used in a particular year will not be refunded and will not be carried forward to a succeeding tax year, except as provided in Subsection B.
- B.** For purposes of this credit, the “first tax year” would be a tax year in which the Investment Management Firm is doing business in the City of Portland and either
- 1.** The Investment Management Firm was not doing business in the City of Portland in the prior tax year or
 - 2.** The prior tax year began prior to January 1, 2009.
 - a.** In the first tax year, the credit is limited to 50 percent of the amount calculated in Subsection A. The remaining 50 percent shall be deferred and can only be claimed in the third of three consecutive tax years (in which the Investment Management Firm is doing business in the City of Portland) starting with the first tax year as defined above.
 - b.** In the second consecutive tax year that the Investment Management Firm is doing business in the City of Portland, the credit is limited to 50 percent of the amount calculated in Subsection A. The remaining 50 percent shall be deferred and can only be claimed in the fourth of four consecutive tax years (in which the Investment Management Firm is doing business in the City of Portland) starting with the first tax year as defined above.
 - c.** In the third consecutive tax year that the Investment Management Firm is doing business in the City of Portland, the Investment Management Firm, in addition to the full credit calculated in Subsection A, can claim the 50 percent deferred credit that was calculated in Subsection a. above.

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- a. has at least one physical location (such as an office, warehouse, store or restaurant) within the geographic boundaries of the State of Oregon and/or Clark County, Washington ; and
 - b. is registered to do business in the State of Oregon and said registration has not expired or otherwise been dissolved; or is a sole proprietorship that is not legally required to register to do business in the State of Oregon ; and
 - c. has a current account with the City of Portland and has complied with all filing and payment requirements of Portland ’s Business License Law and the Multnomah County’s Business Income Tax Law.
2. **“Non-exempt”** means the local business has not claimed an exemption from the requirements of the Business License Law as defined and provided for in 7.02.400.
3. **“Tax Year”** means any tax year allowed by the Internal Revenue Service and/or State of Oregon and used by the business to file their income taxes and begins during the year identified as the tax year of the credit.
4. **“Youth Certifying Agency”** means the agency that is responsible for determining youth that qualify for one or more Youth Employment Credit programs.
- B.** Credits issued under a Youth Employment Credit program will have the following features:
 1. Credits will be non-refundable;
 2. There will be a maximum number of credits per tax year per program;
 3. There will be a maximum number of credits that can be claimed by a Local Business in any given tax year;
 4. No individual credit will exceed \$500; and
 5. Credit certificates or letters will be provided by the Revenue Division to be attached to the tax return claiming the credit(s).
- C.** Each Youth Employment Credit program will outline any youth qualifications and business obligations to qualify for the credit, including but not limited to the number of hours and the length of time that the youth must be employed to qualify for the credit, the definitions of a qualifying youth, the certifying agencies for either the youth qualifications for the program or obligations of the business to obtain the

credit, and any program goals and results that should be attained for renewal if the program is a pilot program.

7.02.881 Foster Youth Employment Opportunity Credit.

(Added by Ordinance No. 184716; amended by Ordinance No. 187339, effective October 16, 2015.)

- A.** A Youth Employment Credit, known as the Foster Youth Employment Opportunity Credit, is available for tax years 2011 and 2012 to local businesses that employ foster youth certified by the State of Oregon Department of Human Services (DHS).
- B.** For each tax year, 25 non-refundable \$500 credits are available on a first-come, first-served basis. An individual business can claim one credit for each separate foster youth employed for the minimum required hours, up to a maximum of four (4) credits in one tax year.
- C.** To qualify for the credit, a business must:
 - 1.** Employ a certified foster youth.
 - a.** If the foster youth is enrolled in an educational program, the youth must average 12 hours per week and must have worked at least 200 hours in a six month period; or
 - b.** If the foster youth is not enrolled in an educational program, the youth must average 25 hours per week and must have worked at least 400 hours in a six month period.
 - 2.** Submit the following documentation no later than one month following the close of the tax year in which the credit is to be claimed. The documentation can be submitted at any time once the youth has worked sufficient hours to qualify for the credit.
 - a.** A copy of the youth's DHS certification;
 - b.** Sufficient summary payroll records that supports the average hours per week and total minimum hours required; and
 - c.** Sufficient documentation of the school or other educational program where the youth was enrolled if claiming the credit based on Subsection 1.a. above.
 - 3.** The Revenue Division will issue either a credit certificate or credit letter authorizing the maximum credit(s) for the tax year.

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7.02.882 Youth Career Readiness Credit.

(Added by Ordinance No. 184716, effective August 5, 2011.)

- A.** A Youth Employment Credit, known as the Youth Career Readiness Credit, is available for tax years 2011 and 2012 as a pilot program with the goal to increase the number of students who graduate from high school “career-ready” by expanding the number of meaningful career-related learning experiences between the private sector and schools.
- B.** For purposes of the Youth Career Readiness Credit:
- 1.** “**Career-Readiness**” involves three major skill areas: core academic skills and the ability to apply those skills to concrete situations in order to function in the workplace and in routine daily activities; employability skills (such as critical thinking and responsibility) that are essential in any career area; and technical, job-specific skills related to a specific career pathway. These skills have been emphasized across numerous pieces of research and allow students to enter true career pathways that offer family-sustaining wages and opportunities for advancement.
 - 2.** “**Career-Related Learning Experiences**” (CRLEs) are structured student activities in the community, the workplace or in the school that connect academic content and career-related learning to real life applications. These experiences extend, reinforce and support classroom learning and also help students to clarify career goals and usually take form as “Career Awareness Activities”, “Career Exploration Activities” and “Career Preparation Activities”.
 - 3.** “**Career Awareness Activities**” include workplace tours and field trips, career and job fairs and guest speakers.
 - 4.** “**Career Exploration Activities**” include job shadowing, informational and mock interviews, career mentoring and enterprise and community-based projects.
 - 5.** “**Career Preparation Activities**” include work experience, internships and apprenticeships.
 - 6.** “**CRLE Certifying Agency**” means the partner agency that has entered into an agreement or other memorandum of understanding with the City to act as the certifying agency for CRLE programs and will issue the credit certificate to each qualifying business program.
- C.** For each tax year, 75 non-refundable \$500 credits are available on a first-come, first-served basis, to Local Businesses that provide substantial career-readiness

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activities to high school students. An individual business can claim credits for each separate career readiness activity, up to a maximum of four (4) credits. However, no more than two (2) credits can be claimed for Career Awareness Activities.

- D.** To qualify for the credit, a business must:
- 1.** Provide a Career Awareness, Career Exploration or Career Preparation activities program with direct costs of more than \$2,500 or in-kind value of more than \$5,000.
 - 2.** The CRLE program being provided by the business must be certified by the CRLE Certifying Agency.
 - 3.** Complete the certified program as agreed to obtain the credit certificate from the CRLE Certifying Agency.

7.02.890 Residential Rental Registration Program.

(Added by Ordinance No. 189086, effective July 25, 2018.)

- A.** For tax years beginning on or after January 1, 2018, all owners of residential rental property in the City are required to register the property and annually provide a schedule that includes the address of all owned residential rental units within the City. The Director may require additional data about the rental location by administrative rule. For purposes of this section, except where defined by administrative rule in accordance with Section 7.02.210, “residential rental unit” means any residential property rented or offered for rent for a period of more than 30 consecutive days. If a property contains more than one residential living quarter, the term residential rental unit refers to each separate living quarter.
- B.** In the first tax year of the Residential Rental Registration Program, no additional fee will be imposed in connection with the registration. In subsequent years, a fee may be enacted to partially or fully recover the administration costs of the program in addition to other services as the Council may direct. Any fee schedule would be created and amended by administrative rule in accordance with Section 7.02.210. Section 7.02.700, Penalties, shall not apply for failure to file rental registration data in the 2018 tax year. Beginning in tax year 2019 and beyond, the penalty provisions of Section 7.02.700 shall apply.

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CHAPTER 7.03 - TEMPORARY BUSINESSES

(Chapter added by Ordinance No. 182137, effective
September 19, 2008.)

Sections:

- 7.03.010 Temporary Businesses Exempt from Business License Law.
- 7.03.020 Fees for Revenue.
- 7.03.030 Temporary Businesses Defined.
- 7.03.040 License Required; Fees.

7.03.010 Temporary Businesses Exempt from Business License Law.

- A. Persons doing business as defined in Section 7.03.030 are considered “temporary businesses” and are not subject to the provisions of the Business License Law, Chapter 7.02, but are subject to the provisions of this Chapter. This Chapter does not apply to a business that is currently licensed under the provisions of Chapter 7.02.
- B. The term “person” includes, but is not limited to, a natural person, sole proprietorship, partnership, limited partnership, family limited partnerships, joint venture, association, cooperative, trust, estate, corporation, personal holding company, limited liability company, limited liability partnership or any other form of organization for doing business.

7.03.020 Fees for Revenue.

The term “license” as used in this Chapter does not mean a permit, nor is it regulatory in any manner. The fees prescribed under this Chapter are for revenue purposes only.

7.03.030 Temporary Businesses Defined.

The following persons, as defined, are considered “temporary businesses” subject to the requirements of this Chapter:

- A. “Amusement Ride Operator” means an operator of amusement rides not in the same location for more than 14 days.
- B. “Temporary Structure Vendor” means a vendor not located in a permanent structure for more than 14 days.
- C. “Promoter” means a promoter of commercial entertainment doing business in the City of Portland for no more than three (3) days in any calendar year.
- D. “Production Company” means a production company filming in the City of Portland for no more than three (3) days in any calendar year.

**CHAPTER 16.30 - TOWING & DISPOSITION
OF VEHICLES**

Sections:

- 16.30.001 Purpose.
- 16.30.100 Authority to Tow Vehicles and Establish Hearing Procedures.
- 16.30.200 Vehicle Towing.
- 16.30.210 When a Vehicle May be Towed.
- 16.30.220 Towing Without Prior Notice.
- 16.30.225 Towing With 24 Hour or 72 Hour Notice.
- 16.30.240 Towing and Immobilization Upon Order of Circuit Court.
- 16.30.300 Notice of Vehicle Tow.
- 16.30.310 Notice Prior to Tow.
- 16.30.320 Notice After Vehicle Tow.
- 16.30.340 Unidentifiable Vehicle.
- 16.30.350 Notice to Contest Tow When Vehicle Claimed.
- 16.30.400 Tow Hearing Procedure.
- 16.30.410 Request for Hearing.
- 16.30.420 Hearing Procedure.
- 16.30.430 When Tow Found Invalid.
- 16.30.440 When Tow Found Valid.
- 16.30.450 Hearing Administration.
- 16.30.500 Fee Payments and Vehicle Release Procedure.
- 16.30.510 Towing and Storage Rates.
- 16.30.520 Charges and Release of Vehicle.
- 16.30.530 When Tow Found Invalid.
- 16.30.540 When Tow Found Valid.
- 16.30.550 Storage Charges at Completion of Hearing.
- 16.30.600 Selling Abandoned Vehicles.
- 16.30.610 When a Vehicle May Be Sold.
- 16.30.620 Sale of Vehicles.
- 16.30.700 Moving Vehicles for Street and Utility Maintenance and for Emergencies.
- 16.30.710 Authority to Move Vehicles.
- 16.30.720 When a Vehicle May Be Moved.
- 16.30.730 Manner of Moving Vehicle.
- 16.30.800 Regulation of Towers.
- 16.30.810 Solicitation of Towing Business at Accidents Prohibited.
- 16.30.820 Obstructing Traffic.
- 16.30.830 Failure to Remove Injurious Substance.

16.30.001 Purpose.

This Section describes when a vehicle may or will be towed for parking violation(s), the manner of the towing, storage of the vehicle, and the release or disposition of the vehicle.

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16.30.100 Authority to Tow Vehicles and Establish Hearing Procedures.

(Amended by Ordinance Nos. 170923, 187925 and 188652, effective November 17, 2017.)

- A.** Any parking enforcement officer, police officer, Portland Streetcar Supervisor or Superintendent, or other officer authorized by the City Council or by City Code may order a vehicle towed as provided in this Title.
 - 1.** Impoundment of a vehicle does not preclude issuance of a citation for violation of this Title.
 - 2.** Stolen vehicles may be towed from public or private property and stored at the expense of the vehicle owner.
- B.** The authority to establish procedures in this Title for the disposition of towed vehicles is authorized by Oregon law. Disposition of vehicles towed under authority of this Title must follow the procedures established by this Title.
- C.** If any person tows a vehicle from the public streets without authority under the City Code, the City Towing Coordinator may assess a civil penalty of up to \$1,000 for each vehicle towed to be paid to the City Towing Coordinator and deposited to the City's general fund.

16.30.200 Vehicle Towing.

16.30.210 When a Vehicle May be Towed.

(Amended by Ordinance Nos. 172788, 179141, 187261 and 189789, effective January 10, 2020.) A vehicle may be towed and held at the expense of the owner or person entitled to possession thereof from:

- A.** Any public right-of-way, city owned or operated property, parking lot, public park or other public place or property, when:
 - 1.** The vehicle is parked in violation of a temporary or permanent parking restriction;
 - 2.** The vehicle is parked unlawfully or in a manner that may be hazardous to traffic;
 - 3.** The vehicle is parked on City-owned or operated property without express City permission;
 - 4.** The vehicle was used in committing a traffic or parking violation for which an unserved warrant or citation is on file with the clerk of the Circuit court;
 - 5.** The vehicle has been reported stolen;

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6. The vehicle or its contents is to be used as evidence in traffic or criminal prosecutions;
 7. The vehicle is in possession of a person taken into custody by a law enforcement agency;
 8. The vehicle is parked in a space that is marked as reserved for disabled persons unless such vehicle conspicuously displays appropriate decals, insignia, or registration plates as required by state statutes;
 9. The vehicle is parked in violation of any parking regulation;
 10. The vehicle is an abandoned vehicle, as defined in 16.90.005; or
 11. The vehicle is stored on the street in violation of 16.20.170.
- B.** Permanent parking restrictions may be enforced by tow 24 hours after placement in any meter or non meter areas.
- C.** Private property if:
1. The vehicle is parked or stopped without the permission of the person in control of such property; or
 2. In violation of this Title.
- D.** Temporary parking restrictions may be enforced by tow 24 hours after placement in any non meter area.
- E.** Temporary parking restrictions may be enforced by tow in any meter district if the space reservation device or signs are in place, and verified,
1. By 12:30 p.m. the prior day if the meters are in effect until 6 p.m. within the meter district. Towing may continue each day for the duration of the temporary parking restrictions days and times, and no additional verification is required; or,
 2. By 1:30 p.m. the prior day if the meters are in effect until 7 p.m. or later within the meter district. Towing may continue each day for the duration of the temporary parking restrictions days and times, and no additional verification is required.

16.30.220 Towing Without Prior Notice.

(Amended by Ordinance Nos. 165980, 170912, 176352, and 176442, effective May 1, 2002.) Any authorized officer may, without prior notice, order a vehicle towed, when:

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- A.** The vehicle is impeding or likely to impede the normal flow of vehicular or pedestrian traffic;
- B.** The vehicle is illegally parked in a conspicuously posted restricted space, zone, or traffic lane where parking is limited to designated classes of vehicles or is prohibited in excess of a designated time period, or during certain hours, or on designated days, or at any time and place the vehicle is interfering or reasonably likely to interfere with the intended use of such a space, zone, or traffic lane;
- C.** The vehicle is parked in front of a rural-type mailbox and has been cited within the previous 30 days for violation of Section 16.20.130 E;
- D.** The vehicle poses an immediate danger to the public safety;
- E.** The vehicle is illegally parked within 10 feet of a fire hydrant.
- F.** A police officer reasonably believes that the vehicle is stolen;
- G.** A police officer reasonably believes that the vehicle or its contents constitute evidence of any offense, if such towing is reasonably necessary to obtain or preserve such evidence;
- H.** The vehicle was in possession of a person taken into custody by a law enforcement officer and no other reasonable disposition of the vehicle is available;
- I.** The vehicle is parked or stopped in violation of 16.20.120 A and the vehicle alarm system disturbs, injures, or endangers, or is likely to disturb, injure, or endanger, the peace, quiet, comfort, repose, health, or safety of the public or any person; or
- J.** The vehicle is in the possession of a person arrested for any felony traffic offense, as defined by Oregon Revised Statutes.
- K.** A police officer has probable cause to believe that the vehicle's operator has committed any of the following offenses:
 - 1.** Driving uninsured (ORS 806.010);
 - 2.** Driving while suspended or revoked (ORS 811.175 or ORS 811.182);
 - 3.** Operating a vehicle without driving privileges or in violation of license restrictions (ORS 807.010) and the operator's license has been expired for 60 days or more, or that the operator has not had a valid driver's license within the previous 60 days.
 - 4.** Driving while under the influence of intoxicants (ORS 813.010);

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5. Fleeing or attempt to elude police officer (ORS 811.540);
 6. Speed racing on highway (ORS 811.125); or
 7. Reckless driving (ORS 811.140).
- L.** A police officer has probably cause to believe that the vehicle has been used or is possessed for the purpose of being used to commit or conceal the commission of one or more of these offenses:
1. Prostitution (ORS 167.007), Promoting prostitution (ORS 167.012), or Compelling prostitution (ORS 167.017) or any attempt, solicitation or conspiracy of one of these offenses; or
 2. Unlawful delivery of imitation controlled substance (ORS 475.991), Unlawful possession, delivery, or manufacture of controlled substance (OR 472.992), Unlawful distribution of controlled substance to minors (ORS 475.995), Unlawful manufacture or delivery of controlled substance within 1,000 feet of school (ORS 475.999), or any attempt, solicitation, or conspiracy of one of these offenses.

16.30.225 Towing with 24 Hour or 72 Hour Notice.

(Added by Ordinance No. 166947; amended by Ordinance Nos. 170923, 172788 and 179141, effective March 23, 2005.)

- A.** A vehicle may be towed 24 hours after notice of intent to tow has been affixed to or placed on the vehicle if the vehicle is an abandoned vehicle which is an immediate threat to the public health or safety because of its condition.
- B.** A vehicle may be towed 72 hours after notice of intent to tow has been affixed to or placed on the vehicle if the vehicle is an abandoned vehicle; or
- C.** A vehicle may be towed 72 hours after notice of intent to tow has been affixed to or placed on the vehicle if the vehicle is in violation of 16.20.120 H or I or 16.20.170.
- D.** Notice shall be mailed after tow as provided in 16.30.320.

16.30.230 When Notice Required Before Towing.

(Repealed by Ordinance No. 172788, effective November 13, 1998.)

16.30.240 Towing and Immobilization upon Order of Circuit Court.

(Amended by Ordinance Nos. 173369 and 187925, effective September 2, 2016.)

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- A. Vehicles that have been used in the commission of a traffic or parking violation, for which an unserved warrant or citation is on file with the Multnomah County Circuit Court, may be immobilized and towed upon order of the court.
- B. For the purposes of this Section, “immobilized” means the application of a device commonly known as a “boot”, which clamps and locks on to the wheel and impedes vehicle movement.
- C. Any officer authorized by the City Council or by City Code to order a vehicle tow is authorized to immobilize a vehicle or order a vehicle immobilized as provided in this Section.

16.30.300 Notice of Vehicle Tow.

16.30.310 Notice Prior to Tow.

(Amended by Ordinance No. 172788, effective November 13, 1998.)

- A. Except where shorter notice is allowed by this title, notice for vehicles which require prior notice before towing must be provided by:
 - 1. Affixing a tow warning to the vehicle at least 10 days prior to the tow; and
 - 2. Mailing a notice to the registered owner(s) and any other persons who reasonably appear to have an interest in the vehicle within 48 hours, Saturdays, Sundays, and holidays excluded, after the tow warning is affixed to the vehicle.
- B. The tow warning and the mailed notice will state that:
 - 1. The vehicle is parked in violation of City Code;
 - 2. The City intends to tow and remove the vehicle if the violation is not corrected; and
 - 3. A hearing is available to contest the validity of the intended tow, and the method of requesting a hearing, including the date by which a hearing may be requested.
- C. If a timely request for hearing is received pursuant to Subsection 16.30.400, the vehicle will not be towed until the Tow Hearings Officer makes a determination.

16.30.320 Notice After Vehicle Tow.

- A. After a vehicle has been towed pursuant to this Chapter, notice will be provided to the registered owner(s) and any other person(s) who reasonably appear to have an

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interest in the vehicle. Notice will be mailed to such persons within 48 hours after the tow of the vehicle, Saturdays, Sundays, and holidays excluded, and will state:

1. That the vehicle has been towed;
 2. The location of the vehicle and that it may be reclaimed only upon evidence that the claimant is the owner or person entitled to possession;
 3. The address and telephone number of the person or facility that may be contacted for information on the charges that must be paid before the vehicle will be released and the procedures for obtaining the release of the vehicle;
 4. That the vehicle and its contents are subject to a lien for the towing and storage charges; that if the vehicle is not claimed within 15 days after the mailing date of the notice, the vehicle and its contents will be subject to sale by the City or the towing and storage facility where the vehicle is located and that failure to reclaim the vehicle within such time will constitute a waiver of all interest in the vehicle; and
 5. Unless notice of the availability of a hearing to contest the tow has been provided prior to towing as prescribed in Section 16.30.310, the notice will state that a hearing may be requested to contest the validity of the tow and will set forth the time in which a hearing must be requested and the method of requesting a hearing.
- B.** If a vehicle has been reclaimed prior to the mailing of the notice, no notice need be mailed or provided, but the person or persons reclaiming the vehicle must be provided with written notice of the opportunity for a hearing to contest the tow pursuant to Section 16.30.350.
- C.** In those circumstances in which it can reasonably be anticipated that mailing of notice may hinder or prevent the apprehension of a suspect in an ongoing criminal investigation, the mailing of notice may be delayed until such time as will not prejudice that investigation or apprehension.

16.30.340 Unidentifiable Vehicle.

No notice need be mailed pursuant to Subsections 16.30.310 or 16.30.320 when:

- A.** A vehicle does not display license plates or other identifying markings by which the registration or ownership of the vehicle can be determined, or;
- B.** When the identity of the owner of the vehicle is not available from the appropriate motor vehicle licensing and registration authority and when the identity and address of the owner and/or other persons with an interest in the vehicle cannot otherwise be reasonably determined.

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16.30.350 Notice to Contest Tow When Vehicle Claimed.

Written notice of the opportunity to contest the validity of the tow of a vehicle, together with a statement of the time in which a hearing may be requested and the method of requesting a hearing, must be given to each person who seeks to redeem a vehicle which has been towed pursuant to this Chapter. This information will be made available by the tow company or other facility holding such vehicle.

16.30.400 Tow Hearing Procedure.

16.30.410 Request for Hearing.

(Amended by Ordinance No. 170923, effective March 21, 1997.)

- A.** After a vehicle has been towed pursuant to subsection 16.30.220 or 16.30.225 and prior to towing pursuant to subsection 16.30.230, the owner(s) and any other persons who reasonably appear to have an interest in the vehicle are, upon timely application filed with the Tow Hearings Officer, entitled to request a hearing to contest the validity of the tow or intended tow of the vehicle.

 - 1.** In the case of a vehicle towed pursuant to Subsection 16.30.220 or 16.30.225, such application must be filed with and received by the Tow Hearings Officer not later than 10 days after the vehicle was towed.
 - 2.** In the case of a vehicle proposed to be towed pursuant to Subsection 16.30.230, such application must be filed with and received by the Tow Hearings Officer not later than 10 days after the affixing of the tow warning to the vehicle.
- B.** The Tow Hearings Officer may, for good cause shown, grant a request for hearing filed after the foregoing time requirements have expired. If the mailing of the towed vehicle notice was delayed pursuant to Subsection 16.30.310, the Tow Hearings Officer will grant a request for hearing received and filed within 10 days of the mailing date of the notice or 10 days of the date the vehicle was reclaimed, whichever first occurs.
- C.** The request for hearing must be in writing and will state the grounds upon which the person requesting the hearing believes the tow or proposed tow invalid, or, for any other reason, unjustified. The request for hearing will also contain such other information, relating to the purposes of this Chapter, as the Tow Hearings Officer may require.
- D.** The Tow Hearings Officer will set and conduct an administrative hearing on the matter within 14 days of receipt of a proper request filed pursuant to this Section. In all cases where a vehicle has been towed and not yet released, however, the Tow Hearings Officer will set and conduct the hearing within 72 hours, not including Saturdays, Sundays, or holidays, on receipt of the request.

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- B.** Except in the case of emergency and as otherwise provided for herein, the City Engineer shall not issue permits for the use of Auxiliary Vehicular Lanes between the hours of 6:00 AM and 7:00 PM Monday through Friday. The City Engineer may issue permits for Saturday and/or Sunday, but permits shall be short term closures as required for operational safety of the service provider and shall not interrupt TriMet service. The Director of Transportation may approve a short term (3 days or less) permit, during otherwise restricted times, with agreement from Tri-County Metropolitan Transportation District of Oregon (TriMet). The Director shall establish rules and procedures for this type of closure.
- 1.** “Emergency” shall mean any unscheduled repair of existing facilities which must be accomplished immediately to protect the life, health and well being of the public, or to protect public or private property. Under this definition, “emergency” work shall encompass only immediately required repairs and shall not include extensive replacement or upgrading of the facility.
- C.** The City Engineer may issue permits for the use of Auxiliary Vehicular Lane on SW 6th Avenue between SW Taylor and SW Morrison Streets to accommodate events permitted and authorized by Pioneer Courthouse Square, Inc. as may be deemed appropriate in the judgment of the City Engineer.
- D.** All permits shall include a traffic control plan approved by the City Engineer and Tri-County Metropolitan Transportation District of Oregon (TriMet).

