

UPDATE INFORMATION SHEET

The Auditor's office is responsible for providing update pages to

Vols. I & II – Portland City Code

Updates will be available periodically throughout the year. This sheet will provide you with the current update information to assist you in keeping your book current.

**Retain this sheet. It will be replaced with each mailing.
Please contact us should you have any questions 503-823-4082.**

| | |
|-------------------------------|-----------------------|
| Update Packet Enclosed | March 31, 2013 |
| Previous Update Packet | December 31, 2012 |

Chapter 3.02

**COUNCIL ORGANIZATION AND
PROCEDURE**

(Chapter replaced by Ordinance No. 160414,
effective February 16, 1988.)

Sections:

- 3.02.010 Council Meetings.
- 3.02.020 Special Meetings.
- 3.02.025 Attendance by Electronic Communication.
- 3.02.030 Entry of Documents on Agenda.
- 3.02.035 Ordinance Wording.
- 3.02.036 Consent Agenda.
- 3.02.037 Time Certain Agenda.
- 3.02.040 Rules of the Council.
- 3.02.050 Authority to Adopt Rules, Procedures and Forms.

3.02.010 Council Meetings.

(Amended by Ordinance Nos. 166314, 170834, 177787 and 182541, effective February 18, 2009.) A regular meeting of the City Council shall be held once a week and will generally be held each Wednesday, commencing at 9:30 a.m., and, as necessary, recessed sessions will be held each Wednesday at 2:00 p.m. and the following Thursday at 2:00 p.m. in the Council Chambers. City Council may hold its recessed session in the evening of either day beginning at 6:00 p.m. upon motion adopted by the Council at least 2 weeks prior to the meeting date. When either day falls on a legal holiday the meeting shall be held on the next succeeding business day at the same hour unless otherwise directed by Council during a regularly scheduled session not less than two weeks prior to the meeting. Any recessed session may, upon motion adopted by the Council, be held at a place other than the Council Chamber, but the place shall be within the City limits.

3.02.020 Special Meetings.

(Amended by Ordinance No. 185877, effective March 1, 2013.) Special meetings of the Council may be held at any time upon a request signed by three members of the Council. A written notice of the time and place of the meeting shall be delivered by the Auditor to each member of the Council at his or her office in the City Hall, not later than 24 hours preceding the meeting. The Auditor shall also post on the City's website and distribute electronically to interested persons a notice of the meeting containing a summary of matters anticipated to be considered, not later than 24 hours preceding the meeting. The Mayor, the President of the Council or any three members of the Council may call an emergency special meeting of the Council under any of the following conditions:

**TITLE 3
ADMINISTRATION**

- A.** A disaster which has occurred or is imminent;
- B.** An emergency affecting or tending to affect the public health or safety;
- C.** War or hostile enemy action;
- D.** A civil defense alert on the immediate possibility of enemy action;
- E.** An emergency declared by the Governor;
- F.** An emergency declared by the President of the United States. The requirements contained in this Section for the agenda and for publication and notice of special meetings shall not apply, but the person or persons calling the emergency special meeting shall notify every other available Council member and the City Auditor or Deputy Auditor, and notification to the media and other interested persons is required. The minutes for the meeting shall describe the emergency justifying less than 24 hours notice. The notice must be appropriate to the circumstances. At an emergency special meeting only matters connected with the emergency shall be considered. No emergency special meeting shall be held without the presence of the Auditor, Deputy Auditor or Auditor's designee who shall act as the clerk of the meeting according to appropriate provisions of the Charter and shall keep a full and complete record of the proceedings. An emergency special meeting shall be deemed to be in session upon the presence of a quorum, and consideration of any ordinance or resolution at an emergency special meeting shall be governed by the appropriate Sections of the Charter. No ordinance or resolution shall be considered at the emergency special meeting unless it is in writing and unless an original copy has been filed with the Auditor before action thereon. An emergency special meeting may be held at a place other than the Council Chambers but shall be open to the public and all provisions of the Charter relating to legislative acts of the Council shall apply to any ordinance passed by the Council at the emergency special meeting.

3.02.025 Attendance by Electronic Communication.

Members of the City Council may attend and be present at public meetings by means of telephone or other electronic communication allowing voice transmission provided that all the conditions in Subsections A. – D. are fulfilled.

- A.** An emergency exists such that failure to allow participation of City Council members by electronic communication would jeopardize the public interest, health, safety or welfare.