16.50.500 Regulation and Permit Procedure.

- A.** The Traffic Engineer must notify the Tri-County Metropolitan Transportation District of Oregon of any rule, regulation or permit proposed to be issued under this chapter. The rule, regulation or permit will become effective on a date agreed upon by both parties. In the event of disagreement between Tri-Met and the Traffic Engineer, the City Council will determine whether the rule be adopted or the permit issued based upon the amount of interference to mass transit operations.
- B.** No limitation or prohibition of use herein applies to vehicles on a street intersecting or crossing a transit lane unless it is specifically designated as a transit lane.

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CHAPTER 16.60 - MOTOR VEHICLE FUELS

(Chapter added by Ordinance No. 180313, effective
August 11, 2006.)

Sections:

- 16.60.010 Definitions.
- 16.60.020 Biofuel Requirements.
- 16.60.025 Additional Regulation in the 122nd Avenue Subdistrict.
- 16.60.030 Exemptions.
- 16.60.040 Enforcement and Notice of Violation.
- 16.60.050 Penalties.
- 16.60.060 Disclosure.
- 16.60.070 Additional Regulations.

16.60.010 Definitions.

(Amended by Ordinance Nos. 180671 and 189820, effective February 7, 2020.) As used in this Chapter, the following terms shall be defined as provided in this section:

- A.** “B5 Fuel” means a fuel mixture consisting of 5% Biodiesel and 95% Diesel Fuel.
- B.** “B10 Fuel” means a fuel mixture consisting of 10% Biodiesel and 90% Diesel Fuel.
- C.** “B20 Fuel” means a fuel mixture consisting of 20% Biodiesel and 80% Diesel Fuel.
- D.** “Biodiesel blend stock” means 100% biodiesel fuel utilized for the purpose of blending with diesel fuel.
- E.** “Biodiesel fuel” means the monoalkyl esters of long chain fatty acids derived from plant or animal matter that meet the registration requirements for fuels and fuel additives established by the federal Environmental Protection Agency and standards established by the American Society of Testing and Materials (ASTM).
- F.** “Biofuel” means any fuel that is derived from plant or animal matter that meets the registration requirements for fuels and fuel additives established by the federal Environmental Protection Agency and standards established by the American Society of Testing and Materials (ASTM) as determined by the Director of the Bureau of Planning and Sustainability under Section 16.60.020.D. For the purposes of this Chapter, Biofuel shall include Biodiesel and Ethanol.
- G.** “Diesel” means petroleum based liquid that is suitable for use as a fuel in diesel powered vehicles.
- H.** “E10” means a fuel mixture of 10% ethanol and 90% gasoline.

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- I. “Ethanol” means ethyl alcohol, a flammable liquid used or sold for the purpose of blending or mixing with gasoline.
- J. “Feedstock” means the plant or animal matter from which a biofuel is derived.
- K. “Fuel” means all gasoline or diesel sold within the City of Portland for the purpose of operating motor vehicles on public roadways.
- L. “Fuel distributor” means a person that causes the transportation or storage of fuel at any point between a refinery or importer’s facility and any retail outlet or wholesale purchaser-consumer within the City of Portland.
- M. “Gasoline” means any fuel sold for use in spark ignition engines.
- N. “Motor Vehicle” means every inanimate vehicle which is self-propelled. For the purposes of this Chapter, the definition of motor vehicle shall not include aircraft, watercraft, or locomotives.
- O. “Nonretail dealer” means any person who owns, operates, controls or supervises an establishment at which motor vehicles fuel is dispensed through a car or key-activated fuel dispensing device to nonretail customers.
- P. “Reseller” means a person who purchases fuel and resells or transfers it to a retailer or wholesale purchaser-consumer within the City of Portland.
- Q. “Retail outlet” means any establishment within the City of Portland at which fuel is sold or offered for sale to the ultimate consumer for use in motor vehicles.
- R. “Retailer” means any person who owns, leases, operates, controls or supervises a retail outlet within the City of Portland.
- S. “Wholesale purchaser-consumer” means any organization within the City of Portland that is an ultimate consumer of fuel, and which purchases or obtains diesel or gasoline from a fuel distributor or reseller for use in motor vehicles, and receives delivery of that product into a storage tank or directly into a vehicle’s tank.

16.60.020 Biofuel Requirements.

(Amended by Ordinance Nos. 180671 and 189820, effective February 7, 2020.)

- A.
 - 1. On and after July 1, 2007, all diesel fuel sold by fuel distributors or resellers to fuel retailers, nonretail dealers or wholesale purchaser-consumers within the City of Portland shall contain a minimum blend of 5% Biodiesel (B5 fuel).

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2. On and after August 15, 2007, all diesel fuel sold by fuel retailers, dispensed by nonretail dealers or purchased by wholesale purchaser-consumers within the City of Portland shall contain a minimum blend of 5% Biodiesel (B5 fuel).

B.

1. On and after July 1, 2010, all diesel fuel sold by fuel distributors or resellers to fuel retailers, nonretail dealers or wholesale purchaser-consumers within the City of Portland shall contain a minimum blend of 10% Biodiesel (B10 fuel).
2. On and after July 1, 2010, all diesel fuel sold by fuel retailers, dispensed by nonretailer dealers or purchased by wholesale purchaser-consumers within the City of Portland shall contain a minimum blend of 10% Biodiesel (B10 fuel).

C.

1. On and after September 16, 2007, all gasoline sold by fuel distributors or resellers to fuel retailers, nonretail dealers or wholesale purchaser-consumers within City of Portland shall contain a minimum blend of 10% ethanol (E10 fuel). This requirement shall remain in effect on a year round basis.
2. On and after November 1, 2007, all gasoline sold by fuel retailers, dispensed by nonretailer dealers or purchased by wholesale purchaser-consumers within City of Portland shall contain a minimum blend of 10% ethanol (E10 fuel). This requirement shall remain in effect on a year round basis.

- D.** The Director of the Bureau of Planning and Sustainability shall establish, and revise as necessary, standards for biofuels sold in the City of Portland. The Director shall consult specifications established for biofuels by the American Society for Testing and Materials, the Oregon Department of Agriculture or similar specifications, in forming its standards.

- E.** Biodiesel produced from a feedstock of palm oil may not be used to satisfy the requirements of this Chapter.

- F.** The Bureau of Planning and Sustainability shall study and monitor biodiesel production, use and sales in Oregon and in the City of Portland. When the production of biodiesel from Oregon grown feedstock and used cooking oil reaches a level of at least two million five hundred thousand gallons on an annualized basis for at least three months, the Bureau of Planning and Sustainability shall notify all

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fuel distributors, resellers, retailers, nonretail dealers and wholesale-purchaser consumers that:

1. The production of biodiesel from Oregon grown feedstock and used cooking oil has reached the level described above; and
 2. That three months from the date of the notice, all biodiesel used for the purposes of satisfying the requirements of this Chapter shall contain a minimum of 50% (by volume) of biodiesel produced from used cooking oil and/or feedstock from the Genera Brassica, Camelina, Helianthus or Carthamus.
- G.** Fuel retailers shall be required to conspicuously place signage denoting the type of biofuel mixture available for sale by the fuel retailer in accordance with the labeling guidelines or rules established by the Oregon Department of Agriculture. For example, B5 fuel shall be labeled “B5 Biodiesel Blend.”

16.60.025 Additional Regulation in the 122nd Avenue Subdistrict.

(Added by Ordinance No. 180372; amended by Ordinance 180671, effective January 12, 2007.) Effective July 1, 2007, in the 122nd Avenue subdistrict of the East Corridor plan district, all fuel vendors established under the provisions of Subsection 33.521.300. F. of Title 33, Planning and Zoning, must sell a minimum blend of 20% Biodiesel (B20 fuel) at one or more pumps.

16.60.030 Exemptions.

(Amended by Ordinance Nos. 180671 and 189820, effective February 7, 2020.)

- A.** Any retailer who offers a biodiesel blend of 20% (B20 fuel) or greater shall be exempt from the requirements of Section 16.60.020 (A) and (B), and may also provide for sale, on the same site or a contiguous site, diesel fuel which does not contain biodiesel.
- B.** The Director of the Bureau of Planning and Sustainability may temporarily suspend or modify the minimum biofuel content requirements of this Chapter based on a determination that such requirements are temporarily infeasible due to economic or technical circumstances. The Director’s determination shall be made by filing a report with the City Council.
- C.** The requirements of this Chapter do not apply to fuel used for the operation of railroad locomotives, watercraft or aircraft.
- D.** Nothing in this Chapter is intended to prohibit the production, sale, or use of motor fuel for use in federally designated flexibly fueled vehicles capable of using up to eighty-five percent ethanol fuel blends.

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16.60.040 Enforcement and Notice of Violation.

(Amended by Ordinance Nos. 180671 and 189820, effective February 7, 2020.)

- A. The Director of the Bureau of Planning and Sustainability, or designee, upon determining that a violation of this code or regulations duly adopted pursuant to this Chapter has occurred, shall issue a written notice of the violation by certified mail to the fuel distributor, reseller or retailer identifying the violation and applicable penalty.
- B. The fuel distributor, reseller or retailer shall, upon receipt of a notice of violation, correct the violation and pay to the City the stated penalty or appeal the finding of a violation to the Code Hearings Officer within 10 days of receipt of the notice.
- C. A determination issued pursuant to Section 16.60.040.A may be appealed to the Code Hearings Officer, as provided for in Chapter 22.10 of City Code.

16.60.050 Penalties.

Violations of this Chapter may be punishable by fines as follows:

- A. A fine of up to \$5,000 for the first violation;
- B. A fine of up to \$10,000 for each subsequent violation.

16.60.060 Disclosure.

(Amended by Ordinance No. 180671, effective January 12, 2007.) For all sales of biofuels blended products by fuel distributors or resellers for the purposes of meeting this Chapter, the distributor or reseller must provide a bill of lading or shipping manifest disclosing biofuel content, stating volume percentage, gallons of biofuel per gallon base stock, or an “Bxx” or “Exx” designation where “xx” denotes the volume percent biofuel included in the blended product, and the feedstock from which the biofuel was derived.

16.60.070 Additional Regulations.

(Amended by Ordinance Nos. 180671 and 189820, effective February 7, 2020.)

- A. The Bureau of Planning and Sustainability is authorized to promulgate administrative rules and take other actions reasonable and necessary to enforce this Chapter.

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CHAPTER 17.04 - DEFINITIONS

(Chapter replaced by Ordinance No. 185397,
effective July 6, 2012.)

Section:

17.04.010 Definitions.

17.04.010 Definitions.

(Amended by Ordinance Nos. 186902, 189629 and 189837, effective February 28, 2020.)

The following definitions apply to the entirety of Title 17. Additional section-specific definitions may be found in other sections.

- A. “Best Management Practices (BMPs)”** means operational, maintenance and other practices that prevent or reduce environmental, health or safety impacts. BMPs include structural controls, modification of facility processes, and operating and housekeeping pollution control practices.
- B. “Brownfield”** means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.
- C. “Building Permit”** means a permit required under Chapter 24 or state administrative rule to erect, construct, enlarge, alter, repair, move, improve, remove, convert, change occupancy group of, or demolish any building or structure, or to do any clearing or grading, or cause any of the same to be done.
- D. “Chief Engineer”** means the engineer with the authority to act as the official agent of the bureau or department responsible for a local or public improvement or the lawfully designated subordinate of the City Engineer. For the Bureau of Transportation this shall be the City Engineer, for the Bureau of Environmental Services this shall be the Chief Engineer of the Bureau of Environmental Services, and for the Portland Water Bureau this shall be the Chief Engineer of the Portland Water Bureau.
- E. “City Engineer”** means the duly appointed City Engineer, or appropriate designees.
- F. “Department of Environmental Quality (DEQ)”** means the Oregon Department of Environmental Quality.
- G. “Development”** means all improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, and areas devoted to exterior display, storage or activities which create the need for additional usage or construction of public infrastructure.

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- H.** “**Director of the Bureau of Environmental Services**” means the duly appointed Director of the Bureau of Environmental Services, or the lawfully designated subordinate of the Director of Environmental Services acting under the orders of the Director of the Bureau of Environmental Services.
- I.** “**Director of the Bureau of Transportation**” means the duly appointed Director of the Bureau of Transportation, or the lawfully designated subordinate of the Director of the Bureau of Transportation acting under the orders of the Director of the Bureau of Transportation.
- J.** “**Dwelling Unit**” means a building or a portion of a building consisting of one or more rooms which may include sleeping, cooking, and plumbing facilities and are arranged and designed as living quarters for one family or household.
- K.** “**Engineer’s Estimate**” means the calculation of anticipated total dollar cost of the construction of a public or local improvement project as determined by the Chief Engineer. The estimate is used in determining the face value of performance bonds where applicable.
- L.** “**EPA**” means the United States Environmental Protection Agency.
- M.** “**Frontage**” means the length of public right-of-way adjacent to a property, measured in feet.
- N.** “**Lateral**” means the underground pipe that connects the plumbing system of a building or buildings to a public or private sewer.
- O.** “**Local Improvement**” means an improvement of, on, over or under property that is or will be owned or controlled by the public, by construction, reconstruction, remodeling, repair or replacement, when the improvement is determined by the Council to confer a special benefit on certain properties, and such properties are to be charged through assessment all or a portion of the improvement cost.
- P.** “**Oregon Administrative Rules (OAR)**” means the State of Oregon Administrative Rules as amended.
- Q.** “**Owner**” means an owner-of-record of real property according to the appropriate county’s assessment and taxation records.
- R.** “**Person**” means any natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, and/or the manager, lessee, agent, servant, officer, or employee of any of them.
- S.** “**Projected Future Curbline**” means:
1. The location of the curbline as designated on City plans for street construction;

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2. To the edge of existing pavement; or
 3. To the appropriate width of the designated street classification as described in the Design Standards for Public Streets.
- T. “Public Improvement”** means an improvement of, on, over or under property owned or controlled by the City, or property to be controlled by the City upon plat and easement recording for approved land divisions, by construction, reconstruction, remodeling, repair or replacement, when no property is intended to be charged through assessment any portion of the improvement cost.
- U. “Public Sewer”** means the entire City sewage, sludge, and stormwater collection, conveyance, treatment, pollution reduction, reuse, and disposal systems, including all pipes, ditches, sumps, manholes, and other system components that:
1. Have been designed for the collection and transport of stormwater, wastewater, or sanitary sewage received from street inlets, sewer service laterals and common private sewer systems; and
 2. Were
 - a. Constructed by the City’s Bureau of Environmental Services; or
 - b. Accepted by the City’s Bureau of Environmental Services under Section 17.32.055.
- V. “Public Utility”** means a person currently possessing a franchise or privilege granted by the City of Portland to provide utility service, or is a City bureau charged with providing utility service, to the public to generate, transmit or provide any such service within the City, including but not limited to electricity, telecommunications, natural gas, sewer, water, stormwater, cable or pipeline services.
- W. “Public Works Project”** means any project performed or financed by a local, state, or federal government that results in the construction of a Local Improvement or a Public Improvement.
- X. “Responsible Official”** means the Official with the authority to act as the official agent of the bureau or department or the lawfully appointed subordinate of the Responsible Official. For the Bureau of Transportation, this shall be the Director of the Bureau of Transportation as defined in Section 17.04.036. For the Bureau of Environmental Services, this shall be the Director of the Bureau of Environmental Services as defined in Section 17.04.035.
- Y. “Street”** means any street as defined in the City Charter, including all area between property lines, and area dedicated to street use.

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- Z.** “**Tri-County Metropolitan Transportation District of Oregon (TriMet)**” is a public agency established under ORS 267.010 to 267.390 that operates mass transit which spans most of the Portland metropolitan area, and/or the manager, lessee, agent, servant, officer, or employee of the organization.

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- E.** The Director of the Bureau of Transportation may require any applicant for a driveway permit to provide evidence that the proposed driveway will access legal parking and maneuvering space on property as set forth in Title 33, Planning and Zoning regulations. The Director of the Bureau of Transportation may refuse to issue a permit if the applicant cannot show evidence that on property parking and maneuvering space is in compliance with Title 33, Planning and Zoning regulations.
- 1.** If the Director of the Bureau of Transportation finds that a property owner is permitting access where a properly constructed driveway does not exist, the Director of the Bureau of Transportation may post notice and require termination of access or construction of a driveway in accordance with the requirements of this Chapter.
- F.** Revocability of driveway permits.
- 1.** The Director of the Bureau of Transportation may revoke any driveway permit or require the modification of any driveway if:
 - a.** The area occupied by the driveway is needed for the public convenience;
 - b.** Continued operation of the driveway interferes with the safe and orderly flow of pedestrians, bicycles or vehicular traffic; or
 - c.** The abutting owner has failed to comply with all specifications and conditions of the permit; or
 - d.** The driveway does not access legal parking and maneuvering space on abutting property.
 - 2.** The Council may revoke any driveway permit if they deem such action will be in the public interest.
- G.** Enforcement powers. Within 60 calendar days of written notice from the Director of the Bureau of Transportation to close or modify a driveway, the abutting property owner shall obtain any required permits and make the required corrections. If the abutting owner fails to make the required corrections within 60 calendar days, the City may perform the required work at the expense of the abutting property owner and the cost shall be determined and assessment made as provided in this Chapter.

17.28.120 After Construction Driveways Deemed Part of Sidewalk.

After a driveway has been constructed, it shall be deemed a part of the sidewalk whether or not there is a sidewalk improvement extending along the balance of the frontage property, for all purposes of repair or reconstruction. Requirements relating to construction or reconstruction of a sidewalk as provided in this Chapter, shall be applicable to

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reconstruction of a driveway, except that the property owner shall have no option to petition for a local improvement solely for such purpose.

17.28.130 Reconstruction of Existing Driveways.

(Amended by Ordinance No. 186716, effective August 15, 2014.) If the City Engineer finds that any driveway does not conform to the requirements of this Chapter and should be reconstructed for the protection or convenience of pedestrians or vehicles using the street area, the City Engineer may post notice and require the reconstruction or removal of the driveway. If the abutting property owner fails to make the required corrections within 60 days the City may perform the required work at the expense of the abutting property owner, and the cost shall be determined and assessment made as provided in this Chapter.

17.28.140 City Charges for Construction or Repair of Sidewalks, Curbs and Driveways.

(Amended by Ordinance Nos. 182760 and 189837, effective February 28, 2020.) The property owner shall be charged for the construction, reconstruction or repair of sidewalks, curbs and driveways. The cost for the City to have repairs made will be assessed as a lien upon the property.

- A. Special structural, excavation and fill jobs and jobs in areas of traffic and pedestrian congestion shall be charged at the discretion of the City Engineer. Determination of whether a job is of special type shall be made by the City Engineer.
- B. Cost basis charges for work may be made at the discretion of the City Engineer if the actual cost can be conveniently and accurately determined.

17.28.150 Billing for Charges.

(Amended by Ordinance Nos. 183348, 189413 and 189837, effective February 28, 2020.)

- A. When work is completed by the City on any construction, reconstruction or repair of a sidewalk, curb or driveway, the amount of the charge shall be determined by the City Engineer and reported to the Revenue Division. The Revenue Division shall calculate a proposed assessment that includes the amount of the improvement charge plus 10% of the charge to defray the administrative costs of notice, assessment and lien recording.
- B. The Revenue Division shall prepare a proposed assessment notice for the owner of each property or the owner's agent of the affected property as shown in the County tax records. The notice shall be mailed at least 21 calendar days before the public hearing on the proposed assessment, and the notice shall consist of the following information:
 - 1. The legal description and site address of the property;
 - 2. The amount of the proposed assessment against the property;
 - 3. The manner and deadline for filing a written remonstrance to the proposed assessment amount;

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4. The date, time and location of the public hearing for Council consideration of the proposed assessment; and
 5. Contact information for sidewalk repair.
- C. Any owner of property proposed to be assessed for sidewalk repair may file a remonstrance to the proposed assessment with the Revenue Division. The remonstrance must be in writing and received by the Revenue Division via US mail or hand delivered no later than 5:00 PM eight (8) calendar days prior to the hearing by the City Council on the proposed final assessment. Upon receipt of a timely filed remonstrance the Revenue Division shall remove the property from the filing of the proposed assessment before the City Council hearing date, and shall refer the remonstrance to the responsible bureau for follow-up and response.
- D. The Revenue Division shall mail the proposed assessment notice by first class mail to the owners of the affected property. The notice shall be deemed given upon deposit in the U.S. mail.

17.28.160 Assessment of Charges.

(Amended by Ordinance Nos. 182760, 183348, 189413 and 189837, effective February 28, 2020.)

- A. The Revenue Division shall refer to the City Engineer or responsible bureau all remonstrances and remove from further assessment action the proposed assessments which are associated with the remonstrances. The City Engineer or responsible bureau shall review each remonstrance by taking the following actions:
1. Determine whether the improvement work was required by Code and whether the conditions required the improvements, whether the required improvements are consistent with Code and City specifications, and whether the improvement charges are calculated as provided by Code; and
 2. Determine the extent of actions or adjustments which are necessary to bring the proposed assessment into compliance with Code and program standards; and
 3. Mail a statement of findings to the remonstrating property owner, and file a copy with the Revenue Division. The findings shall include a statement that the property owner may appeal the determination.
 4. If a property owner concludes that this determination is not consistent with City Code, they may request an appeal before a Code Hearings Officer under the provisions of Portland City Code Chapter 22.10. The associated property will be removed from further assessment action until the appeal is resolved. The Code Hearings Officer shall notify the appellant and the Revenue Division of their determination. The affected property will be

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included in the next group assessment for City Council approval, unless the Code Hearings Officer annuls, reverses, or remands the assessment or the Code Hearings Officer's decision is appealed by writ of review.

- B.** Following adoption of the assessing ordinance, the Revenue Division shall mail a final assessment notice to the owners of the affected property as shown on the last available assessment roll in the office of the county assessor. The notice shall be deemed given upon deposit in the U.S. mail. The notice shall contain the following information:
1. The legal description and site address of the property;
 2. The final assessment amount;
 3. A statement that the final assessment is recorded in the Docket of City Liens, and is a lien which has first priority against the property as provided by state statute;
 4. The manner and deadline for paying the final assessment in full or requesting to pay the final assessment in installments if authorized by Code;
 5. The interest, penalties and collections costs which shall be charged if the final assessment is not paid or an installment payment contract is not filed before the deadline contained in the notice; and
 6. A statement that delinquent final assessments may be collected by foreclosure and property sale.
- C.** The Revenue Division shall maintain a Docket of City Liens containing final assessments on property. Any unpaid final assessment shall be recorded in the City lien docket, and it shall be binding upon the property owner and all subsequent property owners of the property or any segregated part of it. The docket shall stand thereafter as a lien docket the same as ad valorem property taxes assessed in favor of the City against each lot or parcel of land until paid, for the following:
1. The amount of the unpaid final assessments docketed, with accrued interest at the rate determined by the City Council, or in the case of an installment contract, at the rate set forth in the contract; and
 2. Any additional interest, penalties, or billing charges imposed by the City with respect to any installments of final assessments which are not paid when due.
- D.** All unpaid final assessments together with accrued and unpaid interest and penalties and billing charges are a lien on each lot or parcel of land respectively, in favor of the City and the lien shall have first priority over all other liens and encumbrances whatsoever.

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- E.** The City shall enforce assessment liens and installment payment contracts under this Chapter in the same manner as other City assessments as set forth in Title 5.

**CHAPTER 17.106 - DECONSTRUCTION OF
BUILDINGS LAW**

(Chapter added by Ordinance No. 187876, effective
October 31, 2016.)

Sections:

- 17.106.005 Short Title.
- 17.106.010 Purpose.
- 17.106.020 Definitions.
- 17.106.030 Authority of Director to Adopt Rules.
- 17.106.040 Regulations.
- 17.106.050 Enforcement and Penalties.
- 17.106.060 Right of Appeal.

17.106.005 Short Title.

Chapter 17.106 of the Portland City Code shall be known as the Deconstruction of Buildings Law.

17.106.010 Purpose.

This Chapter provides deconstruction requirements for the removal of Portland's older and more historic primary dwelling structures. The Deconstruction of Buildings Law seeks to:

- A. Maximize the salvage of valuable building materials for reuse;
- B. Reduce carbon emissions associated with demolition;
- C. Reduce the amount of demolition waste disposed of in landfills; and
- D. Minimize the adverse impacts associated with building removal.

17.106.020 Definitions.

(Amended by Ordinance No. 189761, effective January 20, 2020.) The terms used in Chapter 17.106 are defined as provided in this section:

- A. **“Certified Deconstruction Contractor”** means a contractor licensed with the Oregon Construction Contractors Board (CCB) that has successfully completed a deconstruction certification program recognized by the Bureau of Planning and Sustainability. A firm will be considered certified if at least one person currently employed by the firm is certified.
- B. **“Deconstruction”** means the systematic dismantling of a structure, typically in the opposite order it was constructed, in order to maximize the salvage of materials for reuse, in preference over salvaging materials for recycling, energy recovery, or sending the materials to the landfill.

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- C.** “**Director**” means, the Director of the Bureau of Planning and Sustainability or their authorized designee.
- D.** “**Primary Dwelling Structure**” means one and two-family structures (detached and attached) based on current permitted occupancy at the time of demolition permit application. Primary Dwelling Structures do not include accessory structures such as garages or accessory dwelling units.
- E.** “**Recycling**” means the processing of waste materials into new products or material feed stock for products. Materials that can be recycled include but are not limited to concrete, metal piping, and asphalt roofing shingles.
- F.** “**Responsible Party**” means any owner or person in control of a primary dwelling structure, or their authorized agent.
- G.** “**Reuse**” means the utilization of a product or material that was previously installed for the same or similar function to extend its life cycle. Materials salvageable for reuse include but are not limited to cabinets, doors, hardware, fixtures, flooring, siding, and framing lumber.

17.106.030 Authority of Director.

- A.** The Director is hereby authorized to administer and enforce the provisions of this Chapter.
- B.** The Director is authorized to adopt rules, procedures, and forms to implement the provisions of this Chapter.
 - 1.** Any rule adopted pursuant to this Section shall require a public review process. Not less than 10 nor more than 30 days before such public review process, notice shall be given by publication in a newspaper of general circulation. Such notice shall include the place, time and purpose of the public review process and the location at which copies of the full set of the proposed rules may be obtained.
 - 2.** During the public review, the Director shall hear testimony or receive written comment concerning the proposed rules. The Director shall review the recommendations, taking into consideration the comments received during the public review process, and shall either adopt the proposed rules, modify or reject them. Unless otherwise stated, all rules shall be effective upon adoption by the Director and shall be filed in the Office of the Director and with the City Auditor’s Portland Policy Documents repository.
- C.** The Director may temporarily suspend or modify the requirements of this Chapter based on a determination that such requirements are temporarily infeasible due to economic or technical circumstances. The Director’s determination to temporarily

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suspend or modify shall be filed as a report with the City Council. The Director's determination shall be effective after the Council has accepted the report.

17.106.040 Regulations.

(Amended by Ordinance Nos. 188259 and 189761, effective January 20, 2020.)

- A.** Scope. The deconstruction requirements of this Chapter apply to demolition permit applications under Chapter 24.55 of the City Code for:
- 1.** Primary dwelling structures that were built in 1940 or earlier according to building permit records on file with the Bureau of Development Services, or if no such permit records exist, then County tax assessor information; or
 - 2.** Primary dwelling structures that have been designated as a historic resource subject to the demolition review or 120-day delay provisions of Title 33.
- B.** Requirements. Primary dwelling structures must be deconstructed in accordance with the provisions of this Chapter and associated administrative rules. Salvaged material may be sold, donated, or reused on site.
- 1.** Demolition Permit Application. An application for a demolition permit under Chapter 24.55 for any primary dwelling structure shall not be considered complete unless it is accompanied by a completed Pre-Deconstruction Form provided by the Director.
 - 2.** Certified Deconstruction Contractor. Deconstruction work must be performed by a Certified Deconstruction Contractor. A Certified Deconstruction Contractor shall be assigned to the project throughout the course of deconstruction. Certified Deconstruction Contractors must comply with the requirements of this Chapter and the administrative rules. The Bureau of Planning and Sustainability will maintain on file and available to the public a list of current Certified Deconstruction Contractors.
 - 3.** Site Posting. On the first day of active deconstruction a yard sign provided by the Director when the permit is issued must be posted at the site. The sign must indicate that the structure is being deconstructed and must provide City of Portland contact information for questions or concerns.
 - a.** The sign must remain in place throughout the course of deconstruction.
 - b.** The sign must be placed on each street frontage of the site.
 - c.** Signs must be posted within 5 feet of a street lot line and must be visible to pedestrians and motorists. Signs may not be posted in a

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public right-of-way. Signs are not required along street frontages that are not improved and allow no motor vehicle access.

4. Heavy Machinery. Heavy machinery may be used in deconstruction to assist in the salvage of materials for reuse or to remove material not required to be salvaged for reuse. Heavy machinery may not be used in deconstruction to remove or dismantle components of buildings in ways that render building components unsuitable for salvage. For purposes of this Chapter 17.106, heavy machinery includes, but is not limited to, track hoes, excavators, skid steer loaders, or forklifts.
 5. Documentation. Certified Deconstruction Contractors must maintain receipts for donation, sale, recycling, and disposal of all materials for any deconstruction project. Materials intended for reuse on site must be documented with photographs. The Director may ask that a Certified Deconstruction Contractor produce the receipts or photographs for inspection any time until the demolition permit is approved to be finalized.
 6. Demolition Permit Final. A completed Post-Deconstruction Form and all documentation required in Subsection 5. above must be submitted to the Bureau of Planning and Sustainability before the Bureau of Development Services may approve a demolition permit as finalized.
- C. Additional Regulations. Compliance with Chapter 17.106 does not exempt the demolition of buildings from any other requirements of the City Code, such as in Title 11 Trees, Title 24 Building Regulations, or Title 33 Planning and Zoning.
- D. Exemptions. The following are exempt from the requirements of Chapter 17.106:
1. A building permit to move a structure as provided under Chapter 24.25.
 2. Any primary dwelling structure that has been determined by the Bureau of Development Services to be dangerous and is required to be abated by demolition as provided in Section 29.40.030.
 3. Any primary dwelling structure that the Director has determined is unsuitable for deconstruction because:
 - a. The structure is structurally unsafe or is otherwise hazardous to human life; or
 - b. Most of the material in the structure is not suitable for reuse.
- E. Request for an Exemption. An applicant may request an exemption from the requirements of this Chapter under Subsection 17.106.040 D.3. above by

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submitting a written request for exemption, together with supporting evidence, when submitting a demolition permit application.

- F.** Determination of an Exemption. The Director will make the final determination of exemption based on evidence submitted by the applicant as well as an inspection to confirm conditions and unsuitability. The demolition permit will not be issued until the final determination is made on the exemption request. Should the applicant disagree with the final determination the determination may be appealed by the applicant under Subsection 17.106.060 B.

17.106.050 Enforcement and Penalties.

(Amended by Ordinance Nos. 189413 and 189761, effective January 20, 2020.)

- A.** The Director may impose penalties on any responsible party who fails to comply with the requirements of this Chapter or who has misrepresented any material fact in a document or evidence required to be prepared or submitted by this Chapter.
1. A first violation of this Chapter may be subject to a penalty of up to \$500.
 2. A second violation of this Chapter by the same person may be subject to a penalty of up to \$1,000.
 3. Third and subsequent violations of this Chapter by the same person may be subject to a penalty of up to \$1,500.
 4. Penalties may be imposed on a per month, per day, per incident, or such other basis as the Director may determine as appropriate based upon criteria in Subsection E below.
 5. Any person receiving a notice of violation shall, within 10 days of issuance of the notice, either pay to the City the stated amount of the penalty or request an appeal as provided in Section 17.106.060.
- B.** Heavy Machinery.
1. Improper use of heavy machinery in violation of this Chapter may be subject to a penalty of up to \$10,000.
 2. Any person receiving a notice of violation shall, within 10 days of issuance of the notice, either pay to the City the stated amount of the penalty or request an appeal as provided in Section 17.106.060.
- C.** Additional Enforcement Actions for Certified Deconstruction Contractors. The Director may impose the following additional remedies for Certified Deconstruction Contractors.

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1. A first violation of this Chapter may result in removal from the list of approved Certified Deconstruction Contractors for up to 6 months.
 2. A second violation of this Chapter may result in removal from the list of approved Certified Deconstruction Contractors for up to 12 months.
 3. Third and subsequent violations may result in revocation of certification whereby a contractor may not apply for recertification for a period of 18 months.
 4. Temporary removal from the list of approved Certified Deconstruction Contractors will expire immediately following the term of removal and will not require further action from the Director.
- D.** Stop Work Orders. When necessary to obtain compliance with this Chapter, the Director may issue a stop work order requiring that all work, except work directly related to elimination of the violation, be immediately and completely stopped. If the Director issues a stop work order, activity subject to the order may not be resumed until such time as the Director gives specific approval in writing. The stop work order will be in writing and posted at a conspicuous location at the site. When an emergency condition exists, a stop work order may be issued orally, followed by a written stop work order. It is unlawful for any person to remove, obscure, mutilate or otherwise damage a stop work order. Any person subject to a stop work order may seek administrative review of the order and may appeal the Director's administrative determination as provided in Subsection 17.106.060 B.
- E.** The Director will consider the following criteria in determining the amount of penalties or remedies to impose under this Section:
1. The nature and extent of the person's involvement in the violation;
 2. Whether the person was seeking any benefits, economic or otherwise, through the violation;
 4. Whether other similar prior violations have occurred with that person;
 5. Whether the violation was isolated and temporary, or repeated and continuous;
 6. The length of time from any prior violations;
 7. The magnitude and seriousness of the violation;
 8. The costs of investigation and remedying the violation;
 9. Other relevant, applicable evidence bearing on the nature and seriousness of the violation.

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- F.** If the Director assesses an enforcement penalty as described in this Section against a property owner, the Director may file a statement with the Revenue Division that identifies the property, the amount of the penalty, and the date from which the charges are to begin. The Revenue Division will then:
1. Notify the property owner of the assessment of enforcement penalties;
 2. Record a property lien in the Docket of City Liens;
 3. Bill the property owner monthly for the full amount of enforcement penalties owing, plus additional charges to cover administrative costs of the Revenue Division; and
 4. Maintain lien records until the lien and all associated interest, penalties, and costs are paid in full; and the Director certifies that all violations listed in the original or any subsequent notice of violation have been corrected.
- G.** Inspections. The Director may conduct inspections whenever necessary to enforce any provisions of this Chapter, to determine compliance with this Chapter or whenever the Director has reasonable cause to believe there exists any violation of this Chapter. If the responsible party is at the site when the inspection is occurring, the Director will first present proper credentials to the responsible party and request entry.

17.106.060 Right of Appeal.

- A.** Whenever the responsible party has been given a written notice or order pursuant to this Chapter or has been directed to make any correction, pay a penalty or to perform any act and the responsible party believes the finding of the notice or order was in error, the responsible party may have the notice or order reviewed by the Director. If a review is sought, the responsible party will submit a written request to the Director within 10 days of the date of the notice or order. Such review will be conducted by the Director. The responsible party requesting such review will be given the opportunity to present evidence to the Director. Following a review, the Director will issue a written determination. Nothing in this Section shall limit the authority of the Director to initiate a code enforcement proceeding under Title 22.
- B.** A responsible party may appeal the Director's written determination to the Code Hearings Officer in accordance with Portland City Code Chapter 22.10. The filing of an appeal request will remain the effective date of a penalty until the appeal is determined by the Code Hearings Officer. If, pursuant to said appeal hearing, payment of a penalty is ordered, such payment must be received by the Director or postmarked within 15 calendar days after the order becomes final.

**CHAPTER 17.107 - TRANSPORTATION AND
PARKING DEMAND MANAGEMENT**

(Chapter added by Ordinance No. 188177; amended
by Ordinance No. 188695, effective May 24, 2018.)

Sections:

- 17.107.010 Purpose.
- 17.107.020 Required Elements of a Transportation and Parking Demand Management Plan.
- 17.107.030 Transportation and Parking Demand Management Requirements and Procedures.
- 17.107.035 Pre-Approved Multimodal Incentives for Development.
- 17.107.045 Required Reporting.
- 17.107.050 Enforcement and Penalties.
- 17.107.060 Administrative Rule Authority.
- 17.107.070 Fees.

17.107.010 Purpose.

(Amended by Ordinance No. 188957, effective June 23, 2018.) The purpose of this Chapter is to describe the required elements of a Transportation and Parking Demand Management (TDM) Plan, and the circumstances under which a pre-approved TDM plan may be submitted. Requiring TDM is intended to prevent, reduce, and mitigate the impacts of development on the transportation system, neighborhood livability, safety, and the environment while reducing transportation system costs.

TDM plans provide residents, employees, and visitors with information and incentives to use transportation methods other than single occupancy vehicles in order to achieve the City's transportation goals, including reduced reliance on single occupancy vehicles, and reduced vehicle miles travelled.

17.107.020 Required Elements of a Transportation and Parking Demand Management Plan.

(Amended by Ordinance No. 189651, effective September 6, 2019.) A TDM Plan shall include, at a minimum, the following elements:

- A. Description of proposed development, including trip generation estimates and proposed auto and bicycle parking. The description may include development anticipated to occur for a period of up to 10 years;
- B. Description of existing land uses, traffic conditions, and multimodal facilities in the area within ¼ mile of the site, including (if applicable) any current employee mode split data from the most recent Employee Commute Options (ECO) report submitted to the Oregon Department of Environmental Quality;
- C. Performance Targets:
 - 1. Mode split goals shall be based on the performance targets from Policy 9.49.3 in the Transportation System Plan;

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2. An ECO survey submitted in Subsection B. shall serve as the baseline mode split, when available. If an ECO survey is not available, census data may be used, or the applicant may submit an independent survey from a professional traffic engineer;
 3. Interim performance targets may be determined as a straight line projection from the base year to 2035;
 4. Alternate performance targets may be proposed based on the following factors:
 - a. The relative availability of bicycle, transit, bike share, and car share infrastructure and services;
 - b. Current TDM strategies that have been implemented by the applicant;
 - c. Travel characteristics, including schedules, of employees, residents, and visitors;
 - d. Best practices and performance of comparable sites in Portland and comparable cities;
- D.** If a site has a TDM Plan approved through a previous land use review, and the applicant is in compliance with the provisions of that Plan, then the TDM Plan may serve as the basis of any subsequent updates. The submittal for a TDM Plan update should include:
1. Demonstration of compliance with neighborhood engagement obligations;
 2. Demonstration of compliance with mode split reporting obligations;
 3. Evaluation of mode split trends based relative to the performance target;
- E.** Strategies likely to achieve the identified mode split and parking management performance targets. Strategies may include but are not limited to:
1. Supply, management, and pricing of on-site employee, resident, and student parking;
 2. Dissemination of information about alternatives to single-occupant vehicle commuting;
 3. Identification of a site or campus TDM coordinator;
 4. Financial incentives offered to employees for carpool, car-sharing, transit, bicycling, and walking;

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- 5. For nonresidential uses, strategies to reduce total trips such as telework and/or compressed work week scheduling or on-site housing;
 - 6. For nonresidential uses, the availability of end-of-trip facilities, such as bicycle lockers, showers, and secured bicycle parking.
- F. For colleges and hospitals in the Campus Institutional Zone, a neighborhood engagement plan;
- G. Reporting as required by Section 17.107.045, including any Performance Monitoring plans proposed by the applicant that exceed the ECO reporting requirements detailed in Section 17.107.045;
- H. Ongoing Participation and Adaptive Management plan, specifying what additional actions not detailed in Subsection 17.107.020 D. may be utilized to achieve the 2035 performance targets specified in Subsection 17.107.020 C.

17.107.030 Transportation and Parking Demand Management Requirements and Procedures.

(Amended by Ordinance No. 189895, effective March 18, 2020.)

- A. **Requirement for Colleges and Medical Centers.** Title 33 requires College and Medical Center uses in the campus institutional zones to conform to an approved Transportation Impact review. The application requirements for the Transportation Impact review require the applicant to provide a Transportation and Parking Demand Management Plan that has all the elements required by this Chapter. Approval of the TDM plan is subject to the criteria described in Chapter 33.852.
- B. **Requirement for Residential Uses.** Title 33 requires development in specified zones that includes a building with more than 10 new dwelling units to have a TDM Plan at the time of development permit issuance. Development subject to this requirement may utilize the pre-approved multimodal incentive described in Section 17.107.035, or develop a custom plan approved through Transportation Impact Review, as described in Chapter 33.852.

17.107.035 Pre-Approved Multimodal Incentives for Development.

(Amended by Ordinance Nos. 188957 and 189895, effective March 18, 2020.) As an alternative to preparing a custom TDM plan subject to Sections 17.107.020 through 17.107.030, and Chapter 33.852, an applicant may agree to provide a multimodal incentive plan, preapproved by the City, including, but not limited to, the following:

- A. Distribution of transportation options information approved or provided by the Portland Bureau of Transportation for the first 4 years of building occupancy, offered to residents, employees, and visitors;

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- B.** Multimodal financial incentives equal to the value of a 1-year adult TriMet pass per residential unit, for the first year of building occupancy. This obligation will pay for a menu of incentives that will be offered to residents of the site to increase the use of transit, bicycling, walking, and other alternatives to driving alone. Specific rates for affordable dwelling units and market-rate dwelling units are found in the annual fee schedule;
- C.** Participation in an annual travel survey of residents and employees for the first 4 years of building occupancy;
- D.** A written acknowledgment by the applicant of the enforcement provisions in Code Section 17.107.050.

17.107.045 Required Reporting.

Employers on sites subject to an approved TDM Plan shall submit Employee Commute Options surveys to the Portland Bureau of Transportation a minimum of every 2 years after initial approval. On residential properties subject to a pre-approved TDM Plan under Section 17.107.035, the building owner or manager is required to actively participate in an annual City travel survey of residents and employees for the first 4 years of building occupancy.

17.107.050 Enforcement and Penalties.

It shall be a violation of this Chapter for any entity or person to fail to comply with the requirements of this Chapter or to misrepresent any material fact in a document required to be prepared or disclosed by this Chapter. Any building owner, employer, tenant, property manager, or person who fails, omits, neglects, or refuses to comply with the provisions of this Chapter shall be subject to a civil penalty of up to \$1,000 for every 7-day period during which the violation continues. If an entity or person is fully implementing all other elements of this Chapter, failing to meet performance targets alone shall not be an enforcement violation. The Bureau of Transportation shall seek voluntary compliance for a period of at least 1 month before resorting to penalties.

17.107.060 Administrative Rule Authority.

The Director of Transportation shall adopt administrative rules necessary to achieve the purpose of this Chapter.

17.107.070 Fees.

The City may charge fees for Transportation and Parking Demand Management goods and services provided, including but not limited to application review, incentives and education, performance monitoring, adaptive management, and compliance and enforcement.

FIGURE 6 - CHAPTER 17.102

(Figure replaced by Ordinance No. 189816,
effective February 1, 2020.)

Residential Solid Waste and Recycling Rates

As used in Figure 6 the following terms have the meanings described below:

"Excess distance" is applicable to any collection beyond seventy-five (75) feet from the curb. This charge is in addition to the "non-curb surcharge."

"Clean up containers" include hauler-provided containers which are provided as requested by the customer for occasional or temporary use.

"Small multiplex" refers to any multidwelling building or a combination of buildings on a single tax lot in the residential franchise territory that contains 2-4 dwelling units.

"Non-curb surcharge" is the charge for collection service provided at a location more distant than curbside.

"Terrain differential" is applicable to services within the territory designated on Figure 6-1.

Residential Curbside Collection Service Rates and Charges				
Single Family Service Level	Monthly Rate Curbside Pickup	Per Unit or Per Pickup	Non-Curb Surcharge	Excess Distance
Standard Service - Service includes weekly collection of composting & recycling, every-other-week garbage				
20-gallon Can*	27.55		2.10	0.70
32-gallon Can*	32.15		2.10	0.70
20-gallon Rollcart	27.55			
35-gallon Rollcart	32.15			
60-gallon Rollcart	37.35			
90-gallon Rollcart	42.60			
1.0 Cubic Yard Container	87.30			
1.5 Cubic Yard Container	118.70			
2.0 Cubic Yard Container	150.05			
Every-four-weeks Service - Service includes weekly collection of composting & recycling, every-four-weeks garbage				
32-gallon Can*	24.65		1.05	0.35
35-gallon Rollcart	24.65			

*Customer-provided garbage cans are being phased out and these service levels are generally not available. Customers currently providing their own garbage cans are grandfathered in.

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Single Family Service Level	Monthly Rate Curbside Pickup	Per Unit or Per Pickup	Non-Curb Surcharge	Excess Distance
Special Services				
Recycling Only, Weekly Collection	11.25			
Composting & Recycling Only, Weekly Collection	20.80			
On Call Yard Debris Collection (32 gallon Can, Bag or Bundle--Yard Debris Only)		7.35		
On Call Garbage (32-Gallon Can or Bag)		9.80	1.05	0.35
Yard Debris, Extra Can, Bag or Bundle-Yard Debris Only		3.75		
Garbage, Extra Can or Bag		5.00	1.05	0.35
Courtesy Callback (Garbage or Composting)		9.70		
Rollcart Delivery**		13.75		
Extra Composting Rollcart	13.90			
Extra Recycling Rollcart	5.90			
Holiday Tree Removal		5.00		
Multiple Cans/Rollcarts -- Service includes weekly collection of composting & recycling, every-other-week garbage				
32-Gallon Cans, Two*	41.85		4.20	1.40
32-Gallon Cans, Three*	47.90		6.30	2.10
32-Gallon Cans, Four*	52.40		8.40	2.80
35-Gallon Rollcart, Two	41.10			
35-Gallon Rollcart, Three	48.55			
35-Gallon Rollcart, Four	56.00			
60-Gallon Rollcart, Two	48.10			
60-Gallon Rollcart, Three	58.30			
60-Gallon Rollcart, Four	68.45			
90-Gallon Rollcart, Two	56.20			
90-Gallon Rollcart, Three	68.05			
90-Gallon Rollcart, Four	79.85			

*Customer-provided garbage cans are being phased out and these service levels are generally not available. Customers currently providing their own garbage cans are grandfathered in.

**Rollcart delivery fees may be charged in the following scenarios:

1. For composting and recycling, if it is the customer's second (or greater) rollcart delivery.
2. For garbage, if it is the customer's second (or greater) rollcart delivery within a one year period.
3. Any time the customer requests a clean rollcart.

**TITLE 17
PUBLIC IMPROVEMENTS**

Service Level	Monthly Rate Curbside Pickup	Per Unit or Per Pickup	Non-Curb Surcharge	Excess Distance
Clean-Up Containers				
One 1.0 Cubic Yard		92.25		
One 1.5 Cubic Yard		100.85		
One 2.0 Cubic Yard		109.35		
Terrain Differential				
Every-Other-Week Garbage (Single Can / Rollcart)	4.30			
Every-Other-Week Garbage (Multiple Cans / Rollcarts)	4.45			
Every-Four-Weeks Garbage	3.00			
Recycling Only	1.50			
Compost & Recycling Only	2.85			
32-Gallon Can On-Call	0.75			
On Call Yard Debris Collection (32 gallon Can, Bag, or Bundle –Yard Debris Only	0.30			

**TITLE 17
PUBLIC IMPROVEMENTS**

**Curbside Collection Service Rates and Charges
for Small Multiplexes**

Weekly composting & recycling, every-other-week garbage			
Collection for:	Duplex	Tri-Plex	Four-Plex
Single Container Service, where rollcart / container is shared by residents of 2, 3 or 4 units			
One shared 60-Gallon Rollcart	43.80	52.60	N / A
One shared 90-Gallon Rollcart	47.30	56.05	64.85
One shared 1.0 Cubic Yard Container	73.15	81.90	90.70
One shared 1.5 Cubic Yard Container	90.80	99.55	108.35
One shared 2.0 Cubic Yard Container	108.40	117.15	125.90
Multiple Containers, where all cans / rollcarts are placed together in a single location at curbside for pickup. Where unshared cans / rollcarts are located separately at curbside for pickup then each is considered a separate account, charged at single-family rate.			
Two 32-Gallon Cans*	44.40	53.15	N / A
Three 32-Gallon Cans*	48.60	57.40	66.15
Four 32-Gallon Cans*	52.85	61.60	70.35
Two 20-Gallon Rollcarts	42.25	N / A	N / A
Three 20-Gallon Rollcarts	45.45	54.20	N / A
Four 20-Gallon Rollcarts	48.60	57.35	66.10
Two 35-Gallon Rollcarts	45.35	54.10	N / A
Three 35-Gallon Rollcarts	50.05	58.80	67.55
Four 35-Gallon Rollcarts	54.70	63.50	72.25
Two 60-Gallon Rollcarts	51.70	60.45	69.20
Three 60-Gallon Rollcarts	59.55	68.30	77.10
Four 60-Gallon Rollcarts	67.45	76.20	84.95
Two 90-Gallon Rollcarts	58.65	67.45	76.20
Three 90-Gallon Rollcarts	70.00	78.75	87.55
Four 90 Gallon Rollcarts	81.40	90.15	98.90

--N/A services are not available.