**TITLE 3
ADMINISTRATION**

- B.** Prior to commencement of the meeting, the Auditor or designate shall make reasonable efforts to notify all City Council members who are expected to be unable to be physically present at the location of the meeting in order to give them an opportunity to participate by electronic communication.
- C.** At the commencement of the meeting, the Council shall make a record of the circumstances constituting the emergency which requires use of electronic communication and a record of the nature and extent of the attempts made to give each physically absent Council member an opportunity to participate by electronic communication. After making this record, the Council shall give an opportunity to all those physically present at the meeting to state on the record any objection they have to conducting the meeting by electronic communication.
- D.** Except for an executive session, the Council shall make available at least one place where the public entitled to attend the meeting can listen to the communication at the time it occurs by speakers or other devices. The place provided may be a place where no members of the Council are present. All other requirements of state law and City Code concerning the conduct of meetings by electronic communication shall be met.

3.02.030 Entry of Documents on Agenda.

(Amended by Ordinance Nos. 165402, 166314, 170834, 177787, 182515 and 185877, effective March 1, 2013.)

- A.** Notice and Filing of Documents. The City Auditor shall post on the City's website and distribute electronically to interested persons, 24 hours before each meeting, a summary of matters to come before the Council at the next meeting. The summary shall be known as the Portland City Council Agenda. Documents for inclusion on the Agenda shall be filed in the Office of the City Auditor before 5:00 p.m. each Thursday preceding the Council meeting except when otherwise required due to the date of a legal holiday. In this event, the Auditor shall give notice to all bureaus of the revised time for filing agenda items.
- B.** The Order of Business on the Council Agenda. Items of Council business shall be heard in the following order:
 - 1.** Communications from the public or governmental jurisdictions other than City.
 - 2.** Time Certain matters.
 - 3.** Consent Agenda.
 - a.** Reports of City Officers;

**TITLE 3
ADMINISTRATION**

- b.** Reports from Committees or Commissions;
- c.** Matters submitted by Order of Council, a Committee of Council or by two or more Council members;
- d.** Items introduced by and identified as such from:
 - (1)** The Mayor;
 - (2)** The Commissioners, in order of position. Beginning January 1 of every year, items introduced by the Commissioner in Position No. 1 shall be placed first, followed by the Commissioner in Position No. 2, then the Commissioner in Position No. 3, then the Commissioner in Position No. 4. The order of placement shall be modified on the first day of each subsequent calendar quarter so that items introduced by the Commissioner whose Position number was first in order in the previous calendar quarter are placed last in order; and
 - (3)** The City Auditor.

The provisions of Section 3.02.036 shall apply to matters on the Consent Agenda.

- 4.** Regular Agenda. The business of the Council on the Regular Agenda shall be presented in the same order as items B.3.a.-d. above.

C. Schedule of Council items.

- 1.** The Auditor's Office has the discretion to schedule items in a manner making the best use of Council time including consolidating all of the Council's business into one session. Generally, business items including purchases, contracts, personnel actions, budgetary matters, franchises, claims, nuisances, street vacations, local improvements, permits and similar actions will be presented at the Wednesday 9:30 a.m. meeting.
- 2.** Appeals and hearings of land use matters which require notification under the Planning and Zoning Code will generally be scheduled at the recessed meeting. on Wednesday unless otherwise announced.
- 3.** Any item of business which is expected to require considerable testimony and/or Council discussion may be filed for consideration at the

**TITLE 3
ADMINISTRATION**

Wednesday or Thursday sessions and may be the only item to be heard, if the Auditor so determines.

4. The Auditor may shift matters listed for presentation on Thursday to the following Wednesday if, due to items being withdrawn, there are insufficient items to merit holding a Thursday session. Notice shall be placed on the council Chamber door stating the reschedule date and time.
5. Matters not appearing on the Agenda may be considered by the Council under suspension of rules at any session.
6. The Auditor shall prepare a supplementary Agenda which shall be designated and known as the Four-Fifths Agenda, which shall contain a summary of matters filed in his or her office not later than 5:00 p.m. on the preceding Tuesday for consideration at either the following Wednesday or Thursday session. All documents filed with the Auditor intended for the Four-Fifths Agenda shall be initialed by four members of the Council or their representatives, as designated in Section 3.02.040 D.2.
7. Matters ordered by the Council to be considered at a special time other than the listed sessions shall be considered at the special time as directed by the Council. Council members may direct that special items be listed for meetings other than those specified above.

3.02.035 Ordinance Wording.

A. Ordinance exhibits.

1. If the directive portion of an ordinance refers to an exhibit, unless the ordinance directs otherwise, the following language is understood to follow; to wit “said exhibit is by this reference incorporated as if set out verbatim.”
2. Unless the ordinance directs otherwise, the Auditor shall determine when a copy of an exhibit is to be provided with a copy of the ordinance.

B. Appropriation designation. The budget ordinance makes the annual appropriation and defines the level of accounting control. When the directive section of an ordinance includes a reference to an appropriation, the ordinance shall control the appropriation at the same accounting level in the original budget ordinances. These appropriations are subject to the limitations on specific appropriations or types of expenditure stated in the budget ordinance. The designation of an appropriation in an ordinance by subaccount below the level of control may be adjusted administratively without an amending ordinance provided there is no

**TITLE 3
ADMINISTRATION**

change in the appropriation at the level of control, unless the ordinance directs otherwise.