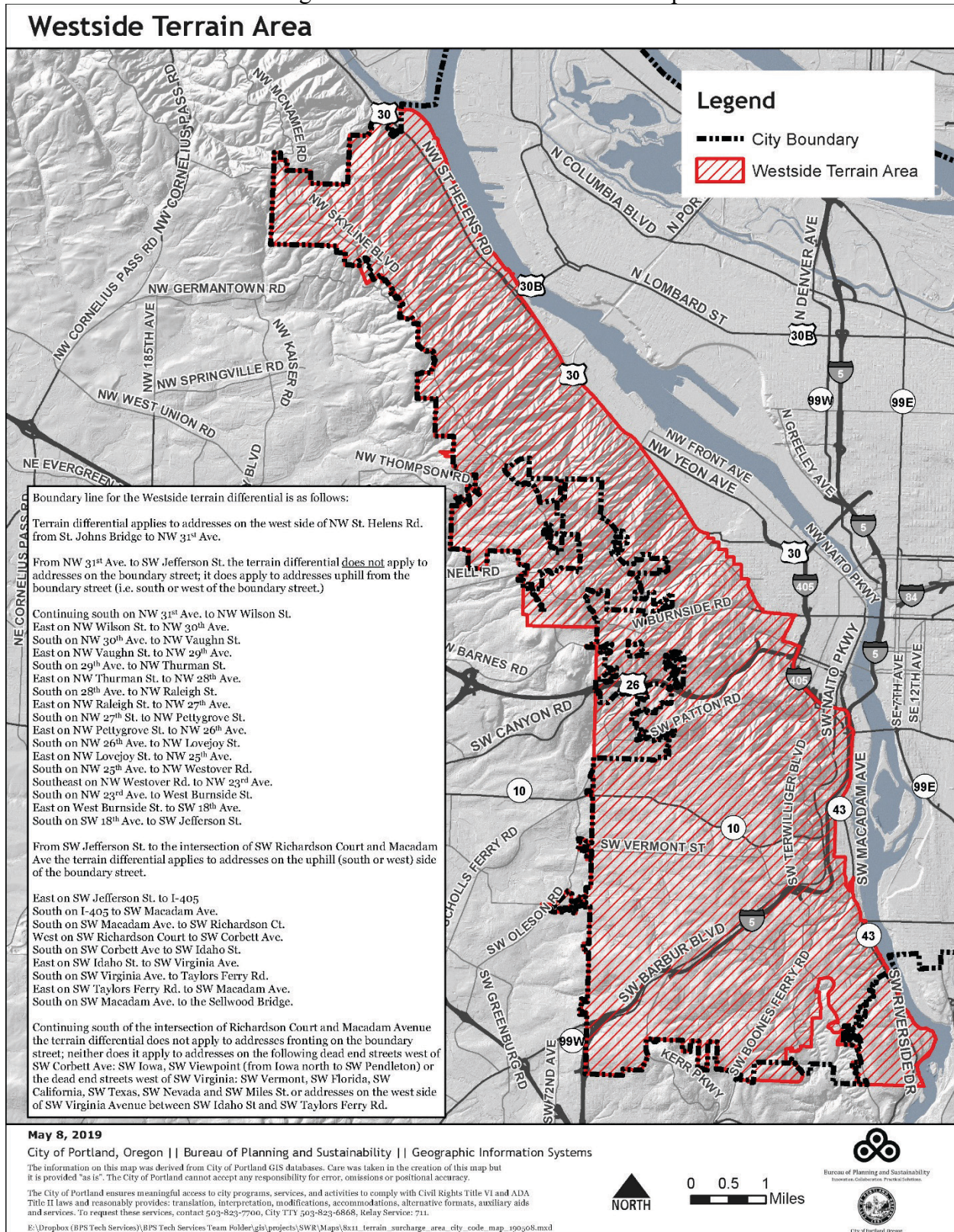
--Non-curbside service is available at small multiplexes for garbage cans and rollcarts at an additional monthly charge of \$2.10 per can and \$4.30 per rollcart. Excess distance charge for a can is \$0.70. Excess distance charge for a rollcart is \$1.40.

--For composting services, extra cans, bags, or bundles of yard debris only are \$3.75 each and accrue on a per account, rather than per unit, basis.

--Recycling labor surcharge is \$8.75 per additional dwelling unit.

*Customer-provided garbage cans are being phased out and these service levels are generally not available. Customers currently providing their own garbage cans are grandfathered in.

Figure 6-1 Terrain Differential Area Map



CHAPTER 18.03 - NUISANCE ABATEMENT

(Chapter repealed by Ordinance No. 171455,
effective August 29, 1997.)

**TITLE 18
NOISE CONTROL**

**CHAPTER 18.04 - STANDARDS AND
DEFINITIONS**

Sections:

- 18.04.010 Terminology and Standards.
- 18.04.020 Measurement of Sound.
- 18.04.040 Definitions.

18.04.010 Terminology and Standards.

All terminology used in this Title not defined below shall be in accordance with applicable publications of the American National Standards Institute (ANSI) in effect on the effective date of this Title.

18.04.020 Measurement of Sound.

(Amended by Ordinance Nos. 159276 and 175772, effective August 1, 2001.)

- A. If measurements are made with a sound level meter, the meter shall be an instrument in good operating condition, meeting the requirements of a Type I or Type II meter, as specified by ANSI Standard 1.4-1971. For purposes of this Title, a sound level meter shall contain at least an A-weighted scale, and both fast and slow meter response capacity.
- B. If measurements are made with other instruments, the procedure shall be carried out in such a manner that the overall accuracy shall be at least that called for ANSI standard 1.4-1971 for Type II instruments.
- C. When the location or distance prescribed in this Title for measurement of sound is impractical or would provide misleading or inaccurate results, measurements may be taken at other locations or distances using appropriate correction factors specified in this Title or in other rules promulgated by the Noise Control Officer.
- D. Procedures and tests required by this Title and not specified herein, shall be placed on file with the City Auditor.
- E. For purposes of determining compliance with the measurable sound level requirements found in the Portland City Code, approved sound level meters shall utilize a Fast meter response setting. Slow sound level meter settings shall not be used for the purpose of determining compliance with the Portland City Code, unless directed by the Noise Control Officer.

18.04.040 Definitions.

(Amended by Ordinance Nos. 159276, 164010, 175772, 184101, 188959, 189137 and 189805, effective March 1, 2020.) The following words shall have the meanings ascribed to them in this Section:

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NOISE CONTROL

- A.** A-scale (dBA): The sound level in decibels measured using the A-weighting network as specified in ANSI S 1.4-1971 for sound level meters.
- B.** Ambient noise: The all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources, near and far.
- C.** City: The City of Portland, Oregon, or the area within the territorial City limits of the City of Portland, Oregon, and such territory outside of this City over which the City has jurisdiction or control by virtue of ownership or any constitutional or Charter provisions, or any law.
- D.** Construction: Any and all activity necessary or incidental to the erection, demolition, assembling, altering, installing, repair or equipping of buildings, roadways, or utilities, including land clearing, grading, excavating and filling.
- E.** Decibel (dB): A unit of measure of sound (See sound pressure level).
- F.** Dwelling unit: A building or portion thereof intended for and regularly used for residential occupancy.
- G.** Dynamic braking device: A device, used primarily on trucks and buses to convert the motor from an internal combustion engine to an air compressor for the purpose of vehicle braking without the use of wheel brakes.
- H.** Emergency work: Work made necessary to restore property to a safe condition following a public calamity, work to restore public utilities, or work required to protect persons or property from imminent exposure to danger.
- I.** Frequency: The time of repetition of a periodic phenomenon, measured in Hertz (Hz) (formerly cps or cycles per second).
- J.** High noise impact events: Events or activities which are attended by at least 250 people, and which may reasonably be assumed to cause increases of 15 dBA or more in the ambient noise level of a residential or commercial use area.
- K.** Impulse sound: A single pressure peak or a single burst (multiple pressure peaks) for a duration of not more than one second as measured on a peak unweighted sound pressure measuring instrument, as specified in ANSI S1.4-1971.
- L.** Legal holidays: The days on which New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas day are fixed by State law.
- M.** Lot: Any area, tract or parcel of land owned by or under the lawful control of one distinct ownership. Abutting "platted lots" under the same ownership shall be considered a "lot." The lot line or boundary is an imaginary line at ground level

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NOISE CONTROL

which separates a lot and its vertical extension owned by one person from that owned by another.

- N.** Motor vehicle: Any land vehicle which is, or is designed to be, self-propelled or is designed or used for transporting persons or property.
- O.** Motor vehicle racing: Any motor vehicular activity conducted at a recognized auto racing facility, involving motor vehicles participating in, but not limited to practice, qualifying and racing sessions, tests, training, and all other competitive and non-competitive displays, whether by individual vehicles, or by groups of vehicles.
- P.** Narrow band sound: A sound whose frequencies occupy an octave band or less.
- Q.** Noise disturbance: Any sound which: a) injures or endangers the safety or health of humans; or b) annoys or disturbs a reasonable person of normal sensitivities.
- R.** Noise Sensitive Receiver: A person receiving noise at any residential use or dwelling place, schools, churches, hospitals and libraries.
- S.** Nonconforming use: A use of structure, building or land which was established as a permitted use and which has been lawfully continued pursuant to Title 33 of this Code, but which is not a permitted use in the zone in which it is now located.
- T.** Octave band: An interval in Hertz between two frequencies having a ratio of 2:1. For purposes of this Title, octave band sound pressure levels shall be measured at any of the following center frequencies: 31.5, 63, 125, 250, 500, 1,000, 2,000, 4,000 and 8,000 Hz.
- U.** Offroad vehicle: Any motor vehicle operated off a public right-of-way.
- V.** Person: Any individual, association, partnership, or corporation including any officer, department, bureau, agency or instrumentality of the United States, a state or any political subdivision of that state, including the City of Portland.
- W.** Physical characteristics of sound: A descriptive term, encompassing the steady, impulsive or narrow band property of the sound, the level of the sound, and the extent to which it exceeds the background sound level.
- X.** Plainly audible (sound): Any sound for which the information content of that sound is unambiguously communicated to the listener, such as, but not limited to, understandable spoken speech, comprehension of whether a voice is raised or normal, or comprehensible musical rhythms.
- Y.** Public right-of-way: Any street, avenue, highway, boulevard, alley, easement or public space which is owned by or controlled by a public governmental entity.

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NOISE CONTROL**

- Z.** Sound level: In dBA, the frequency weighted sound pressure level measured on the A-scale of a sound level meter.
- AA.** Sound level meter: A sound level measuring device, either Type I or Type II, as defined by ANSI specification S 1.4-1971. A sound level meter for the purpose of this Title shall contain at least an A-scale and both fast and slow meter response.
- BB.** Sound pressure level: In decibels (dB), is 20 times the logarithm to the base 10 of the ratio of the pressure of a given sound to the reference pressure. The reference pressure is 20 micropascals per square meter.
- CC.** Steady sound: A sound which remains essentially constant (± 2 dB) during a two minute period of observation when measured with the fast response of the sound level meter. Steady sound shall apply only to sound sources which operate or can reasonably be expected to operate for at least 15 minutes out of any one hour period.
- DD.** Use: The purpose for which land or a building is arranged, designed, or occupied.
- EE.** Watercraft: Any vehicle operated upon or immediately above the surface of the water.
- FF.** Zone: A classification of area of the City of Portland as described in Title 33 of the City Code, relating to the use to which property may be put. For the purposes of this title, the zones are based upon the Land Use Zones, as defined in Title 33 as follows:

Category	Zones
Open Space	Open Space
Residential	Residential Farm/Forest
	Residential 20,000
	Residential 10,000
	Residential 7,000
	Residential 5,000
	Residential 2,500
	Residential Multi-Dwelling 1
	Residential Multi-Dwelling 2
	Residential Multi-Dwelling 3
	Residential Multi-Dwelling 4
	Central Residential
	Residential Manufactured Dwelling Park
	Commercial Residential
	Institutional Residential
	Campus Institutional 1

TITLE 18
NOISE CONTROL

Commercial/ Mixed Use

Commercial/Mixed Use 1

Commercial/Mixed Use 2

Commercial/Mixed Use 3

Commercial Employment

Central Commercial

Campus Institutional 2

Industrial

General Employment 1

General Employment 2

Central Employment

General Industrial 1

General Industrial 2

Heavy Industrial

TITLE 30 - AFFORDABLE HOUSING

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TITLE 30 - AFFORDABLE HOUSING

(Title added by Ordinance No. 172844, effective November 4, 1998)

**TITLE 30
AFFORDABLE HOUSING**

**CHAPTER 30.01 - AFFORDABLE HOUSING
PRESERVATION AND PORTLAND RENTER
PROTECTIONS**

(Chapter amended by Ordinance No. 187380,
effective November 13, 2015.)

Sections:

- 30.01.010 Policy.
- 30.01.020 Intent.
- 30.01.030 Definitions.
- 30.01.040 Title 30.01 Responsibilities.
- 30.01.050 Federal Preservation Projects - City Notice and Preservation Opportunities.
- 30.01.060 Federal Preservation Projects - Tenant Provisions.
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- 30.01.130 Manufactured Dwelling Park Affordable Housing Density Bonus.
- 30.01.140 Multi-Dwelling Zones Deeper Housing Affordability FAR Density Program.

30.01.010 Policy.

(Amended by Ordinance No. 187380, effective November 13, 2015.) It is the policy of the City of Portland that all Portlanders, regardless of income level, family composition, race, ethnicity or physical ability, have reasonable certainty in their housing, whether publicly assisted or on the private market. Consequently, publicly assisted rental housing affordable to low and moderate income persons and households should be preserved as a long-term resource to the maximum extent practicable, and the tenants of such properties should receive protections to facilitate securing new housing should the affordable units be converted to market rate units or otherwise be lost as a resource for low and moderate income housing. Likewise, Portland renters in unregulated housing on the private market, need additional protections to ensure that there is adequate time to find alternative housing in the case of a no cause eviction and adequate time to budget for an increase in rent.

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AFFORDABLE HOUSING

30.01.020 Intent.

(Amended by Ordinance No. 187380, effective November 13, 2015.) The intent of this Title is to protect the availability of publicly assisted affordable housing for low and moderate income households by: providing for notice to the City and tenants when transitions from current assistance programs and/or affordable housing uses are planned; providing purchase opportunities for the City to attempt to preserve the affordable housing while respecting ownership interests of building owners; providing tenant relocation assistance when the affordable housing is converted; and, ensuring long term affordability in future projects that the City assists with public financing designed to create or preserve affordable housing; and ensuring that all Portland renters, have additional protections to ensure more certainty in their housing security.

30.01.030 Definitions.

(Amended by Ordinance Nos. 186028, 187380, 188163 and 189323, effective December 19, 2018.)

- A. **“Administrative Rules”** means the program administrative rules developed by the Portland Housing Bureau and approved through City Council which set forth program requirements, processes, and procedures, and are filed through the City’s publically available Portland Policy Documents (PPD).
- B. **“Affordable housing.”** The term “affordable housing”, “affordable rental housing” or “housing affordable to rental households” means that the rent is structured so that the targeted tenant population pays no more than 30 percent of their gross household income for rent and utilities. The targeted tenant populations referred to in this section include households up to 80 percent of MFI.
- C. **"Associated Housing Costs."** include, but are not limited to, fees or utility or service charges, means the compensation or fees paid or charged, usually periodically, for the use of any property, land, buildings, or equipment. For purposes of this Chapter, housing costs include the basic rent charge and any periodic or monthly fees for other services paid to the Landlord by the Tenant, but do not include utility charges that are based on usage and that the Tenant has agreed in the Rental Agreement to pay, unless the obligation to pay those charges is itself a change in the terms of the Rental Agreement.
- D. **“City Subsidy.”** Locally controlled public funds administered by PDC, PHB, or other City bureau or agency, allocated for the purpose of creating or preserving affordable rental housing to households below 80 percent of MFI. City subsidies may be provided to developers through direct financial assistance such as low interest or deferred loans, grants, equity gap investments, credit enhancements or loan guarantees, or other mechanisms.
- E. **“City Subsidy Projects.”** Privately owned properties of five or more units which receive a City Subsidy after the effective date of Title 30.01 through programs

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AFFORDABLE HOUSING

designed to create or preserve rental housing affordable at or below 80 percent of MFI.

- F. “Commercial Market Compatible Offer.”** A Fair Market Value purchase offer made by the City or its designee which is consistent with the terms and conditions which would be made by a buyer on the open market such that a seller negotiating with the City on such terms would not experience any significant disadvantage as compared to a market rate transaction with a private party.
- G. “Fair Market Value.”** The amount of money in cash that real property would bring in the open market if it were offered for sale by one who desired, but was not obligated to sell, and was bought by one willing but not obliged to buy. It is the actual value of the property on the date when a City offer pursuant to Title 30.01.050 is made. As may be further refined by PHB through its Administrative Procedures developed in reference to the Uniform Standards of Professional Appraisal Practice, the Oregon Uniform Trial Instructions, and relevant case law, Fair Market Value is based on the best and highest use of the property, which may be greater than the use being made of the property by the current owner. However, Fair Market Value does not include speculative value, or possible value based on future expenditures and improvements, or potential changes in applicable zoning regulations or laws, which are not reasonably probable. Fair Market Value includes assessment of environmental, structural or mechanical information derived from inspections or other due diligence activities.
- H. “Federal Preservation Projects.”** Properties having project-based rental assistance contracts for some or all of the units (such as Section 8 and Project Rental Assistance Contracts) including those developed under a variety of HUD mortgage assistance and interest rate reduction programs. Federal preservation projects include properties with loans, contracts, or insurance under the following federal subsidy programs: section 221(d)(4) with project-based Section 8; Section 202; Section 236(J)(1); Section 221(D)(3) BMIR; Section 221(D)(3) MIR; Section 811; Project based Section 8 contracts administered through HUD, Oregon Housing and Community Services, or the Housing Authority of Portland; Project Rental Assistance Contracts (PRAC); LIHPRHA capital grant program; and Section 241(f) preservation grant. An updated list of all known Federal Preservation Projects will be maintained and available upon request to the public.
- I. “HUD.”** The United States Department of Housing and Urban Development
- J. “Involuntary Displacement.”** Tenants of Federal Preservation Projects are considered to be involuntarily displaced if:

 - 1.** They are served a notice to vacate the property for reasons other than just cause as defined herein; or

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2. They are not offered a one year lease under their tenant based voucher by the property owner; or
 3. They are offered a one year lease under their tenant based voucher, but are required to pay as rent and utilities an amount greater than the tenant contribution to rent (and utilities) in effect under the project-based Section 8 contract, and they then choose to move from the property rather than enter into a lease under the voucher. This form of displacement is referred to as “economic displacement.”
- K. “Just Cause Eviction.”** Evictions for serious or repeated violations of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause.
- L. “Local Preservation Projects.”** Properties with 10 or more rental units which received financial assistance (from the programs listed below), to create or preserve housing serving households below 80 percent of MFI since January 1, 1988 and through the effective date of Title 30.01, which have affordability restrictions that are still in force as of the effective date of Title 30.01. Financial assistance programs include subsidies from the City of Portland through the Portland Development Commission (Rental Housing Development Loan Program, Investor Rehabilitation Loan Program, Rental Rehabilitation Loan Program, or Downtown Housing Preservation Program), and/or from the State of Oregon Housing and Community Services Department (Housing Development Grant Program, Oregon Affordable Housing Tax Credit Program, and the former Oregon Lenders Tax Credit Program, Risk Sharing Bond program, Elderly and Disabled Bond Program), and/or which have received bond financing issued by the Housing Authority of Portland or the Portland Development Commission. An updated list of all known Local Preservation Projects will be maintained and available upon request to the public.
- M. “Low Income.”** Low income individuals, households or tenants are those with a gross household income below 50 percent of MFI.
- N. “Mass shelter.”** A structure that contains one or more open sleeping areas or is divided only by non-permanent partitions and is 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, with or without a fee, on a daily basis.
- O. “MFI.”** Median family income for the Portland Metropolitan Statistical Area as defined by HUD as adjusted for inflation and published periodically.
- P. “Moderate Income.”** Moderate income individuals, households or tenants are those with a gross household income below 80 percent of MFI.

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- Q.** “**Opt Out.**” An owner’s non-renewal of an available project-based Section 8 contract in a Federal Preservation Project. Owners may consider “opting out” when they contemplate conversion to open market rental housing, other housing or commercial uses, or a sale of the property.
- R.** “**PHB.**” The Portland Housing Bureau.
- S.** “**PDC.**” The Portland Development Commission
- T.** “**Preservation Process.**” The requirements contained in 30.01.050 - 30.01.070 for Federal Preservation Projects and in 30.01.080 for Local Preservation Projects respectively.
- U.** “**Qualifying Household.**” A household legally residing in a Federal Preservation Project with a gross household income at or below 50 percent of MFI.
- V.** “**Receiving Site**” means a new or existing housing development with transferred Inclusionary Housing requirements from a Sending Site.
- W.** “**Regulatory Agreement**” means a recorded agreement between the owner and PHB stating the approval and compliance criteria of a PHB program.
- X.** “**Residential Landlord and Tenant Act**” or “**Act.**” ORS Chapter 90.
- Y.** “**Sending Site**” means a new development project which is subject to Inclusionary Housing requirements and is opting to provide affordable units off-site.
- Z.** “**Short-term housing.**” One or more structures that each contains one or more individual sleeping rooms and for which tenancy of all rooms may be arranged for periods of less than one month. A short-term housing facility may or may not have food preparation facilities, and shower or bath facilities may or may not be shared. The facility is managed by a public or non-profit agency that may or may not charge a fee. Examples include transitional housing and emergency shelters in which individual rooms are provided. Tenancy may be less than 30 days or more than 30 days.

30.01.040 Title 30.01 Responsibilities.

(Amended by Ordinance Nos. 186028 and 187380, effective November 13, 2015.) PHB will have primary responsibility for implementation of Title 30.01. This responsibility will include the development and administration of operating procedures, and taking any and all City actions referenced herein as may be necessary for implementation of the requirements of this Title. PDC will work with PHB to implement property acquisition responsibilities described in this Title. PDC is also expected to develop strategies to implement the 60-year affordability requirements in 30.01.090.

30.01.050 Federal Preservation Projects - City Notice and Preservation Opportunities.
(Replaced by Ordinance No. 174180; amended by Ordinance Nos. 186028 and 187380, effective November 13, 2015.)

- A.** Owners of Federal Preservation Projects must provide the City and each building tenant with a one year's notice of a pending HUD Section 8 contract expiration. In order to facilitate the owner's knowledge of the City's interest in notification, PHB shall provide written confirmation of the City's interest in the property to each Section 8 property within the City of which PHB is aware.
- B.** Owners of Federal Preservation Projects who have decided to Opt Out must provide to the City a notice of 210 days of intent to do so if the owner is opting out of a long-term contract, and 150 days if the owner is opting out of a one-year extension to a long-term contract. The notice shall specify:

 - 1.** whether the owner intends to withdraw the property from the Section 8 program;
 - 2.** whether the owner intends to convert the participating property to a nonparticipating use; and
 - 3.** whether the owner is involved in negotiations with HUD or the Housing and Community Services Department regarding an extension of an expiring contract.
- C.** Owners of Federal Preservation Projects who have decided to Opt Out must consent to reasonable inspection of the property and inspection of the owner reports on file with HUD or the State of Oregon Housing and Community Services Department. These inspections are designed to facilitate the City's ability to assess the Fair Market Value of the property and evaluate status of the tenants, viability of transfer and/or continuation of a Section 8 agreement with HUD and other pertinent information.
- D.** To the extent allowed by HUD, owners of Federal Preservation Projects must maintain an available HUD Section 8 contract in good standing during the notice periods identified in this chapter as well as any condemnation proceeding commenced under ORS Chapter 35.
- E.** Owners of Federal Preservation Projects must refrain from taking any action, other than notifying HUD of the owner's intention to not renew the contract, that would preclude the City or its designee from succeeding to the contract or negotiating with the owner for purchase of the property during the notice periods identified in this Chapter as well as any condemnation proceeding commenced under ORS Chapter 35.

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- F. In addition to any other times, during the notice periods identified in this Chapter, the City may pursue preservation of the Federal Preservation Project through negotiation for purchase or through condemnation under ORS Chapter 35.

30.01.060 Federal Preservation Projects - Tenant Provisions.

(Replaced by Ordinance No. 174180; amended by Ordinance Nos. 186028 and 187380, effective November 13, 2015.)

- A. Owners of Federal Preservation Projects who have decided to Opt Out must provide to each affected building tenant a notice of 210 days of intent to do so if the owner is opting out of a long-term contract, and 150 days if the owner is opting out of a one-year extension to a long-term contract. The notice shall specify:
 - 1. whether the owner intends to withdraw the property from the Section 8 program;
 - 2. whether the owner intends to convert the participating property to a nonparticipating use; and
 - 3. whether the owner is involved in negotiations with HUD or the State of Oregon Housing and Community Services Department regarding an extension of an expiring contract
- B. Owners of Federal Preservation Projects who have decided to Opt Out may not disturb any tenancy other than for cause defined in the contract, for a period of 180 days after expiration of the contract, if the City has paid or arranged to pay to the owner on the first day of each month, the monthly subsidy that the owner was receiving under the contract.
- C. PHB shall identify and make available adequate financial resources for tenant relocation assistance for all tenants who experience involuntary displacement from Federal Preservation Properties. PHB shall request voluntary contributions to a tenant relocation fund from owners of Federal Preservation Projects who have decided to Opt Out.

30.01.070 Federal Preservation Projects - Civil Fines.

(Replaced by Ordinance No.174180; amended by Ordinance No. 186028, effective May 15, 2013.)

- A. An owner who fails to comply with any of the requirements specified in PCC 30.01.050 A.-E., tenant notice requirements in 30.01.060 A., or PHB procedures implementing those specified provisions of this Chapter, shall pay a civil fine. The fine shall be calculated in relation to the costs and damages caused by the owner's failure to comply, up to full replacement costs of each project-based Section 8 housing unit lost. Such civil fines shall be payable into a housing replacement fund

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to be established and managed by the City. If the civil fine is not received within the timeframes specified in the Administrative Procedures developed by PHB, the City may commence enforcement proceedings.

- B.** Any civil fines received shall be used only for creating replacement housing serving households at or below 50 percent MFI.

30.01.080 Local Preservation Projects - Tenant and City Notice Provisions.

(Amended by Ordinance No. 186028, effective May 15, 2013.)

- A.** When the owner of a Local Preservation Project takes action which will make the affordable housing no longer affordable, whether the affordability requirements which were established under prior agreement with the City, PDC or State have expired or are still in effect, the owner must provide a notice of 90 days to the City. The notice shall meet standards developed by PHB. During the 90-day notification period, the owner may not sell or contract to sell the property, but may engage in discussions with other interested parties. Within this period, the City or its designee may make an offer to purchase or attempt to coordinate a purchase by an owner committed to maintaining affordability.
- B.** Owners of Local Preservation Projects who have decided to take action described in 30.01.080 A., must provide a notice of 90 days to tenants. This shall be in addition to the City notice to be provided to the City under 30.01.080 A. During this notice period the Owner may not initiate a no-cause eviction. The notice must meet standards developed by PHB.

30.01.085 Portland Renter Additional Protections.

(Added by Ordinance No. 187380; amended by Ordinance Nos. 188219, 188519, 188558, 188628, 188849, 189421 and 189726, effective November 1, 2019.)

- A.** In addition to the protections set forth in the Residential Landlord and Tenant Act, the following additional protections apply to Tenants that have a Rental Agreement for a Dwelling Unit covered by the Act. For purposes of this chapter, unless otherwise defined herein, capitalized terms have the meaning set forth in the Act.
- B.** A Landlord may terminate a Rental Agreement without a cause or for a qualifying landlord reason specified in the Act only by delivering a written notice of termination (the "Termination Notice") to the Tenant of (a) not less than 90 days before the termination date designated in that notice as calculated under the Act; or (b) the time period designated in the Rental Agreement, whichever is longer. Not less than 45 days prior to the termination date provided in the Termination Notice, a Landlord shall pay to the Tenant, as relocation assistance, a payment ("Relocation Assistance") in the amount that follows: \$2,900 for a studio or single room occupancy ("SRO") Dwelling Unit, \$3,300 for a one-bedroom Dwelling Unit, \$4,200 for a two-bedroom Dwelling Unit and \$4,500 for a three-bedroom or larger

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Dwelling Unit. For purposes of this Subsection, a Landlord that declines to renew or replace an expiring Rental Agreement is subject to the provisions of this Subsection. The requirements of this Subsection are intended to apply per Dwelling Unit, not per individual Tenant.

- C. As allowed by the Act, a Landlord may not increase a Tenant's Rent or Associated Housing Costs by 5 percent or more over a rolling 12-month period unless the Landlord gives notice in writing (the "Increase Notice") to each affected Tenant: (a) at least 90 days prior to the effective date of the Rent increase; or (b) the time period designated in the Rental Agreement, whichever is longer. The Increase Notice must specify the amount of the increase, the amount of the new Rent or Associated Housing Costs and the date, as calculated under the Act, when the increase becomes effective. If, within 45 calendar days after a Tenant receives an Increase Notice indicating a Rent increase of 10 percent or more within a rolling 12-month period and a Tenant provides written notice to the Landlord of the Tenant's request for Relocation Assistance (the "Tenant's Notice"), then, within 31 calendar days of receiving the Tenant's Notice, the Landlord shall pay to the Tenant Relocation Assistance in the amount that follows: \$2,900 for a studio or SRO Dwelling Unit, \$3,300 for a one-bedroom Dwelling Unit, \$4,200 for a two-bedroom Dwelling Unit and \$4,500 for a three-bedroom or larger Dwelling Unit. After the Tenant receives the Relocation Assistance from the Landlord, the Tenant shall have 6 months from the effective date of the Rent increase (the "Relocation Period") to either: (i) pay back the Relocation Assistance and remain in the Dwelling Unit and, subject to the Act, shall be obligated to pay the increased Rent in accordance with the Increase Notice for the duration of the Tenant's occupancy of the Dwelling Unit; or (ii) provide the Landlord with a notice to terminate the Rental Agreement in accordance with the Act (the "Tenant's Termination Notice"). In the event that the Tenant has not repaid the Relocation Assistance to the Landlord or provided the Landlord with the Tenant's Termination Notice on or before the expiration of the Relocation Period, the Tenant shall be in violation of this Subsection. For purposes of this Subsection, a Landlord that conditions the renewal or replacement of an expiring Rental Agreement on the Tenant's agreement to pay a Rent increase of 10 percent or more within a rolling 12-month period is subject to the provisions of this Subsection. For purposes of this Subsection, a Landlord that declines to renew or replace an expiring Rental Agreement on substantially the same terms except for the amount of Rent or Associated Housing Costs terminates the Rental Agreement and is subject to the provisions of this Subsection. The requirements of this Subsection are intended to apply per Dwelling Unit, not per individual Tenant. For purposes of this Subsection, a Tenant may only receive and retain Relocation Assistance once per tenancy per Dwelling Unit.
- D. A Landlord shall include a description of a Tenant's rights and obligations and the eligible amount of Relocation Assistance under this Section 30.01.085 with each and any Termination Notice, Increase Notice, and Relocation Assistance payment.

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- E.** A Landlord shall provide notice to the Portland Housing Bureau (PHB) of all payments to Tenants of Relocation Assistance within 30 days of making such payments. This Subsection shall be effective beginning May 1, 2018.
- F.** For the purposes of this Section 30.01.085, the expiration of Rent concessions specified in the Rental Agreement is not considered a substantial change to a Rental Agreement.
- G.** For the purposes of this Section 30.01.085 and determining the amount of Relocation Assistance a Landlord shall pay, a Rental Agreement for a single bedroom in a Dwelling Unit as defined by PCC 33.910 is considered a SRO Dwelling Unit.
- H.** For the purposes of this Section 30.01.085 and determining the amount of Relocation Assistance a Landlord shall pay, if a Landlord is paying relocation assistance required by the Act and Relocation Assistance required by Section 30.01.085 to the Tenant for the same Termination Notice, the Relocation Assistance required by Section 30.01.085 may be reduced by the relocation assistance required by the Act if both payments are paid at the same time and as a single payment.
- I.** The provisions of this Section 30.01.085 that pertain to Relocation Assistance do not apply to the following so long as the Landlord has submitted a required exemption application form to PHB for which PHB shall have issued an exemption acknowledgement letter, a copy of which the Landlord shall have provided to the Tenant:

 - 1. Rental Agreements for week-to-week tenancies;
 - 2. Tenants that occupy the same Dwelling Unit as the Landlord;
 - 3. Tenants that occupy one Dwelling Unit in a Duplex where the Landlord's principal residence is the second Dwelling Unit in the same Duplex;
 - 4. Tenants that occupy an Accessory Dwelling Unit that is subject to the Act in the City of Portland so long as the owner of the Accessory Dwelling Unit lives on the site, or Tenancies where the owner occupies the Accessory Dwelling Unit and the Tenant occupies a Dwelling Unit on the site;
 - 5. a Landlord that temporarily rents out the Landlord's principal residence during the Landlord's absence of not more than 3 years;
 - 6. a Landlord that temporarily rents out the Landlord's principal residence during the Landlord's absence due to active duty military service;
 - 7. a Dwelling Unit where the Landlord is terminating the Rental Agreement in order for an Immediate Family member to occupy the Dwelling Unit;

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8. a Dwelling Unit regulated or certified as affordable housing by a federal, state or local government is exempt from paying Relocation Assistance for a Rent increase of 10 percent or more within a rolling 12-month period:
- a. so long as such increase does not increase a Tenant's portion of the Rent payment by 10 percent or more within a rolling 12-month period; or
 - b. in Lease Agreements where the Rent or eligibility is periodically calculated based on the Tenant's income or other program eligibility requirements and a Rent increase is necessary due to program eligibility requirements or a change in the Tenant's income.

This exemption by Subsection 30.01.085 I.8. does not apply to private market-rate Dwelling Units with a Tenant who is the recipient of a federal, state, or local government voucher;

This exemption by Subsection 30.01.085 I.8. applies to Rent increases and does not apply to Termination Notices;

9. a Dwelling Unit that is subject to and in compliance with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
10. a Dwelling Unit rendered immediately uninhabitable not due to the action or inaction of a Landlord or Tenant;
11. a Dwelling Unit rented for less than 6 months with appropriate verification of the submission of a demolition permit prior to the Tenant renting the Dwelling Unit;
12. a Dwelling Unit where the Landlord has provided a Fixed Term Tenancy and notified the Tenant prior to occupancy, of the Landlord's intent to sell or permanently convert the Dwelling Unit to a use other than as a Dwelling Unit subject to the Act.

A Landlord that authorizes a property manager that is subject to, and manages property in accordance with ORS 696, to manage a Dwelling Unit, does not waive a Dwelling Unit exemption as a result of the collective number of Dwelling Units managed by such a property manager. For purposes of the exemptions provided in this Subsection, "Dwelling Unit" is defined by PCC 33.910, and not by ORS 90.100. For purposes of the exemptions provided in this Subsection, "Accessory Dwelling Unit" is defined by PCC 33.205. For purposes of the exemptions provided in this Subsection, "Duplex" is defined by PCC 33.910. For purposes of the

exemptions provided in this Subsection, “Immediate Family” is defined by PHB in administrative rules.

- J.** A Landlord that fails to comply with any of the requirements set forth in this Section 30.01.085 shall be liable to the Tenant for an amount up to 3 times the monthly Rent as well as actual damages, Relocation Assistance, reasonable attorney fees and costs (collectively, "Damages"). Any Tenant claiming to be aggrieved by a Landlord's noncompliance with the foregoing has a cause of action in any court of competent jurisdiction for Damages and such other remedies as may be appropriate.
- K.** In carrying out the provisions of this Section 30.01.085, the Director of PHB, or a designee, is authorized to adopt, amend and repeal administrative rules to carry out and administer the provisions of this Section 30.01.085.

30.01.086 Evaluation of Applicants for Dwelling Units.

(Added by Ordinance No. 189580; amended by Ordinance No. 189714, effective March 1, 2020.)

A. Applicability.

In addition to the protections set forth in the Oregon Residential Landlord and Tenant Act (“Act”) and in Sections 30.01.085 and 30.01.087, the following additional Tenant protections regarding Screening Criteria apply to Rental Agreements for a Dwelling Unit covered by the Act. For purposes of this Section, unless otherwise defined in this Section or elsewhere in Chapter 30, capitalized terms have the meaning set forth in the Act.

In changing some terms from the Fair Housing Act, such as the term “Disability,” the City preserves the meaning of the Fair Housing Act while utilizing updated terminology that aligns with the City’s values.

B. Definitions. For purposes of this chapter, unless otherwise defined in this subsection, capitalized terms have the meaning set forth in the Act.

- 1.** “**Accessible Dwelling Unit**” means a Dwelling Unit that qualifies as a “Type A Unit” pursuant to the Oregon Structural Building Code and ICC A117.1.
- 2.** “**Accommodation**” means a reasonable accommodation requested pursuant to the Fair Housing Act, as amended in 1988 (42 U.S.C. § 3601) et seq. (“Fair Housing Act”), at 24 CFR § 100.204.
- 3.** “**Applicant**” means a person applying to reside in a Dwelling Unit. When there are multiple persons who will reside in common within a Dwelling Unit, Applicant shall refer in common to those members of the household

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who intend to contribute financially to payment of the Rent and to sign the lease or Rental Agreement.

4. **“Dwelling Unit”** has the meaning given in ORS 90.100, as amended from time to time.
5. **“Disability”** has the meaning given to “handicap” as defined in the Fair Housing Act, 24 C.F.R § 100.204, as amended from time to time.
6. **“Mobility Disability”** or **“Mobility Disabled,”** with respect to a person, means a Disability that causes an ongoing limitation of independent, purposeful, physical movement of the body or one or more extremities and requires a modifiable living space because of, but not limited to, the need for an assistive mobility device.
7. **“Modification”** means a reasonable modification requested pursuant to the Fair Housing Act, 24 C.F.R § 100.203, pertaining to the physical characteristics of a Dwelling Unit.
8. **“Multnomah County Coordinated Access System”** means the system established by Multnomah County, Home Forward, the Joint Office of Homeless Services, and the City of Portland, and community partners to coordinate the referral and prioritization of high priority applicants for available Dwelling Units regulated as affordable housing by a federal, state or local government.
9. **“Rules of Residency”** means an agreement that a Landlord (as defined in the Act) may require prospective Tenants of the Landlord’s Dwelling Unit to acknowledge and sign that describes rules of conduct, and the rights and obligations of all adults residing in a Dwelling Unit. The Rules of Residency may be separate from or incorporated into a Rental Agreement and must comply with ORS 90.262.
10. **“Screening Criteria”** means a written statement of any factors a Landlord considers in deciding whether to accept or reject an Applicant and any qualifications required for acceptance. “Screening or admission criteria” includes, but is not limited to, the rental history, character references, public records, criminal records, credit reports, credit references and incomes or resources of the Applicant.
11. **“Supplemental Evidence”** means any written information submitted by the Applicant in addition to that provided on the Landlord’s form application that the Applicant believes to be relevant to the Applicant’s predicted performance as a Tenant.

C. Tenant Application Process; Generally.

1. Notice of Dwelling Unit Availability; Notice Content.

a. If a Landlord advertises a Dwelling Unit’s availability, the Landlord must publish notices for rental of the available Dwelling Unit at least 72 hours prior to the start of the date and time the Landlord will begin processing applications (“Open Application Period”). The notice must specify the following:

- (1)** When the Landlord will begin to process applications;
- (2)** A description of the factors the Landlord will consider in evaluating Applicants if the Landlord intends to charge a screening fee; and
- (3)** Whether the available unit is an Accessible Dwelling Unit.

b. The Landlord’s Notice may incorporate this information or may provide an address, website address, internet link or other method of communicating this information to prospective Tenants.

2. Order of Processing Applications.

a. Applications Received in Response to an Advertised Notice.

- (1)** At the start of the Open Application Period, a Landlord must digitally or manually record the date and time the Landlord received each complete application.
- (2)** With regard to any applications received earlier than the Open Application Period, the Landlord must digitally or manually record the date and time of such complete applications as 8 hours after the start of the Open Application Period.
- (3)** A Landlord may simultaneously process multiple applications but must accept, conditionally accept, or deny Applicants in order of receipt.
- (4)** A Landlord owning Dwelling Units within the City of Portland, may refuse to process the application of an Applicant who has verifiable repeated Rental Agreement violations with this Landlord if the most recent violation occurred within 365 days before the Applicant’s submission date.

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- (5) A Landlord may refuse to process an application that is materially incomplete, that fails to include information concerning an Applicant's identification, income, or upon which an Applicant has intentionally withheld or misrepresented required information.
 - (6) Within 5 business days of receiving a request from an Applicant, a Landlord must provide the Applicant with a record of the date and time the Landlord received the complete Application.
- b.** Applications Processed from a Waitlist.
- (1) If a Landlord maintains a waitlist for filling vacancies instead of advertising notice of vacancies, the Landlord must add names to the waitlist in the order of receipt.
 - (2) When members of a waitlist apply for a vacancy, a Landlord may simultaneously process multiple applications but must accept, conditionally accept, or deny Applicants in order of receipt of a completed application.
- c.** Applications for Accessible Dwelling Units.
- (1) When, during the first 8 hours of the Open Application Period, a Landlord receives an application for an Accessible Dwelling Unit from an Applicant with a household member that is Mobility Disabled, the Landlord must give priority to such application and accept, conditionally accept, or deny the Applicant prior to considering other Applicants.
 - (2) If there are multiple Applicants for an Accessible Dwelling Unit with a household member that is Mobility Disabled, the Landlord must accept, conditionally accept, or deny such applications in order of receipt, but prior to processing completed applications for Applicants without household members that are Mobility Disabled.
- d.** The requirements of this Subsection C. do not apply to applications for Dwelling Units regulated as affordable housing by a federal, state or local government for households that earn no more than 80 percent of the median household income and are leased through a lottery or preference process, or through the Multnomah County Coordinated Access System.

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e. Upon a Landlord’s approval and the Applicant’s acceptance of the Dwelling Unit, the Applicant and the Landlord must enter into a Rental Agreement. The Landlord may require all adult Tenants or persons intending to occupy the Dwelling Unit to sign Rules of Residency.

3. Content of Landlord Application Forms. Landlord Application forms for rental of a vacant Dwelling Unit must include the following:

- a. An opportunity on the application for an Applicant to affirmatively indicate a Mobility Disability or other Disability Status;
- b. A City of Portland Notice to Applicants relating to a Tenant’s right to request a Modification or Accommodation;
- c. A City of Portland Notice to Applicants referencing where an Applicant could obtain the Portland Housing Bureau (PHB)’s Statement of Applicant Rights;
- d. If the Landlord charges a screening fee, a description of the Landlord’s Screening Criteria and evaluation process; and
- e. An opportunity for Applicant to include Supplemental Evidence for the Landlord’s consideration to mitigate potentially negative screening results.

D. General Screening Process. Landlords must apply the General Screening Process described in this Subsection D. but may screen Applicants using additional Screening Criteria. If applying additional Screening Criteria, the Landlord must: 1) use a Screening Criteria no more prohibitive to the Tenant than the low- barrier criteria (“Low-Barrier Criteria”) described in Subsection E.; or 2) use a Screening Criteria of the Landlord’s choosing (“Landlord’s Screening Criteria”); however, when using the Landlord’s Screening Criteria, a Landlord must conduct an individual assessment (“Individual Assessment”) in accordance with the requirements of Subsection F, before denying an Applicant.

A Landlord must comply with the following General Screening Process:

1. Applicant Identification. A Landlord may not reject an application as incomplete because an Applicant or member of the Applicant’s household does not produce a social security number or prove lawful presence in the U.S. A Landlord may not inquire about the immigration status of a member of the Applicant’s household or require proof of their lawful presence in the U.S. A Landlord must accept any of the following, or a combination thereof, to verify the name, date of birth and photo of the Applicant:

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- a. Evidence of Social Security Number (SSN Card);
 - b. Valid Permanent Resident Alien Registration Receipt Card;
 - c. Immigrant Visa;
 - d. Individual Tax Payer Identification Number (ITIN);
 - e. Non-immigrant visa;
 - f. Any government-issued identification regardless of expiration date;
or
 - g. Any non-governmental identification or combination of identifications that would permit a reasonable verification of identity.
2. Financial Responsibility of Applicant. When there are multiple persons who will reside in common within a Dwelling Unit, the persons may choose which adults will be the Applicants financially responsible for the Dwelling Unit and which will be the Tenants with no financial responsibility (“Non-Applicant Tenant”). The Landlord may screen only an Applicant for financial responsibility, and not a Non-Applicant Tenant
- a. A Landlord may require an Applicant to demonstrate a monthly gross income of up to but not greater than 2.5 times the amount of the Rent for the Dwelling Unit when the monthly Rent amount is below the maximum monthly rent for a household earning no more than 80 percent of the median household income as published annually by the Portland Housing Bureau.
 - b. A Landlord may require an Applicant to demonstrate a monthly gross income of up to, but not greater than 2 times the amount of the Rent for the Dwelling Unit when the monthly Rent amount is at or above the maximum monthly rent for a household earning no more than 80 percent of the median household income as published annually by the Portland Housing Bureau.
 - c. For the purposes of this subsection, a Landlord’s evaluation of an Applicant’s income to Rent ratio must:
 - (1) Include all income sources of an Applicant, including, but not limited to, wages, rent assistance (non-governmental only), and monetary public benefits. The Landlord may also choose to consider verifiable friend or family assistance;

8. Appeals. A Landlord must offer the Applicant an opportunity for appeal for 30 days following the denial of an Application. The Landlord's appeal process must:
 - a. Provide the Applicant the opportunity to correct, refute or explain negative information that formed the basis of the Landlord's denial;
 - b. Prequalify the Applicant for rental opportunities at the Landlord's properties for the 3 months following the date a Landlord approves an application reviewed on appeal; and
 - c. Waive the Applicant's screening fee for the 3 months following the approved appeal. Prior to waiving the screening fee, the Landlord may require the Applicant to self-certify that no conditions have materially changed from those described in the Landlord's approved application.

E. Applicant Evaluation; Encouraging Most Inclusive Evaluation Process. If applying a Screening Criteria to an Applicant in addition to the General Screening Process, a Landlord is encouraged to apply criteria consistent with, or less prohibitive than, the Low-Barrier Criteria described in Subsection E. below. If the Landlord applies any single criterion more prohibitive than any of the Low Barrier Criteria listed in Subsection E.1.a.-c. below, then the Landlord must apply the Individual Assessment process as described in Subsection F. In applying Low-Barrier Criteria, Landlords must comply with all applicable federal, state, and local laws.

1. Low-Barrier Screening Criteria. In adopting Low-Barrier Criteria, Landlords agree not to reject Applicants for:
 - a. Criminal History:
 - (1) An arrest that did not result in conviction, unless the resulting charge is pending on the date of the Application;
 - (2) Participation in or completion of a diversion or a deferral of judgment program;
 - (3) A conviction that has been judicially dismissed, expunged, voided, or invalidated;
 - (4) A conviction for a crime that is no longer illegal in the State of Oregon;
 - (5) A conviction or any other determination or adjudication issued through the juvenile justice system;

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- (6) A criminal conviction for misdemeanor offenses for which the dates of sentencing are older than 3 years from the date of the Application, excluding court-mandated prohibitions that are present at the property for which the Applicant has applied; or
- (7) A criminal conviction for a felony offense for which the dates of sentencing are older than 7 years from the date of the Application, excluding court-mandated prohibitions that are present at the property for which the Applicant has applied.

b. Credit History:

- (1) A credit score of 500 or higher;
- (2) Insufficient credit history, unless the Applicant in bad faith withholds credit history information that might otherwise form the basis for a denial;
- (3) Negative information provided by a consumer credit reporting agency indicating past-due unpaid obligations in amounts less than \$1,000;
- (4) Balance owed for prior rental property damage in an amount less than \$500;
- (5) A Bankruptcy filed by the Applicant that has been discharged;
- (6) A Chapter 13 Bankruptcy filed by the Applicant under an active repayment plan; or
- (7) Medical or education/vocational training debt.

c. Rental History:

- (1) An action to recover possession pursuant to ORS 105.105 to 105.168 if the action:
 - (a) Was dismissed or resulted in a general judgment for the Applicant before the Applicant submitted the application;

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consider Supplemental Evidence provided by the Applicant if provided at the time of application submittal.

F. Individual Assessment. A Landlord that applies the Landlord’s Screening Criteria which is more prohibitive than the Low-Barrier Criteria as described in Subsection E. above, must conduct an Individual Assessment for any basis upon which the Landlord intends to deny an application, before issuing a denial to an Applicant.

1. Consideration of Supplemental Evidence; Individual Assessment. In evaluating an Applicant using the Individual Assessment, a Landlord must accept and consider all Supplemental Evidence, if any is provided with a completed application to explain, justify or negate the relevance of potentially negative information revealed by screening. In evaluating an Applicant using the Individual Assessment, the Landlord must also consider:

- a.** The nature and severity of the incidents that would lead to a denial;
- b.** The number and type of the incidents;
- c.** The time that has elapsed since the date the incidents occurred; and
- d.** The age of the individual at the time the incidents occurred.

2. Denial; Individual Assessment. After performing an Individual Assessment, a Landlord may deny the Applicant, so long as:

- a.** The denial is non-discriminatory in accordance with the Fair Housing Act;
- b.** The denial is in accordance with Subsection D. of this Code and all other applicable federal, state, and local laws;
- c.** The Landlord provides a written “Notice of Denial” to the Applicant within 2 weeks of the denial that meets the requirements of ORS 90.304, Subsection D.4. above, and includes an explanation of the basis for denial, an explanation of the reasons that the Supplemental Evidence did not adequately compensate for the factors that informed the Landlord’s decision to reject the application; and
- d.** The notice of denial is issued to the Applicant by the Landlord.