3.02.036 Consent Agenda.

(Amended by Ordinance Nos. 166314 and 17787, effective August 13, 2003.)

- A.** Those who file documents for inclusion on the Council Agenda shall clearly designate such items as “Consent” or “Regular” Agenda. The Council Agenda shall clearly distinguish Consent from Regular Agenda items. The Auditor shall make an appropriate designation if none is assigned.
- B.** The Consent Agenda may include any matter for Council consideration except:
 - 1.** Appeals of land use decisions or other land use matters requiring a hearing under City Charter or State law;
 - 2.** Any matter which will increase an appropriation unit’s budget; or
 - 3.** Any matter requested to be placed on the regular agenda at the time of filing with the Auditor.
- C.** The Consent Agenda shall be positioned in the Council Agenda in accordance with Section 3.02.030.
- D.** An item designated for the Consent Agenda may be removed from the Consent Agenda by a Council member or any individual prior to Council vote on the Consent Agenda. The request may be in either written or verbal form. When removed, items shall be considered individually at the end of the Consent Agenda at the same Council meeting. A request to pull an item from Consent shall be made to the City Auditor prior to the beginning of the Council meeting, or presented verbally at the Council meeting.
- E.** At any meeting at which there is a Consent Agenda, the ayes and nays shall be taken upon the passage of all items on the Consent Agenda by a single Council vote. It shall not be necessary that there be a reading of the titles or the effect of the items on a Consent Agenda. Items on a Consent Agenda shall not be subject to amendment or debate. Consideration of the Consent Agenda requires at least four Council members to be present and voting. Action on the Consent Agenda shall require a unanimous vote of all Council members present.

**TITLE 5
REVENUE AND FINANCE**

Chapter 5.04

FUNDS

| | |
|----------|--|
| 5.04.010 | Provisions Made For. |
| 5.04.020 | Sundry Trusts Fund. |
| 5.04.030 | Trustees' Fund. |
| 5.04.040 | Parking Meter Fund. |
| 5.04.050 | Golf Fund. |
| 5.04.070 | Bonded Debt Interest and Sinking Fund. |
| 5.04.140 | Parking Facilities Fund. |
| 5.04.150 | Parking Facilities Bond Redemption Fund. |
| 5.04.170 | Revenue Sharing Fund. |
| 5.04.175 | State Revenue Sharing Fund. |
| 5.04.180 | CityFleet Operating Fund. |
| 5.04.185 | Facilities Services Operating Fund. |
| 5.04.200 | Printing and Distribution Services Operating Fund. |
| 5.04.210 | Improvement Warrant Sinking Fund. |
| 5.04.220 | Economic Development Trust Fund. |
| 5.04.230 | Insurance and Claims Operating Fund. |
| 5.04.240 | Worker's Compensation Self Insurance Operating Fund. |
| 5.04.250 | System Development Charge Sinking Fund. |
| 5.04.270 | Washington County Water Supply Construction Fund. |
| 5.04.280 | Washington County Water Supply Bonded Debt Service Sinking Fund. |
| 5.04.290 | Water Growth Impact Charge Trust Fund. |
| 5.04.300 | Bull Run Fund. |
| 5.04.310 | St. Johns Landfill End Use Plan Fund. |
| 5.04.320 | Sewer Revolving Loan Fund. |
| 5.04.400 | Sewer System Operating Fund. |
| 5.04.410 | Sewer System Construction Fund. |
| 5.04.420 | Sewer System Debt Redemption Fund. |
| 5.04.430 | Sewer System Debt Proceeds Fund. |
| 5.04.440 | Sewer System Rate Stabilization Fund. |
| 5.04.450 | Sewer System Safety Net Fund. |
| 5.04.460 | Use of Sewage Disposal Fund. |
| 5.04.470 | Portland Police Fitness Room Trust Fund. |
| 5.04.480 | Property Management License Fund. |
| 5.04.490 | Graffiti Nuisance Abatement Trust Fund. |
| 5.04.500 | Technology Services Fund. |
| 5.04.510 | Arts Education and Access Fund. |

Chapter 5.08**PAYMENT OF SALARIES, WAGES AND EXPENSES**

- 5.08.010 Biweekly Pay Period.
- 5.08.020 Preparation and Certification of Biweekly Time Reports.
- 5.08.030 Computing Daily and Hourly Rates of Pay.
- 5.08.040 When Auditor to Draw Checks.
- 5.08.060 Safety Glasses.
- 5.08.070 Clothing Allowance.
- 5.08.075 Year Defined.
- 5.08.105 Reimbursement to Employees in Educational Programs Authorized by Council.
- 5.08.110 Bus Fare for Meter Readers.
- 5.08.120 Payment of Salaries and Wages at Other than Times Specified.
- 5.08.130 Salaries Chargeable to More than One Fund.
- 5.08.140 Salary Deductions.
- 5.08.150 State Tax Street Fund.
- 5.08.160 Delivery of Checks Payable to Deceased Persons.
- 5.08.170 Hold Harmless Agreements.
- 5.08.180 Effect of Death Upon Assignments and Levies.