G. Exemptions

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1. Section 30.01.086 does not apply to a process for leasing for a Dwelling Unit that is:
 - a. Regulated as affordable housing by a federal, state or local government for households that earn no more than 80 percent of the median household income and is subject to the Multnomah County Coordinated Access System or formal referral agreement between a Landlord and a non-profit service provider or government agency working to place low income or vulnerable Tenants into housing;
 - b. Not rented to, or advertised for rental to the general public, including advertisements on online platforms with or without a fee; or
 - c. Shared with a Landlord using the Dwelling Unit as a primary residence, where the Dwelling Unit is defined by PCC 33.910, and not by ORS 90.100; or shared with an existing Tenant with a separate Rental Agreement for the same Dwelling Unit, where the Dwelling Unit is defined by PCC 33.910, and not by ORS 90.100; or
 - d. Tenancies where the Applicant would occupy one Dwelling Unit in a Duplex where the Landlord's principal residence is the second Dwelling Unit in the same Duplex; or
 - e. Tenancies where the Applicant would occupy an Accessory Dwelling Unit, as defined by PCC 33.205, that is subject to the Act in the City of Portland so long as the owner of the Accessory Dwelling Unit lives on the site, or Tenancies where the owner occupies the Accessory Dwelling Unit and the Dwelling Unit the Applicant would occupy is on the site.
 2. Wherever local, state, or federal funding or loan requirements for Tenant screening conflict with any portion of Section 30.01.086, the funding or loan requirements will take precedence over only those portions in conflict.
- H. Damages.** A Landlord that fails to comply with any of the requirements set forth in this Section shall be liable to the Applicant for an amount up to \$250 per violation plus actual damages, reasonable attorney fees and costs (collectively, "Damages"). Any Applicant materially harmed by a Landlord's intentional noncompliance with the foregoing has a cause of action in any court of competent jurisdiction for Damages and such other remedies as may be appropriate.
- I. Delegation of Authority.** In carrying out the provisions of this Section 30.01.086, the Director of PHB, or a designee, is authorized to adopt, amend and repeal

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administrative rules to carry out and administer the provisions of this Section 30.01.086.

30.01.087 Security Deposits; Pre-paid Rent.

(Added by Ordinance No. 189581; amended by Ordinance No. 189715, effective March 1, 2020.) In addition to the protections set forth in the Oregon Residential Landlord and Tenant Act (“Act”) and in Sections 30.01.085 and 30.01.086, the following additional Tenant protections regarding Security Deposits apply to Rental Agreements for a Dwelling Unit covered by the Act. For purposes of this Section, unless otherwise defined in this Section or elsewhere in Chapter 30, capitalized terms have the meaning set forth in the Act.

A. Amount of Security Deposit.

1. If a Landlord requires, as a condition of tenancy, a Security Deposit that includes last month’s Rent, a Landlord may not collect as an additional part of the Security Deposit more than an amount equal to one-half of one month’s Rent.
2. If a Landlord does not require last month’s Rent, a Landlord may not collect more than an amount equal to one month’s Rent as a Security Deposit.
3. If a Landlord conditionally approves an application subject to an Applicant’s demonstration of financial capacity or to offset risk factors identified by the Applicant screening for tenancy as described in Section 30.01.086, the Landlord may require payment of an amount equal to one-half of one month’s Rent as a Security Deposit in addition to the other amounts authorized in this subsection. The Landlord must allow a Tenant to pay any such additional Security Deposit in installments over a period of up to 3 months in installment amounts reasonably requested by the Tenant.

B. Bank Deposit of Tenant Funds.

1. Within 2 weeks following receipt of a Tenant’s funds paid as a Security Deposit or for last-month’s Rent, a Landlord shall deposit all of such funds into a secure bank account segregated from the Landlord’s personal and business operating accounts. If the account is an interest-bearing account, all interest shall accrue proportionately to the benefit of the Tenant and shall be returned to the Tenant with the unused security deposit in accordance with Subsection B.2. below. If the account bears interest, the Landlord is required to pay such interest in full, minus an optional 5 percent deduction for administrative costs, to the Tenant unless it is used to cover any claims for damage. For interest bearing accounts, the Landlord must provide a receipt of the account and any interest earned at the Tenant’s request, no more than once per year. The Rental Agreement must reflect the name and address of the financial institution at which the Security Deposit is

deposited and whether the Security Deposit is held in an interest-bearing account.

2. In accordance with ORS 90.300, a Landlord shall provide a Tenant with a written accounting of the application of any Security Deposit funds to costs of repair or replacement within 30 days following the Landlord's use of these funds and shall refund unapplied sums to the Tenant not later than 31 days following termination of the tenancy.

C. Amounts Withheld for Repair

1. A Landlord may only apply Security Deposit funds for the repair and replacement of those fixtures, appliances, equipment or personal property that are identified in the Rental Agreement and to which a depreciated value is attached in accordance with the depreciation schedule published on the Portland Housing Bureau website. A Landlord may provide documentation reasonably acceptable to a Tenant demonstrating why a different calculation is justified for a particular item.
2. A Landlord may apply Security Deposit amounts only to actual costs reasonably incurred to repair the premises to their condition existing at the commencement of the Rental Agreement ("Commencement Date"); provided however, that a Landlord may not apply any portion of the Security Deposit to costs incurred for routine maintenance; for ordinary wear and tear; for replacement of fixtures, appliances, equipment, or personal property that failed or sustained damage due to causes other than the Tenant's acts or omissions; or for any cost that is reimbursed by a Landlord's property or comprehensive general liability insurance or by a warranty.
3. Any Landlord-provided fixtures, appliances, equipment, or personal property, the condition of which a Landlord plans to be covered by the Tenant Security Deposit, shall be itemized by description and full replacement cost and incorporated into the Rental Agreement.
4. A Landlord may not apply the Tenant Security Deposit to the cost of cleaning or repair of flooring material except as expressly provided in ORS 90.300(7)(c) and only if additional cleaning or replacement is necessitated by use in excess of ordinary wear and tear and is limited to the costs of cleaning or replacement of the discrete impacted area and not for the other areas of the Dwelling Unit.
5. A Landlord may not apply the Tenant Security Deposit to the costs of interior painting of the leased premises, except to repair specific damage

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caused by the Tenant in excess of ordinary wear and tear, or to repaint walls that were painted by the Tenant without permission.

D. Condition Reports

1. Within 7 days following the Commencement Date, a Tenant may complete and submit to the Landlord a Condition Report on a form provided by the Landlord, noting the condition of all fixtures, appliances, equipment, and personal property listed in the Rental Agreement, and noting damage (the “Condition Report”). Unless the Landlord disputes the Condition Report, and the Tenant and the Landlord obtain third-party validation of the condition of the Dwelling Unit, the Tenant’s Condition Report shall establish the baseline condition of the Dwelling Unit as of the Commencement Date against which the Landlord will be required to assess any Dwelling Unit repair or replacement needs identified in a Final Inspection that will result in costs that may be deducted from the Tenant Security Deposit as of termination of the Rental Agreement (the “Termination Date”). An unresolved dispute as to the condition of the Dwelling Unit as of the Commencement Date shall be resolved in favor of the Tenant. If the Tenant does not complete and submit a Condition Report to the Landlord within 7 days of the Commencement Date then the Landlord shall thereafter complete and provide to the Tenant a Condition Report including digital photographs of the premises within 17 days following the Commencement Date. The Landlord shall update the Condition Report to reflect all repairs and replacements impacting the Dwelling Unit during the term of the Rental Agreement and shall provide the updated Condition Report to the Tenant.
2. Within 1 week following the Termination Date a Landlord shall conduct a walk-through of the Dwelling Unit at the Tenant’s option, with the Tenant or Tenant’s representative, to document any damage beyond ordinary wear and tear not noted on the Condition Report (the “Final Inspection”). The Tenant, or the Tenant’s representative, may choose to be present for the Final Inspection. The Landlord must give notice of the date and time of the Final Inspection at least 24 hours in advance to the Tenant.
3. A Landlord shall prepare an itemization describing any repair and replacement in accordance with the fixture, appliances, equipment, or personal property identified in the Rental Agreement. The Landlord shall document any visual damage in excess of normal wear and tear with photographs that the Landlord shall provide to the Tenant with a written accounting in accordance with ORS 90.300 (12). To the extent that a Landlord seeks to charge labor costs greater than \$200 to a Tenant, the Landlord must provide documentation demonstrating that the labor costs are reasonable and consistent with the typical hourly rates in the

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metropolitan region. A Landlord may not charge for the repair of any damage or replacement of malfunctioning or damaged appliances, fixtures, or equipment, or personal property noted on the Condition Report.

- E. Notice of Rights.** Contemporaneously with the delivery of the written accounting required by ORS 90.300 (12), a Landlord must also deliver to the Tenant a written notice of rights regarding Security Deposits (“Notice of Rights”). Such Notice of Rights must specify all Tenant’s right to damages under this Section. The requirement in this Subsection may be met by delivering a copy of this Section to the Tenant and contact information for the nearest Legal Aid Services of Oregon, or online and physical address of the Oregon State Bar.
- F. Rent Payment History.** Within 5 business days of receiving a request from a Tenant or delivering a Termination Notice, a Landlord must provide a written accounting to the Tenant of the Tenant’s Rent payment history that covers up to the prior 2 years of tenancy, as well as a fully completed Rental History Form available on the Portland Housing Bureau website. The Landlord shall also provide the Tenant with an accounting of the Security Deposit as soon as practicable but no later than within the timeframes prescribed by ORS 90.300.
- G. Damages.** A Landlord that fails to comply with any of the requirements of this Section shall be liable to the Tenant for an amount double to the amount of the Tenant’s Security Deposit, reasonable attorney fees, and costs (collectively, “Damages”). Any Tenant aggrieved by a Landlord’s noncompliance with the foregoing has a cause of action in any court of competent jurisdiction for Damages and such other remedies as may be appropriate.
- H. Delegation of Authority.** In carrying out the provisions of this Section 30.01.087, the Director of PHB, or a designee, is authorized to adopt, amend, and repeal administrative rules to carry out and administer the provisions of this Section 30.01.087.

30.01.090 City Subsidy Projects - Long-Term Affordability Requirements.

(Amended by Ordinance Nos. 186028, 187380 and 188440, effective July 8, 2017.)

- A.** City Subsidy Projects that in the future request and receive a City Subsidy from PDC, PHB or other City bureau or agency for the purpose of creating or preserving rental housing affordable to households below 80 percent of MFI, will be subject to a minimum of 60 year affordability contract requirements developed by PHB consistent with the implementing charge in Subsection 30.01.090 B. Notwithstanding the foregoing, City Subsidy Projects that receive a Rental Rehabilitation Conditional Grant will be subject to a minimum of 10 year affordability contract requirement in accordance with the Rental Rehabilitation Conditional Grant Product Guidelines.

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- B.** All City Bureaus and agencies administering affordable rental housing subsidy programs will be responsible for implementing this section. As the primary agency charged by the City to negotiate and confer affordable housing subsidies, PHB will develop implementing strategies consistent with the 60 year affordability principles contained in this section, the Administrative Procedures Implementing Title 30.01 and the approved 1998/99 Consolidated Plan, Principle III (Ordinance No. 172259).

30.01.095 Partial and Full Exemptions of System Development Charges for Affordable Housing Developments.

(Added by Ordinance No. 183448; Amended by Ordinance Nos. 186712, 186744, 187380, 187975 and 189323, effective December 19, 2018.)

- A.** The purpose of this Section is to reduce the costs of developing permanent affordable housing by exempting system development charges for qualified affordable housing developments. This section advances a Council-recognized public policy goal to provide for a diversity of housing types to meet the needs of the citizens of the City.
- B.** The City will exempt qualified affordable housing developments from paying all or part of system development charges required by Code. The Applicant must apply for exemptions under this Section prior to the date the City issues the permit on the new development. Where new development consists of only part of one or more of the uses described in this Section, only that portion of the development that qualifies under this Section is eligible for an exemption. The balance of the new development that does not qualify for any exemption under this Section is subject to system development charges to the full extent authorized by Code or general ordinance. The Applicant has the burden to prove entitlement to exemptions so requested.
- C.** The City shall calculate exemptions in the manner authorized for calculating system development charges for rented and owner-occupied residential properties. Non-residential properties or the non-residential portion of mixed-use developments are not eligible for exemptions provided by this Section. Exemptions are applicable to the portions of residential properties that are directly used in providing housing for its low-income residents such as on-site manager units and shared space including but not limited to restrooms, community rooms and laundry facilities.
- D.** To obtain the exemption, the applicant must present to the City, at the time of Application, documentation from PHB that the development qualifies for the exemption pursuant to this Chapter. Applicant must also pay an administration fee per unit on rental and/or owner-occupied units as determined by PHB.
- E.** The City shall require the recording of real property covenants in the deed records for properties receiving exemptions under this Section in order to ensure

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compliance, or to provide remedies for failure to restrict units, or both. Deed restrictions may be used by PHB in order to restrict sale prices and rents charged for exempt units, or to provide remedies for failure to restrict units, or both.

F. Applicants shall meet the following affordable housing qualifications to be exempt from paying all or a portion of system development charges based on the type of housing provided:

1. Rental Units.

- a.** For purposes of this Section, "affordable" for rental housing means that the rent and expenses associated with occupancy such as utilities or fees, does not exceed 30 percent of the gross household income at the level of the rent restrictions.
- b.** The units receiving an exemption shall be affordable to households earning 60 percent or less of MFI at time of occupancy and shall be leased, rented or made available on a continuous basis to persons or households whose incomes are 60 percent or less of MFI, as adjusted by household size and as determined by HUD for the Portland Metropolitan Area, except as provided for below. Such units shall remain affordable for a period of 60 years.
- c.** Effective July 1, 2014, developments of new buildings in Old Town/Chinatown shall be eligible for exemption subject to the following conditions:
 - (1)** Units must be located in the Old Town/Chinatown Action Plan Focus Area;
 - (2)** Financial need must be verified through project pro forma underwriting conducted by the PDC;
 - (3)** All units shall remain affordable for a period of not less than 10 years, to persons or households whose incomes are 100 percent or less of MFI, as adjusted by household size and as determined by HUD for the Portland Metropolitan Area, and for not less than 5 years thereafter shall continue to remain affordable to persons or households whose incomes are 120 percent or less of MFI, as so described; and
 - (4)** The exemption granted by this Subsection shall not be available to developments for which a building permit application is filed on or after July 1, 2019, or after permit

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applications have been filed for development of 500 qualifying units, in the aggregate, whichever occurs first.

2. Owner-Occupied Units.

- a.** For the purposes of this Section, “Affordable” means that ownership units are sold to persons or households whose incomes are at or below 100 percent of MFI for a family of four as determined annually for the Portland Metropolitan Area by HUD, which income may be adjusted upward for households with more than four persons; and
- b.** The ownership units sell at or below the price limit as provided by Subsection 3.102.090 D.

- G.** Pursuant to Section 30.01.040, the PHB is responsible for enforcing property covenants and other agreements with applicants that are conditions of receiving exemptions provided by this Section. PHB may adopt, amend and appeal administrative rules, establish procedures, and prepare forms for implementation, administration and compliance monitoring consistent with the provisions of this Section.

In the event that an applicant violates the covenants, agreements or other requirements that were established by the City as a condition of approval of an exemption application, or the owner of the property wants to remove the affordability covenants of Subsection 30.01.095 F., the City shall terminate the exemption and make due and payable all previously exempt portions of system development charges based on rates in effect on the date of the submittal of a complete building permit application, plus accrued interest from the date of the issuance of the building permit to the date of the termination of the exemption calculated with the interim interest rate in effect on the date of the termination of the exemption as set by general ordinance pursuant to Section 17.12.140, and a processing fee of \$250 due to each City bureau exempting system development charges and to PHB as the administrator. The City may collect reinstated system development charges, processing fees, carrying charges and the actual costs of collections by recording a property lien pursuant to Title 22.

30.01.096 Partial and Full Exemptions of System Development Charges for Mass Shelters and Short-Term Housing.

(Added by Ordinance No. 189323, effective December 19, 2018.)

- A.** The purpose of this Section is to reduce the costs of developing permanent transitional housing in the form of mass shelters and short-term housing by exempting system development charges for qualified developments. This section advances a Council-recognized public policy goal of providing a continuum of safe

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and affordable housing opportunities including transitional housing, emergency shelters, and campgrounds/rest areas to meet the needs of Portland residents.

- B.** The City will exempt qualified mass shelter and short-term housing developments from paying all or part of system development charges required by Code. The applicant must apply for exemptions under this Section prior to the date the City issues the permit on the new development. Where new development consists of only part of one or more of the uses described in this Section, only that portion of the development that qualifies under this Section is eligible for an exemption. The balance of the new development that does not qualify for any exemption under this Section is subject to system development charges to the full extent authorized by Code or general ordinance. The applicant has the burden to prove entitlement to exemptions so requested.
- C.** The City shall calculate exemptions in the manner authorized for calculating system development charges. Exemptions are applicable to the portions of mass shelter and short-term housing projects that are directly used in providing shelter and services for their residents such as on-site manager facilities and shared space including but not limited to restrooms, kitchens, community rooms, social service facilities, and laundry facilities.
- D.** To obtain the exemption, the applicant must present to the City, at the time of application, documentation from the Joint Office of Homeless Services, or other designated agency, that the development qualifies for the exemption pursuant to this Chapter.
- E.** The applicant must provide permit drawings that clearly note the exemption, if granted, in order to ensure compliance. Alternatively, the drawings must provide remedies for failure to comply that are acceptable to the City. Permit drawings must state the following, “This project received SDC exemptions for mass shelters or short-term housing. The exemptions only apply to the mass shelter or short-term housing development and associated facilities including social services. If a future tenant improvement or change of occupancy creates a use that is not a mass shelter or short-term housing or associated service, system development charges will be assessed for the new use. It is the permittee’s responsibility to maintain proper documentation of the continued mass shelter or short-term housing use.”

30.01.100 Compliance and Enforcement.

(Amended by Ordinance No. 186028, effective May 15, 2013.)

- A.** PHB shall develop and implement procedures to enforce the provisions of this code. Such procedures should include, where feasible, record notice of the applicability of this code to affected properties, filing a lien to enforce the provisions of this code, and developing civil penalties or other enforcement provisions necessary or appropriate to enforce this code.

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- B.** The City Attorney’s Office may enforce the provisions of this code on behalf of the City in any court of competent jurisdiction or City administrative body.

30.01.110 No Restriction of Powers of Eminent Domain; Severability.

- A.** This Chapter shall not be construed to restrict the City’s existing authority to exercise powers of eminent domain through condemnation as outlined in state law.
- B.** If any part or provision of this Chapter, or application thereof to any person or circumstance, is held invalid, the remainder of this Chapter and the application of the provision or part thereof, to other persons not similarly situated or to other circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Chapter are severable.

30.01.120 Inclusionary Housing.

(Added by Ordinance No. 188163; amended by Ordinance Nos. 189071, 189213 and 189302, effective December 12, 2018.)

- A. Purpose Statement.** The purposes of the Inclusionary Housing (“IH”) Program are:
 - 1.** Increase the number of units available to households earning 80 percent or less of MFI, with an emphasis on households earning 60 percent or less of MFI;
 - 2.** Responsibly allocate resources to increase housing opportunities for families and individuals facing the greatest disparities;
 - 3.** Create affordable housing options in high opportunity neighborhoods, those with superior access to quality schools, services, amenities and transportation; and
 - 4.** Promote a wide range of affordable housing options with regard to size, amenities and location.
- B. Administration.**
 - 1.** PHB will certify whether the applicant’s proposed development meets the standards and any administrative requirements set forth in this Section.
 - 2.** PHB may adopt, amend and repeal Administrative Rules and prepare forms for the implementation, administration and compliance monitoring consistent with the provisions of this Section. The Director of PHB, or a designee, has authority to make changes to the Administrative Rules as is necessary to meet current program requirements. PHB Administrative

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Rules will set forth clear and objective criteria for determining whether a development meets the minimum standard of affordable units (“IH Units”).

3. PHB will review the Inclusionary Housing outcomes periodically in order to determine if the IH Program options and incentives in Subsection 30.01.120 C. are consistent with City goals and market conditions.

C. Financial Incentives. The following financial incentives are provided for the respective options of IH Program compliance:

1. When the proposed development will include 20 percent of the units or total number of bedrooms configured into IH Units at or below 80 percent MFI, or for developments outside of the Central City Plan District, 15 percent of the units or total bedrooms configured into IH units at or below 80 percent MFI for applications filed on or before December 31, 2020:
 - a. Ten-year property tax exemption in accordance with City Code Chapter 3.103 for the IH Units. If the development is in the Central City Plan district, as designated in City Code Chapter 33.510, and has a built or base FAR of 5:1 or greater the tax exemption applies to all residential units; and
 - b. Construction Excise Tax exemption for the IH Units in accordance with Subsection 6.08.060 A.2.
2. When the proposed development will include 10 percent of the units or total number of bedrooms configured into IH units at or below 60 percent MFI, or for developments outside the Central City Plan District, 8 percent of the units or total number of bedrooms configured into IH units at or below 60 percent MFI for applications filed on or before December 31, 2020:
 - a. Ten-year property tax exemption according to City Code Chapter 3.103 for the IH units. If the development is in the Central City Plan District, as designated in City Code Chapter 33.510, and has a built or base FAR of 5:1 or greater, the tax exemption applies to all residential units; and
 - b. Construction Excise Tax exemption for the IH Units in accordance with Subsection 6.08.060 A.2.; and
 - c. SDC exemption for the IH Units in accordance with Section 30.01.095.
3. When the proposed development elects to construct IH Units offsite:

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- a. Construction Excise Tax exemption for the Receiving Site's IH Units in accordance with Subsection 6.08.060 A.2.; and
 - b. SDC exemption for the Receiving Site's IH Units in accordance with Section 30.01.095.
4. When the applicant elects to dedicate IH Units in an existing development, there are no financial incentives provided under Section 30.01.120.
5. When the applicant elects the fee-in-lieu option, there are no financial incentives provided under Section 30.01.120.
- D. Standards.** Developments providing IH Units must satisfy the following standards:
 1. The IH Units must meet clear and objective administrative criteria that ensure a reasonable equivalency between the IH Units and the market-rate units in the development;
 2. The IH Units shall remain affordable for a period of 99 years;
 3. Owners of property subject to the IH Program are required to sign a Regulatory Agreement to be recorded with the property where the IH Units are located;
 4. The owner or a representative shall submit annual documentation of tenant income and rents for the IH Units to PHB;
 5. The City may inspect the IH Units for fire, life and safety hazards and for compliance with IH Program requirements and may inspect files documenting tenant income and rents of the IH Units; and
 6. Subsequent failure to meet the requirements of the IH Program previously determined at the time the permit is reviewed will result in a penalty equal to the amount of the current fee-in-lieu calculation plus accrued interest, and could result in legal action if unpaid.
 7. When the IH Units are configured based on a percentage of the total number of bedrooms within the proposed development, the IH Units must be provided in 2 or more bedrooms per unit.
- E.** To the extent that a financial incentive as set forth in this Section is not available to a development that otherwise complies with City Code Chapter 33.245, the IH Program will not be applicable to the development. If the IH Program is not applicable to the development, PHB will provide a letter certifying that the development is not subject to any IH Program requirements.

F. Fee-In-Lieu. When the applicant elects the fee-in-lieu option, the fee-in-lieu per gross residential and residential related square foot (GSF) of the proposed development is:

1. For developments in zones outside the Central City Plan District

Fee per GSF on or before December 31, 2020
\$19
Fee per GSF after December 31, 2020
\$23

2. For developments in zones within the Central City Plan District

Fee per GSF
\$27

3. For Bonus FAR in non-residential developments

Fee Schedule for Bonus FAR for non-residential occupancy/use
\$24 per square foot of Bonus FAR

30.01.130 Manufactured Dwelling Park Affordable Housing Density Bonus.

(Added by Ordinance No. 189783, effective December 4, 2019.)

A. Purpose Statement. By implementing the Manufactured Dwelling Park Affordable Housing Bonus Density Program (the “MDP Program”), the City has the following goals:

1. Support the preservation of lower-cost market rate housing in manufactured dwelling parks; and
2. Ensure there are a variety of housing types available to low income and otherwise vulnerable people.

B. PHB will certify whether a manufactured dwelling park meets the affordability standards in PCC 33.120.205 F.2. The PHB Director is authorized to adopt administrative rules to enforce the affordability standards.

C. Manufactured dwellings parks approved for the MDP Program must satisfy the following criteria:

1. Manufactured dwellings shall remain affordable for a period of 99 years.
2. Owners are required to sign a Regulatory Agreement to be recorded on the title to the property receiving a density bonus under the MDP Program.

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3. Owners shall submit annual documentation of tenant income and rents for the affordable manufactured dwellings to PHB.
 4. The Regulatory Agreement will authorize PHB to inspect files documenting tenant income and rents of the affordable manufactured dwellings for compliance with MDP Program requirements.
 5. Failure to meet the requirements of the MDP Program will result in a penalty, and could result in legal action.
- D.** The Director of PHB or a designee may adopt, amend and repeal Administrative Rules, and establish procedures, and prepare forms for the implementation, administration and compliance monitoring consistent with the provisions of this Section. The Director of PHB, or a designee, has authority to make changes to the Administrative Rules as is necessary to meet current program requirements.

30.01.140 Multi-Dwelling Zones Deeper Housing Affordability FAR Density Program.
(Added by Ordinance No. 189805, effective March 1, 2020.)

- A. Purpose Statement.** The City intends to implement the Multi-Dwelling Zones Deeper Housing Affordability FAR Density Bonus Program (the "DHA Program") to increase the numbers of Dwelling Units available for sale or for rent to households earning incomes that fall within particular City established parameters.
- B. Administration.**
1. PHB will certify whether the applicant's proposed development meets the standards and requirements set forth in PCC 33.120.211 C.2. and this Section.
 2. PHB may adopt, amend, and repeal Administrative Rules and prepare forms for the implementation, administration and compliance monitoring consistent with the provisions of this Section 30.01.140. The Director of PHB, or a designee, shall have the authority to modify the Administrative Rules as necessary to meet current City housing program requirements. PHB Administrative Rules will set forth clear and objective criteria to establish minimum development standards for affordable units subject to the DHA Program.
- C. Standards.** Developments approved for the DHA Program must satisfy the following criteria:
1. Dwelling units for sale shall remain affordable for a period of at least 10 years and be available to households earning 80 percent or less of area median income, and dwelling units for rent shall remain affordable for a

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period of 99 years and be available to households earning 60 percent or less of area median income;

2. Owners are required to sign a Regulatory Agreement that will encumber the property receiving a density bonus under the DHA Program, and will be recorded in the official records of Multnomah County, Oregon;
3. For rental Dwelling Units, the owner or a representative shall submit annual documentation of tenant income and rents to PHB;
4. The City may inspect the affordable rental Dwelling Units for fire, life, and safety hazards and for compliance with DHA Program requirements and may inspect files documenting tenant income and rents of the affordable rental Dwelling Units; and
5. Failure to meet the requirements of the DHA Program will result in a penalty, and may result in legal action.

D. Penalties.

1. In the event of a failure to meet the requirements of the DHA Program and the additional requirements established in the Regulatory Agreement, PHB may choose, to negotiate with the building owner to bring the building into project compliance.
2. Should PHB and the owner not agree upon an acceptable remedy to bring the project into compliance, the owner will owe financial penalties payable to PHB as follows:

- a. For Rent Dwelling Unit Penalty. For a building with rental Dwelling Units, a penalty equal to multiplying the gross square feet of the residential and residential related portions of the Building by \$23; and

Interest. Interest on the entire unpaid penalty amount, assessed at the rate of .833 percent simple interest per month or fraction thereof (10 percent per annum), computed from the date of default; and

Financial Incentive. Repayment of any financial incentives and exemptions received according to code and administrative rules including, but not limited to, system development charges, property taxes, and construction excise taxes; and

Additional Penalties. PHB may pursue any remedy available at law, or in equity, including but not limited to injunctive relief, and other remedies such as foreclosure, or receivership if the financial

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penalties established in this Subsection 2. are not timely paid in accordance with the timeframe prescribed by PHB or a court of competent jurisdiction.

Upon Owner's payment in full of the applicable Dwelling Unit Penalty, Interest, Financial Incentive repayment amounts due and payment of any Additional Penalties, the impacted for Sale Dwelling Unit will cease to be bound to the restrictions of the DHA Program and PHB will release the Covenant.

- b.** For Sale Dwelling Unit Penalty. For for Sale Dwelling Units, repayment of the difference between the Restricted Sale Price and the assessed value as stated in the DHA Program Covenant; and

Interest. Interest on the entire unpaid Penalty amount, assessed at the rate of .833 percent simple interest per month or fraction thereof (10 percent per annum), computed from the date of default; and

Financial Incentive. Repayment of any financial incentives and exemptions received according to code and administrative rules including, but not limited to, system development charges, property taxes, and construction excise taxes; and

Additional Penalties. PHB may pursue any remedy at law, or in equity, including but not limited to injunctive relief, and other remedies such as foreclosure, or receivership if the financial penalties established in this Section are not timely paid in accordance with the timeframe prescribed by PHB or a court of competent jurisdiction.

Upon Owner's payment in full of the applicable Dwelling Unit Penalty, Interest, Financial Incentive Repayment amounts due and payment of any Additional Penalties, the impacted for Sale Dwelling Unit will cease to be bound to the restrictions of the DHA Program and PHB will release the Covenant.

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- B.** Exception for land use regulations. Amendments to provisions contained in Chapters 32.10 through 32.38 must follow the procedure required under state law as described in Chapter 33.835, Goal, Policy, and Regulation Amendments.

32.10.070 Severability.

If any word, sentence, section, chapter or any other provision or portion of this Title or rules adopted hereunder is invalidated by any court of competent jurisdiction, the remaining words, sentences, sections, chapters, provisions, or portions will not be affected and will continue in full force and effect.

**TITLE 32
SIGNS AND RELATED REGULATIONS**

CHAPTER 32.12 - AUTHORITY AND SCOPE

Sections:

- 32.12.010 Authority.
- 32.12.020 Exemptions.
- 32.12.030 Prohibitions.

32.12.010 Authority.

(Amended by Ordinance No. 176955, effective October 9, 2002.)

- A.** Responsibility. This Title will be administered and enforced by the Director of the Bureau of Development Services (BDS).
- B.** Administration. The Director will administer the code as set forth under Chapters 32.60 through 32.68. The Director may implement procedures, forms, and written policies for administering the provisions of this Title.

32.12.020 Exemptions.

(Amended by Ordinance Nos. 178946, 182962, 188959, 189137 and 189805, effective March 1, 2020.) The following are exempt from the regulations of this Title, but may be subject to other portions of the City Code:

- A.** Signs which are not visible from a right-of-way or another property; however signs located within malls and atriums must comply with all provisions of this Title except Chapters 32.30 through 32.38;
- B.** Signs inside a building. However:
 - 1.** In the OS, RF through RM4, RMP, CI1, CR, and IR zones, illuminated signs in windows are not exempt; and
 - 2.** Signs located within malls and atriums must comply with all provisions of this Title except Chapters 32.30 through 32.38;
- C.** Signs carved into a building;
- D.** Signs required by federal or state law if the sign is no more than 32 square feet in area or is painted directly on pavement;
- E.** Flags;
- F.** Signs required by city law if the sign is no more than 32 square feet in area. Such signs include building addresses, development review or construction review public notices, and commercial parking facility postings;
- G.** Painted wall highlights;

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- H.** Illuminated wall highlights;
- I.** Public Art as defined in Chapter 5.74; and
- J.** Permitted Original Art Murals as defined in Title 4.

32.12.030 Prohibitions.

The following are prohibited and existing ones must be removed:

- A.** Signs containing strobe lights;
- B.** Abandoned sign structures;
- C.** Signs placed on or painted on a motor vehicle or trailer parked with the primary purpose of providing signs not otherwise allowed by the code;
- D.** Permanent balloon signs;
- E.** Outdoor, portable electric signs;
- F.** Signs that imitate or resemble official traffic lights, signs or signals or signs that interfere with the effectiveness of any official traffic light, sign or signal;
- G.** Signs that focus or flash a beam of light into the eyes of a driver of a motor vehicle upon a right of way within 200 feet from such sign; and
- H.** Signs erected, constructed or structurally altered that are required by Section 32.62.010, Permit or Registration Required to have a permit that were erected, constructed or altered without a permit.

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SIGNS AND RELATED REGULATIONS**

**CHAPTER 32.20 - APPLYING THE CODE
LANGUAGE**

Sections:

- 32.20.010 General Rules For Reading and Applying the Code Language.
- 32.20.020 Terms.
- 32.20.030 Applying the Code to Specific Situations.

32.20.010 General Rules For Reading and Applying the Code Language.

(Amended by Ordinance No. 176955, effective October 9, 2002.)

- A.** Reading and applying the code. Literal readings of the code language will be used. Regulations are no more or less strict than as stated. Application of the regulations that are consistent with the rules of Chapters 32.20 through 32.24 are non-discretionary actions of the Director of BDS to implement the code. The action of the Director of BDS is final.
- B.** Situations where the code is silent. Proposals for signs where the code is silent, or where the rules of this chapter do not provide a basis for concluding that the sign is allowed, are prohibited.

32.20.020 Terms.

- A.** Defining words. Words used in the sign code have their dictionary meaning unless they are listed in Chapter 32.22, Definitions. Words listed in the Definitions chapter have the specific meaning stated, unless the context clearly indicates another meaning.
- B.** Tenses and usage.
 - 1.** Words used in the singular include the plural. The reverse is also true.
 - 2.** Words used in the present tense include the future tense. The reverse is also true.
 - 3.** The words "must," "will," and "may not" are mandatory.
 - 4.** "May" is permissive.
 - 5.** "Prohibited" means that an adjustment, conditional use, or other land use review may not be requested in order to allow a modification to the regulation in question.
 - 6.** When used with numbers, "Up to x," "Not more than x" and "a maximum of x" all include x.

CHAPTER 32.30 - GENERAL

Sections:

- 32.30.010 Purpose.
- 32.30.020 Official Zoning Maps.
- 32.30.030 Uses, Use Categories, and Structure Types.

32.30.010 Purpose.

The regulations contained in Chapters 32.30 through 32.38 are land use regulations which work in combination with Title 33, Planning and Zoning, to implement Portland's Comprehensive Plan. The standards contained in Chapters 32.32 through 32.34 encourage signs to be compatible with the distinct character of specific areas of the city by regulating the size, placement, and features of signs by base zone, overlay zone, and plan district. Chapter 32.34 includes standards that encourage signs that further the objectives of certain land use categories.

32.30.020 Official Zoning Maps.

The boundaries and locations of all base zones, overlay zones, plan districts, and historic resource designations referenced in Chapters 32.30 through 32.38 are shown on the City's Official Zoning Maps. See Title 33, Planning and Zoning for additional information.

32.30.030 Uses, Use Categories, and Structure Types.

In some cases, sign regulations are applied based on the land use or use category of a site, or structure type on the site. All of these are described or defined in Title 33, Planning and Zoning.

**TITLE 32
SIGNS AND RELATED REGULATIONS**

**CHAPTER 32.32 - BASE ZONE
REGULATIONS**

Sections:

- 32.32.010 Standards in the Residential Zones, Campus Institution 1, Commercial Residential, and Open Space Zone.
- 32.32.020 Standards in the Commercial/Mixed Use, Campus Institution 2, Employment, and Industrial Zones.
- 32.32.030 Additional Standards in All Zones.

32.32.010 Standards in the Residential Zones, Campus Institution 1, Commercial Residential, and Open Space Zone.

(Amended by Ordinance Nos. 176469, 188959, 189137 and 189805, effective March 1, 2020.)

- A.** General standards. The standards for permanent signs in the RF through RM4 zones and for the RMP, IR, C11, CR and OS zones are stated in Table 1. The sign standards for the RX zone are stated in Table 2. All signs must conform to the regulations of Section 32.32.030.

Table 1 Standards for Permanent Signs in C11, CR, IR, OS and RF Through RM4 Zones [1]					
Use Category/Structure Type[2]	Number of Signs	Max. Sign Face Area	Types of Signs Allowed	Maximum Sign Height	Additional Signs Allowed [3]
Household Living/ Houses, Duplexes, Attached Houses.	1 per site	1 sq. ft.	Fascia, Painted Wall Freestanding	Top of wall, or 10 ft. whichever is less. 6 ft.	lawn signs, directional signs
Household Living/ Townhouse, Multi-dwelling Group Living, Day Care, Nonresidential category uses not listed below.	1 per building	10 sq. ft.	Fascia, Awning, Painted Wall Freestanding	Top of wall 10 ft.	lawn signs, directional signs
Subdivisions, PUDs, Houseboat Moorages, Mobile Home Parks, Agricultural Uses. [4]	1 per entrance	32 sq. ft.	Monument	10 ft.	lawn signs, directional signs
Parks and Open Areas [5]	1 per street frontage	10 sq. ft.	Monument	10 ft	lawn signs, directional signs
Colleges, Community Service, Medical Centers, Religious Institutions, Schools, Commercial Outdoor Recreation, Major Event Entertainment, and uses in Commercial and Industrial use categories.	The sign standards of the RX zones applies. See Section 32.32.020.				

Notes:

- [1] Temporary signs are regulated by 32.32.030 K, Temporary Signs.
- [2] See 32.30.030, Uses, Use Categories, and Structure Types.
- [3] These signs are allowed in addition to other signs when they meet the standards of 32.32.030 H.-J.
- [4] These signs are allowed in addition to those for individual buildings.
- [5] Signs in, or adjacent to and facing, a sports fields associated with Parks and Open Areas are subject to the standards of the RX zone. See 32.32.020.

TITLE 32
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- B.** Sign features. Signs in the RF through RM4 zones and in the RMP, IR, CI1, CR, and OS zones, except for those subject to the RX zone sign standards, are subject to the standards of this subsection. Illuminated signs placed in windows are subject to these sign regulations. Extensions into the right-of-way are prohibited. Changing image sign features are prohibited and only indirect lighting is allowed.

32.32.020 Standards in the Commercial/Mixed Use, Campus Institution 2, Employment, and Industrial Zones.

(Amended by Ordinance Nos. 176469 and 188959, effective May 24, 2018.)

- A.** General standards and sign features. The standards for permanent signs and sign features in the C, E, and I zones are stated in Tables 2 and 3. All signs must conform to the regulations of Section 32.32.030.

Table 2			
Standards for Permanent Signs in Nonresidential Zones and RX Zone [1]			
CE, CM3, EG1&2, EX, IG1&2, IH			
CI2, CM2, CX CMI, RX			
Signs Attached to Buildings			
Size Allocation	<ul style="list-style-type: none"> • 1 sq. ft. per 1 ft. of primary bldg. wall if a freestanding sign is also on the same street frontage • 1-1/2 sq. ft. per 1 ft. of primary bldg. wall if there is no freestanding sign on the same street frontage 	Same	Same
Maximum Number	No limit within size allocation	Same	Same
Maximum Area Per Sign	200 sq. ft.	100 sq. ft.	50 sq. ft.
Min. Guaranteed Sign Area For A Ground Floor Tenant Space	32 sq. ft.	Same	Same
Types Allowed			
Fascia, Awning, Marquee, Pitched Roof, Painted Wall	Yes	Yes	Yes
Projecting	Yes, but no projecting signs if a freestanding sign is also on the same street frontage	Same	Same
Rooftop	No	No	No
Freestanding Signs			
Maximum Number	1 per site or 1 per 300 ft. of arterial street frontage and 1 for each additional 300 ft. or fraction thereof [2].	1 per arterial street frontage [3]	1 per arterial street frontage [3]
When Not Allowed	Not allowed if there is already a projecting sign on the same site frontage, or if existing signs attached to buildings exceed the limit of 1 sq. ft. to 1 ft. of primary building wall	Same	Same
Size Allocation For All Freestanding Signs	1 sq. ft. per 1 ft. of arterial street frontage. Local street frontage can be used if there are not arterial site frontages.	Same	Same
Size Limit	200 sq. ft.	100 sq. ft.	50 sq. ft.
Maximum Height	25 ft. [4]	20 ft. [4]	15 ft. [4]
Additional Signs Allowed [5]			
Directional Signs, Portable Signs, Lawn Signs	See Subsections 32.32.030 G-J		

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SIGNS AND RELATED REGULATIONS

Yes = Allowed
 No = Prohibited

Notes:

- [1] Temporary signs are regulated under 32.32.010 K, Temporary Signs.
- [2] On sites with frontages longer than 300 feet, sign area earned from the first 300 feet may not be used on the second sign. For example, a 350 foot street frontage may have a 200 sq. ft. and a 50 sq. ft. freestanding sign. Regional Trafficways that are not also Major City Traffic Streets are not considered arterial streets for purposes of this Title.
- [3] Where a site has no arterial street frontage, one freestanding sign is allowed.
- [4] This height limit is for the total height of the combined sign face and sign structure.
- [5] These signs may be allowed in addition to signs attached to buildings and freestanding signs when they meet the standards of 32.32.030 G-J.

Table 3		
Sign Features for All Signs In Table 2		
CE, CI2, CM2, CM3, CX, EG1&2, EX, IG&2, IH		CM1, RX
Changing Image Sign Features (see 32.32.030.D)	Yes [1]	No[2]
Lighting	Direct, Indirect, or Internal	Same
Maximum Distance Extending Into R-O-W (see 32.32.030.C)	6-1/2 ft. or 2/3 of distance to roadway, whichever is less	Same
Maximum Area Extending into R-O-W (see 32.32.030.C)	30 sq. ft.	Same

Yes = Allowed

No = Prohibited

Notes:

- [1] Changing image sign features are allowed in the CE, CI2, CM2, CM3, CX, EG1 &2, EX, IG1 &2, and IH zones if they meet the standards of 32.32.030 D., Changing image sign features.
- [2] Changing image sign features are prohibited in the RX, CI1, and CM1 zones; except, changing image sign features are allowed in these zones if the sign is in, or adjacent to and facing, a sports field and meets the standards of 32.32.030 C, Changing image sign features.

B. Signs adjacent to freeways or bridges. The following regulations supersede those stated in Tables 2 and 3.

1. Freeways. For purposes of this title, freeways are Regional Trafficways that are not also classified as Major City Traffic Streets by the Transportation Element of the Comprehensive Plan. These are the I-5, I-84, I-205, I-405 freeways, US Highway 30 between I-405 and NW Nicolai, and US Highway 26 west of the I-405 freeway.

- a.** Sign faces that are within 100 feet of a freeway right-of-way, and that are visible from the freeway, may not exceed 200 square feet in area. Adjustments or modifications to the standard of this Subparagraph are prohibited.
- b.** Freestanding signs that are facing and within 100 feet of a freeway right-of-way or its on- and off-ramps are prohibited. Freestanding signs that are beneath the level of the surface of the roadway are allowed.
- c.** Changing image signs that are facing and within 100 feet of a freeway right-of-way or its on-and off-ramps are prohibited.

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Changing image signs that are beneath the level of the surface of the roadway are allowed.

2. Bridges.

- a.** Sign faces within 100 feet of the Willamette River bridges or bridge approach ramps shown in Figures 11a-e, or within 100 feet of the Columbia River or Columbia Slough bridges or bridge approach ramps, and that are visible from the bridge or bridge approach ramp, may not exceed 100 square feet in area.
- b.** Freestanding signs that are within 100 feet of the Willamette River bridges or bridge approach ramps shown in Figures 11a-e, or within 100 feet of the Columbia River and Columbia Slough bridges and bridge approach ramps are prohibited. Freestanding signs that are beneath the level of the surface of the roadway are allowed.
- c.** Changing image signs that are within 100 feet of the Willamette River bridges or bridge approach ramps shown in Figures 11a-e, or within 100 feet of the Columbia River and Columbia Slough bridges and bridge approach ramps are prohibited. Changing image signs that are beneath the level of the surface of the roadway are allowed.

- C.** Pedestrian districts. In pedestrian districts as shown by the Arterial Streets Classification of the Transportation Element of the Comprehensive Plan, the sign standards of the Central Commercial (CX) zone apply.

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Figure 11a
Willamette River Bridges and Approach Ramps

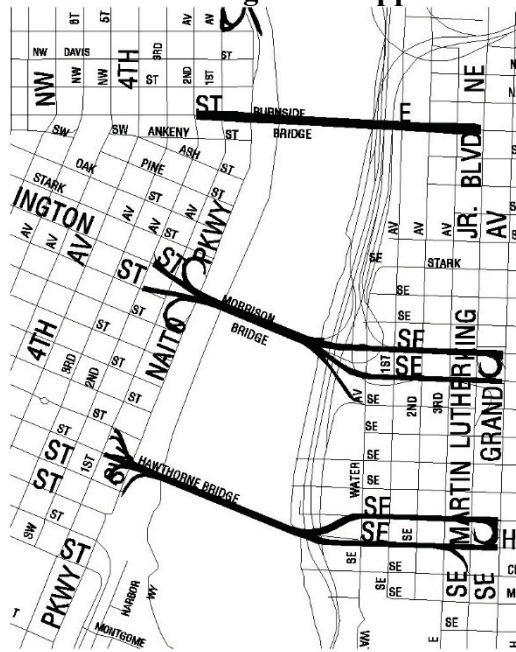


Figure 11b
Willamette River Bridges and Approach Ramps

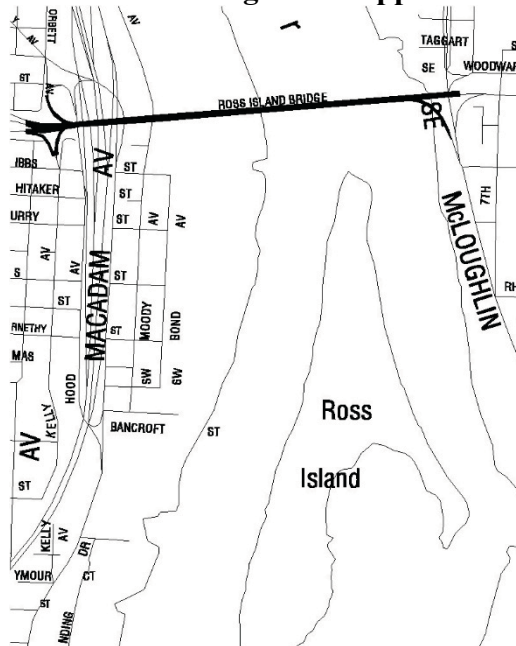


Figure 11c
Willamette River Bridges and Approach Ramps

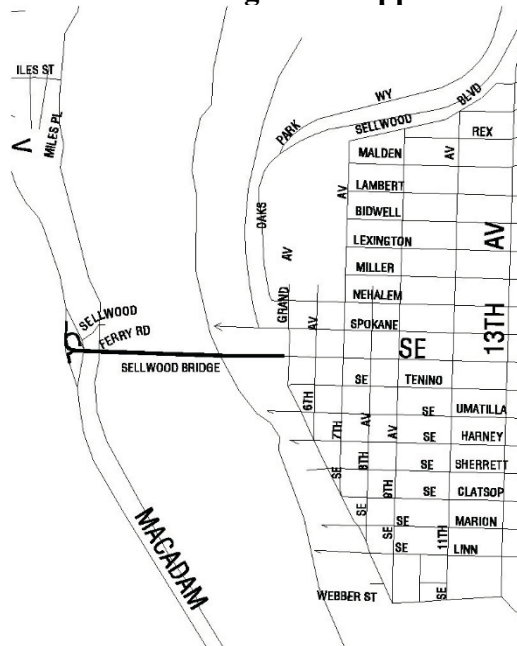
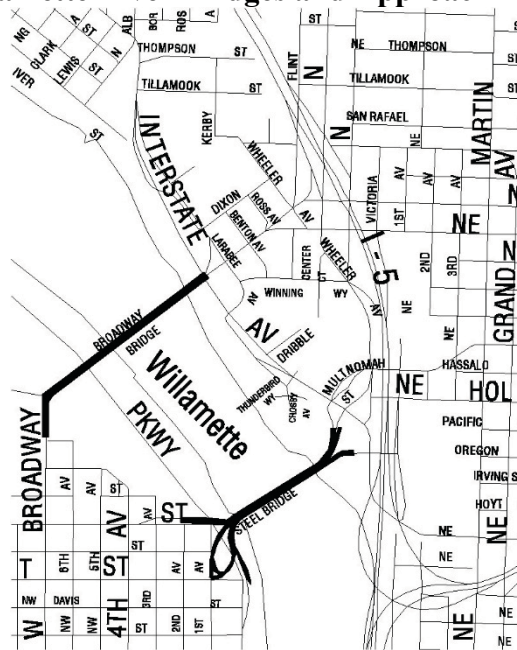
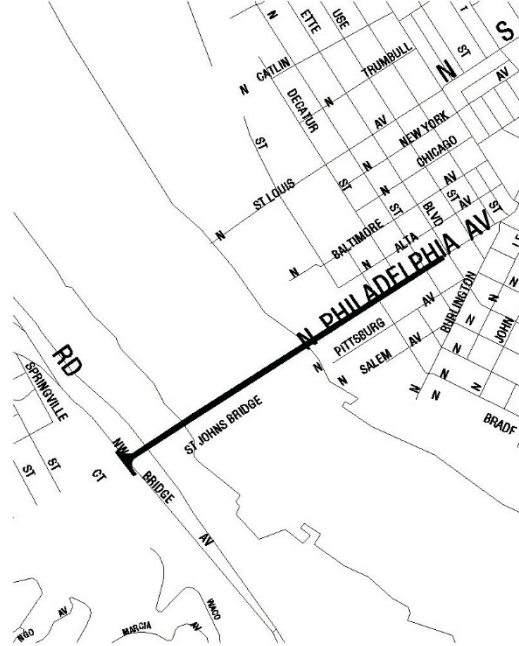


Figure 11d
Willamette River Bridges and Approach Ramps



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SIGNS AND RELATED REGULATIONS**

**Figure 11e
Willamette River Bridges and Approach Ramps**



32.32.030 Additional Standards in All Zones.

(Amended by Ordinance Nos. 176469, 185915, 188959 and 189805, effective March 1, 2020.)

- A. Where these regulations apply. These regulations apply to all signs regulated by this title.
- B. Sign placement. All signs and sign structures must be erected and attached totally within the site except when allowed to extend into the right-of-way by this Title.
- C. Signs extending into the right-of-way. The standards of this subsection apply to permanent signs that are erected on private property and that extend into the right-of-way and portable signs that are in the right-of-way.
 - 1. Projecting signs. Projecting signs that extend into the right-of-way must meet the following standards:
 - a. Distance into the right-of-way.
 - (1) Where allowed, signs may extend into the right-of-way 6 ½ feet or 2/3 of the distance to the roadway, whichever is less. However, in no case may signs extend within 2 feet of the roadway.

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- c.** The sign is entirely outside of the area of a right-of-way corner that is between the curb and the lines created by extending the property line to the curb face. See Figure 13a;
 - d.** The sign is entirely outside the area of a sidewalk that is between the lines created by extending the edges of any curb ramp across the sidewalk to the property line;
 - e.** The sign is within six inches of the curb. See Figure 13b;
 - f.** The sign does not obstruct a continuous through pedestrian zone of at least six feet in width. See Figure 13b; and
 - g.** The sign does not obstruct pedestrian and wheelchair access from the sidewalk to any of the following:

 - (1)** transit stop areas;
 - (2)** designated disabled parking spaces;
 - (3)** disabled access ramps; or
 - (4)** building exits including fire escapes.
 - h.** Physical attachment to public property. Portable signs placed in the right-of-way must remain portable and may not be attached or anchored in any way to trees or to public property including utility or light poles, parking meters, the ground or pavement.
 - i.** Additional placement standards for temporary portable signs. Temporary portable signs placed in the right-of-way must meet the following additional standards:

 - (1)** Where no curb exists, the sign must be placed outside the roadway at least five feet from the edge of the roadway. Temporary portable signs may not be placed in medians, traffic islands, or other areas within the roadway.
 - (2)** Temporary portable signs must not be placed in parking spaces, pedestrian pathways, or bicycle paths.
 - (3)** Where the sidewalk is less than 8 feet in width, temporary portable signs may not be placed on the sidewalk.
- 4.** Removal of signs. The City Engineer may require signs extending into the right-of-way to be modified or moved if streets are widened, or other

improvements made in the right-of-way, which result in the creation of unsafe conditions. The modification or moving will be at the owner's expense. If a nonconforming sign is moved under this requirement, it may be re-erected on the site without being brought into conformance.

Figure 13a
Placement of Portable Signs in the R-O-W

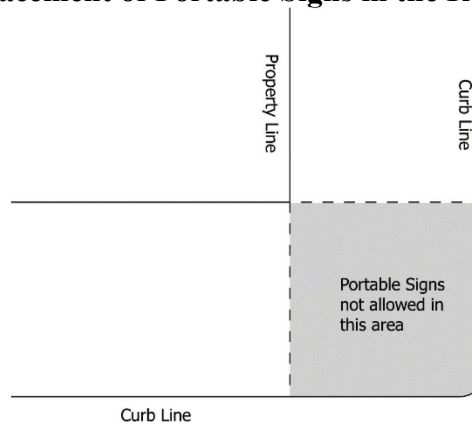
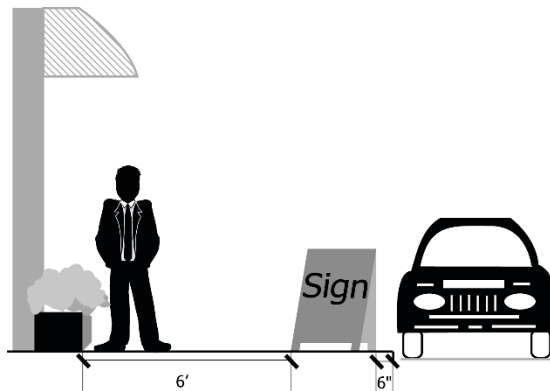


Figure 13b
Placement of Portable Signs in the R-O-W



D. Changing image sign features.

1. Size. Where allowed under this Title, changing image sign features are limited to a total combined area of 20 square feet per site. No single sign may have more than 10 square feet of changing image sign features unless those features cover less than 60 percent of the face of the sign. Each area of changing image feature on each sign face is included in the total for the site. Section 32.24.010 B., Backed Signs, may not be applied to changing image sign features.

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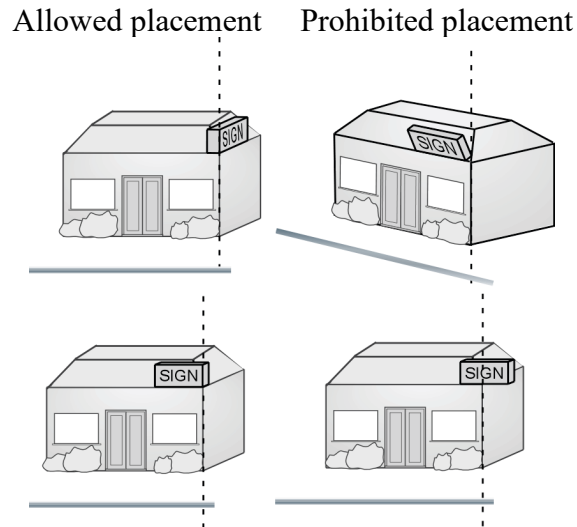
2. Brightness. Changing image sign features are subject to the glare standards of Chapter 33.262, Off-site impacts.
3. Signs subject to the standards of the C11, or CM1 zone. If the sign is subject to the standards of the C11, or CM1 zone, changing image sign features are allowed if the sign meets the standards of a. and b., below. All other changing image sign features are prohibited.
 - a. Location. The sign must be in, or adjacent to and facing, a sports field.
 - b. Duration. The changing image sign features may be turned on no sooner than one hour before scheduled events and must be turned off no later than one hour after scheduled events.
4. Modifications or adjustments to the size standard. Modifications through design review or historic resource review or adjustments to this regulation are prohibited, except as stated in paragraphs 4.b. through 4.d., below:
 - a. Purpose. The character, scale and special communication needs of bright lights districts, sports fields and Major Event Entertainment uses may support the use of changing image sign features that are larger than 20 square feet. The scale, multiple use and special communication needs of sites with major event entertainment uses may support the use of changing image sign features that are substantially larger than 20 square feet.
 - b. Broadway “bright lights” district. In the Broadway “bright lights” Unique Sign District of the Downtown Design District, a modification through design review to allow more than 20 square feet of changing image sign features on a site, or more than 10 square feet of changing image sign features on a sign, may be requested.
 - c. Major Event Entertainment. If the sign is on a site that contains a Major Event Entertainment use, an adjustment or a modification through design review to allow more than 20 square feet of changing image sign features on a site, or more than 10 square feet of changing image sign features on a sign, may be requested.
 - d. Sports field. If the sign is in, or adjacent to and facing, a sports field, an adjustment or a modification through design review to allow more than 20 square feet of changing image sign features on a site, or more than 10 square feet of changing image sign features on a sign, may be requested.

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- E.** Signs attached to buildings or structures.
- 1.** Placement. Signs attached to buildings or structures that are based on the sign rights of a primary building wall may be placed on that primary building wall, on a secondary building wall or on another structure. They may not be placed on another primary building wall.
 - 2.** Awnings and marquees. Signs attached to an awning or marquee that extends into the right-of-way must comply with the pedestrian clearance and right-of-way extension standards of Chapter 32.52. Awnings.
 - 3.** Fascia signs.
 - a.** Vertical extensions. Fascia signs may not extend more than 6 inches above the top of the building wall. Fascia signs attached to other structures may not extend above the top of the structure.
 - b.** Horizontal extensions. A fascia sign may not extend more than 18 inches out from the wall or structure to which it is attached. Fascia signs may not extend beyond the corner of buildings or other structures.
 - 4.** Pitched roof signs.
 - a.** Vertical extensions. The face of pitched roof signs may not extend more than 6 inches above the roofline.
 - b.** Placement and angle. Pitched roof signs must be parallel to the building face. They may not extend beyond the building wall. See Figure 14.
 - c.** Support structures. Support structures must be designed so that there is no visible support structure above the sign.

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**Figure 14
Pitched roof sign placement**



5. Projecting signs

- a.** Vertical extensions. The face of a projecting sign may not extend more than 6 inches above the roof line.
- b.** Placement. The edge of the projecting sign may not be more than 1 foot from the building wall. Projecting signs are not allowed on rooftops or on pitched roofs. Projecting signs that extend over the right-of-way must meet the placement standards of Subsection 32.32.030 C., Signs extending into the right-of-way.
- c.** Support structures. Support structures must be designed so that there is no visible support structure above the sign face.

F. Freestanding signs and monument signs.

1. Setbacks. Freestanding signs are regulated as follows:

- a.** R zones. In R zones and the CR zone, freestanding signs are allowed in required setbacks, however, in required front setbacks they may not be more than 3-1/2 feet tall.
- b.** C, CI, E, and I zones. In C, CI, E, and I zones, freestanding signs are allowed in required setbacks for buildings and parking areas. However, freestanding signs are prohibited in the setback between a property line abutting a residentially zoned site and the building line or parking area setback line.

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2. Frontages. Freestanding signs must be placed on arterial street frontages unless there are none. Freestanding signs that are allowed based on the length of one arterial street frontage may not be placed on another arterial street frontage. Frontage on a freeway is not considered arterial street frontage.
3. Undeveloped sites. Permanent freestanding signs on sites without a primary use are subject to the regulations for Subdivisions shown in Table 1, Standards for Permanent Signs in the IR, OS and RF-RM4 Zones.
4. Extensions into the right-of-way. Freestanding signs may not extend into the right-of-way.

G. Portable signs.

1. General standards. Portable signs that meet the standards of this subsection are allowed in the RX, C, CI, E and I zones and are not counted in the total square footage of permanent signage allowed on the site. Adjustments or modifications to the standards of this subsection are prohibited.
2. Number.
 - a. General. One portable sign is allowed per public entrance to buildings.
 - b. Commercial parking. One portable sign is allowed for each vehicle entrance to a commercial parking facility, but in no case more than four portable signs for the facility.
 - c. Tenant spaces without public entrances. Where a ground floor tenant space or portable cart does not have any public entrance and only provides customer service through a window, one portable sign is allowed for each ground floor tenant space or portable cart.
3. Size. Portable signs may be up to 12 square feet in area. Only one side of a portable sign will be counted. The vertical dimension of the sign including support structure may be no greater than 42 inches. Portable signs extending into the right of way must comply with the size standards of Subsection 32.32.030 C., Signs extending into the right-of-way.
4. Features. Electrical signs and changing image sign features are prohibited.
5. Placement. Portable signs must be entirely on private property or they must meet the placement standards of Subsection 32.32.030 B., Signs extending into the right-of-way.

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6. Portable signs that do not meet the standards of this subsection. Portable signs that do not meet the standards of this subsection must meet the standards for freestanding signs or for temporary signs.

H. Directional signs.

1. General standards. Directional signs that meet the standards of this subsection are allowed in all zones and are not counted in the total square footage of permanent signage allowed on the site. Adjustments or modifications to the standards of this subsection are prohibited.
2. Size. Freestanding directional signs may be up to 6 square feet in area and 42 inches in height. Fascia directional signs may be up to 6 square feet in area and 8 feet in height.
3. Sign features. Direct or indirect lighting is allowed. Changing image sign features and extensions into the right-of-way are prohibited.
4. Directional signs that do not meet the standards of this subsection. Directional signs that do not meet the standards of this subsection must meet either the standards for signs attached to buildings or the standards for freestanding signs.

I. Permanent banners.

1. General. Banners used as permanent signs are allowed in all zones and will be included in the total square footage of permanent signage allowed on the site. Temporary banners are regulated under Subsection K., below.
2. Standards. Permanent banners are subject to the standards for either fascia signs or projecting signs depending on how the banner is supported or anchored.

J. Lawn signs.

1. General standards. Lawn signs that meet the standards of this subsection are allowed in all zones and are not counted in the total square footage of permanent signage allowed on the site. Adjustments or modifications to the standards of this subsection are prohibited.
2. Size. Lawn signs may be up to 3 square feet in area.
3. Placement. Lawn signs must be entirely outside the right-of-way.
4. Sign features. Illumination, electric signs, and changing image sign features are prohibited.

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5. Lawn signs that do not meet the standards of this subsection. Lawn signs that do not meet the standards of this subsection must meet the standards for freestanding signs.

K. Temporary signs.

1. Relationship to permanent sign standards. Signs that meet the standards of this subsection are exempt from the standards for permanent signs and are not counted in the total square footage of signage allowed on the site. Signs that do not meet the standards of this subsection are subject to the standards for permanent signs. Adjustments or modifications to this subsection are prohibited.
2. Sign features. Temporary signs may not have direct or internal illumination. Changing image sign features and electronic elements are prohibited.
3. Temporary banners. Temporary banners are subject to the following regulations:
 - a. Banners on lots with houses, duplexes, and attached houses. In all zones, temporary banners are not allowed on sites with houses, duplexes, and attached houses.
 - b. OS, R, CR, CM1 and CI1 zones. In OS, R, CR, CM1 and CI1 zones, up to three banners no larger than 32 square feet in size are allowed per site. Only one of these banners may be hung on each building wall or on each separate structure. Additional banners, or banners larger than 32 square feet in size, must meet the standards for permanent signs.
 - c. CM2, CI2, CM3, and CX zones. In the CM2, CI2, CM3, and CX zones, up to three banners no larger than 32 square feet in size are allowed per site. Only one of these banners may be hung on each building wall or on each separate structure. Additional banners, or banners larger than 32 square feet in size, must meet the following standards:
 - (1) In no case may a site have more than four temporary banners.
 - (2) Up to one temporary banner larger than 32 square feet in size is allowed per site. This banner may be no larger than 50 square feet in size.

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sign may be up for two continuous periods of up to 180 days per year. A temporary freestanding sign may be installed for an additional 360 days if it meets the registration requirements of 32.62.010.

7. Temporary portable signs.
 - a. Temporary portable signs are allowed in all zones.
 - b. Size. Temporary portable signs may be up to 4 square feet in area. Only one side of a temporary portable sign will be counted. The vertical dimension of the sign including support structure may be no greater than 24 inches.
 - c. Placement. Temporary portable signs must be entirely on private property or they must meet the placement standards of Subsection 32.32.030 C., Signs extending into the right-of-way.
 - d. Hours of use. Temporary portable signs are allowed only between the hours of six (6) p.m. Friday and eight (8) p.m. Sunday, and the hours of six (6) a.m. and one (1) p.m. on Tuesdays.

**TITLE 32
SIGNS AND RELATED REGULATIONS**

**CHAPTER 32.34 - ADDITIONAL
REGULATIONS FOR SPECIFIC USES,
OVERLAY ZONES, AND PLAN DISTRICTS**

Sections:

- 32.34.010 Additional Standards for Specific Uses.
- 32.34.020 Additional Standards in the Overlay Zones.
- 32.34.030 Additional Standards in the Plan Districts.

32.34.010 Additional Standards for Specific Uses.

- A.** Bed and Breakfast facilities. Sites with Bed and Breakfast facilities must meet the sign regulations for Household Living.
- B.** Short Term Housing. Sites with Short Term Housing or Mass Shelters must meet the sign regulations for Household Living.
- C.** Temporary Activities. Permanent signs associated with Temporary Activities are prohibited. All signs associated with a Temporary Activity must be removed when the activity ends.

32.34.020 Additional Standards in Overlay Zones.

(Amended by Ordinance Nos. 176469, 178172, 179092, 185915 and 188959, effective May 24, 2018.) Overlay zones are shown on the Official Zoning Maps.

- A.** Buffer Overlay Zone
 - 1.** Where this regulation applies. The regulation of this subsection applies to signs within the Buffer Overlay Zone.
 - 2.** Regulation. Signs are prohibited in the Buffer Overlay Zone.
- B.** Design Overlay Zone
 - 1.** Where these regulations apply. The regulations of this subsection apply to exterior signs in excess of 32 square feet within the Design Overlay Zone, and all signs within the South Auditorium plan district. However, signs are not required to go through design review if they meet one of the following standards:
 - a.** The sign is a portable sign, lawn sign, directional sign or temporary sign; or
 - b.** The sign is a part of development exempt from design review under Section 33.420.045, Exempt from Design Review.

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2. Awnings. Awnings within the Design Overlay Zone are subject to Chapter 33.420. Awnings must also meet the requirements of Chapter 32.52 of this Title.
3. Regulations.
 - a. Generally. Signs must either meet the Community Design Standard in Subparagraph B.3.c., below or go through Design Review, as described in this paragraph. The Community Design Standards provide an alternative process to design review for some proposals. Where a proposal is eligible to use the Community Design Standards, the applicant may choose to go through the discretionary design review process set out in Chapter 33.825, Design Review, or to meet the objective standards of Subparagraph B.3.c., below. If the proposal meets the Community Design Standards, no design review is required. Proposals that are not eligible to use the Community Design Standards, that do not meet the Community Design Standards, or where the applicant prefers more flexibility, must go through the design review process.
 - b. When Community Design Standards may be used. See Chapter 33.420, Design Overlay Zone.
 - c. Community Design Standard for signs. In the C, E, and I zones, signs must meet the sign regulations of the RX zone. Signs with a sign face area of over 32 square feet may not face an abutting regional trafficway or any Environmental Protection Overlay Zone, Environmental Conservation Overlay Zone, or River Natural Greenway Overlay Zone that is within 1,000 feet of the proposed site.

C. Historic Resource Overlay Zone

1. Where these regulations apply. The regulations of this subsection apply to signs on sites with the historic resource overlay zone. However, signs are not required to go through historic resource review if they meet one of the following standards:
 - a. The sign is a portable sign, lawn sign, or temporary sign; or
 - b. The sign is exempt from historic resource review under Sections 33.445.140, Alterations to a Historic Landmark; 33.445.230, Alterations to a Conservation Landmark; 33.445.320, Development and Alterations in a Historic District; or 33.445.420, Development and Alterations in a Conservation District.

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2. Regulations.

- a.** Generally. Signs must either meet the Community Design Standards in Subparagraph C.2.c., below, or go through historic resource review, as described in this paragraph. The Community Design Standards provide an alternative process to historic resource review for some proposals. Where a proposal is eligible to use the Community Design Standards, the applicant may choose to go through the discretionary historic resource review process set out in Chapter 33.846, Historic Resource Reviews, or to meet the objective standards of Subparagraph C.2.c. If the proposal meets the Community Design Standards, no historic resource review is required. Proposals that are not eligible to use the Community Design Standards, that do not meet the Community Design Standards, or where the applicant prefers more flexibility, must go through the historic resource review process.
- b.** When Community Design Standards may be used. See Chapter 33.445, Historic Resource Overlay Zone.
- c.** Community Design Standard for signs. In the C, E, and I zones, signs must meet the sign regulations of the RX zone. Signs with a sign face area of over 32 square feet may not face an abutting regional trafficway or any Environmental Protection Overlay Zone, Environmental Conservation Overlay Zone, or River Natural Greenway Overlay Zone that is within 1,000 feet of the proposed site.

D. Scenic Resource Overlay Zone

- 1.** Where these regulations apply. The regulations of this subsection apply to signs within Scenic Resource Overlay Zone.
- 2.** Regulations.
 - a.** View corridors. The standards of this subparagraph apply to signs within areas designated as view corridors in the Scenic Resources Protection Plan. All signs within the designated view corridors are subject to the height limits of the base zone, except when a more restrictive height limit is established for the view corridor by the Scenic Resources Protection Plan.
 - b.** Scenic corridors. The standards of this subparagraph apply to signs within areas designated as scenic corridors in the Scenic Resources Protection Plan. The standards of this subparagraph apply within the

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street setback adjacent to the identified resource or within the first 20 feet from the resource if no setback exists. The maximum height of a freestanding sign is 15 feet. The maximum size of a freestanding sign is 100 square feet. Changing image signs are prohibited. When they are more restrictive, the sign standards of the base zone supersede the regulations of this subparagraph.

32.34.030 Additional Standards in Plan Districts.

(Amended by Ordinance Nos. 176469, 179092, 182072, 188959 and 189805, effective March 1, 2020.) Plan districts are shown on the Official Zoning Maps.

A. Central City plan district

- 1. Purpose.** Signs in the Open Space zone are limited in keeping with the low intensity of most uses in the zone. However, the more intense uses allowed in Central City plan district Open Space zones necessitate more visible signage. These regulations are tailored to those uses.
- 2. Sign standards.** The following regulations apply to sites in the Open Space zone.
 - a.** The sign regulations of the CX zone apply to sites with allowed Major Event Entertainment and Commercial Outdoor Recreation uses.
 - b.** The sign regulations of the RX zones applies to sites with allowed Retail Sales and Service uses.

B. Columbia South Shore plan district

- 1. Purpose.** Signs in this plan district should not dominate the landscape or compete with views of streetscapes, view corridors and natural resources. Sign standards are intended to allow for signs to be visible to streets that abut the site, but not to interstate freeways and locations outside the district. Businesses are encouraged to rely on monument signs to identify and communicate their presence.
- 2. Where these regulations apply.** The regulations of this subsection apply to signs in the Columbia South Shore plan district.
- 3. Sign standards.**
 - a.** Signs must conform to the sign standards of the CX zone as modified by the requirements of this subsection. When they are more restrictive, the regulations of the base zone supersede the regulations of this subsection. Adjustments to this subsection are

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allowed only for the sign height on sites more than 10 feet below the level of the surface of the adjacent roadway. All other sign adjustments are prohibited.

- b.** The following signs are prohibited:
 - (1)** Freestanding signs, except monument signs, temporary freestanding signs, and directional signs;
 - (2)** Changing image signs; and
 - (3)** Awning signs with illumination internal to the awning.
- c.** Monument signs. One monument sign is allowed per street frontage. Monument signs are allowed to a maximum height of 6 feet above the adjacent sidewalk and a maximum of 10 feet in length. The end width of the monument structure may not exceed 2 1/2 feet. Signage may be located on two parallel monument faces.
- d.** Signs along Marine Drive. Signs are prohibited within 200 feet of the toe of the levee slope, except for directional signs. Between 200 and 500 feet from toe of the levee slope, signs that face Marine Drive are limited to 1/2 square foot of sign face area per lineal foot of building wall, with a maximum sign area of 100 square feet.

C. Hillsdale plan district.

- 1.** Where this regulation applies. The regulation of this subsection applies to signs in the Hillsdale plan district.
- 2.** Sign standard. Portable signs are prohibited in the right-of-way in the Hillsdale Plan District.

D. Macadam plan district

- 1.** Where these regulations apply. The regulations of this subsection apply to signs in the Macadam plan district.
- 2.** Standards.
 - a.** Freestanding signs are limited to 1/2 square foot of sign face area per lineal foot of arterial street frontage. Signs attached to buildings, marquees, or other structures are limited to 1/2 square foot of sign face area per lineal foot of primary building wall. Maximum sign face area is 100 square feet.

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- a.** The sign may be moved to another location on the site where it is currently located, or to another location that meets the requirements of this subsection;
 - b.** The receiving site must have frontage on North Interstate Avenue between N. Argyle St. and N. Fremont St.;
 - c.** The receiving site must be zoned either CI1, CI2, CM2 or CM3;
 - d.** Signs removed from their sites may be stored elsewhere before relocation;
 - e.** Relocated signs are subject to discretionary Design Review. Design review will consider the location of the sign on the site, the visual relationship of the sign structure to other development on the site, and the visual relationship to North Interstate Avenue; in a content-neutral manner as provided in Section 32.38.010;
 - f.** Relocated signs that are nonconforming as to size, height, lighting, or area of changing image do not have to come into conformance with the requirements of Chapters 32.30 through 32.38. However, they may not move further out of conformance with the size, height, and lighting regulations unless an adjustment or modification is approved. Increases to the area of changing image on a relocated sign are only allowed as provided in Section 32.32.030;
 - g.** Relocated signs do not count towards the maximum sign allocation on the receiving site; and
 - h.** Relocated signs are subject to the other requirements of this Title.
- 4.** Special signs. The signs below may be relocated as specified in this subsection. The signs are:
- a.** Street address 4333 N. Interstate Avenue, also known as “The Westerner Motel sign.”
 - b.** Street address 4024 N. Interstate Avenue, also known as “The Alibi sign.”
 - c.** Street address 5226 N. Interstate Avenue, also known as “The Crown Motel sign.”
 - d.** Street address 3801 N. Interstate Avenue #4, also known as “The Palms Motel sign.”

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- e.** Street address 6701 N. Interstate Avenue , also known as “The Viking Motel sign.”
- f.** Street address 6423 N. Interstate Avenue, also known as “The Nite Hawk sign.”
- g.** Street address 4739 N. Interstate Avenue, also known as “The Budget Motel sign.”
- h.** Street address 5205 N. Interstate Avenue, also known as “The Super Value Motel sign.”
- i.** Street address 6049 N. Interstate Avenue, also known as “The Central Bowl sign.”