Chapter 5.09**DEFERRED COMPENSATION PLAN**

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

| | |
|---------------------|---|
| Chapter 5.10 | CITY CHARITABLE CAMPAIGN |
| 5.10.010 | Definitions. |
| 5.10.020 | Charitable Campaign. |
| 5.10.030 | Charitable Campaign Advisory Committee. |
| 5.10.040 | Eligibility for Participation in Charitable Campaign. |
| 5.10.050 | Administration of Charitable Campaign. |
| | |
| Chapter 5.12 | ASSIGNMENT OR GARNISHMENT OF SALARIES, WAGES OR CLAIMS |
| 5.12.010 | Unlawful to Assign Salary or Wages. |
| 5.12.020 | Auditor Not to Recognize Assignment. |
| 5.12.030 | Exceptions. |
| 5.12.040 | Penalty. |
| 5.12.050 | Garnishments. |
| | |
| Chapter 5.16 | EMERGENCY CHECKS |
| 5.16.010 | Issued When. |
| 5.16.020 | Extraordinary Circumstances Requiring Emergency Checks. |
| | |
| Chapter 5.20 | BUDGET PROCEDURE |
| 5.20.010 | Budget Procedure. |
| 5.20.020 | Reimbursable Expenditures Account. |
| | |
| Chapter 5.24 | AUDITOR'S RECORDS AND REPORTS |
| 5.24.010 | Permanent Records to be Kept by Auditor. |
| 5.24.020 | Auditor to Report on Balance in Appropriation. |
| | |
| Chapter 5.30 | COLLECTIONS AND FORECLOSURE PROCESS |
| 5.30.010 | Purpose. |
| 5.30.020 | Definitions. |
| 5.30.030 | Applicability and Foreclosure Options. |
| 5.30.040 | Authorities and Responsibilities. |
| 5.30.050 | Collection Process. |
| 5.30.060 | Adjustment of Open Lien Amounts. |
| 5.30.070 | Catch-up Payment Program. |
| 5.30.080 | Hardship Payment Program |
| 5.30.090 | Negotiation of Bonded Lien Payment Contracts. |
| 5.30.100 | Preparation of Foreclosure List. |
| 5.30.110 | Council Action on Foreclosure List. |
| 5.30.120 | Purchase of Property by the City. |
| 5.30.130 | Recording Notice of Foreclosure Sale. |

- 5.30.140 Notice to Persons on Foreclosure List of Foreclosure Action.
- 5.30.150 Payment of Lien.
- 5.30.160 Presale and Sale Conditions.
- 5.30.170 Foreclosure Sale.
- 5.30.180 Waste, Improvements to the Property, and Nuisance Abatement Procedures.
- 5.30.190 Certificate of Sale and Notice of Sale to Property Owner.
- 5.30.200 Entry of Collections and Sales.
- 5.30.210 Redemption.
- 5.30.220 Issuance of Deed.
- 5.30.230 Payment of Taxes.
- 5.30.240 Sale of Property Purchased by City.

Chapter 5.31

COLLECTIONS & FORECLOSURE PROCESS FOR DELINQUENT SEWER SAFETY NET LIENS

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

Chapter 5.33

GOODS AND SERVICES

- 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.
- 5.33.050 Authority for Golf Concession Contracts.
- 5.33.055 Authority of Appropriate Unit Managers.
- 5.33.060 Authority of Directors.
- 5.33.065 Authority for Stormwater Improvements.
- 5.33.070 Purchasing Goods, Services and Public Improvements from City Employees.
- 5.33.075 Affirmative Action.
- 5.33.080 Environmentally Preferable Procurement.
- 5.33.085 Preference for Goods Fabricated or Processed within State or Services Performed Within State.
- 5.33.090 Use of Price Agreements.
- 5.33.100 Overview of Source Selection and Contractor Selection.
- 5.33.105 Feasibility and Cost Analysis.
- 5.33.110 Qualified Rehabilitation Facilities.
- 5.33.120 Sole-Source Procurements.
- 5.33.130 Emergency Procurements.
- 5.33.135 Declaration of State of Emergency or Disaster.
- 5.33.140 Cooperative Purchasing.
- 5.33.145 Rules on all types of Cooperative Procurements.
- 5.33.150 Join Cooperative Procurements.
- 5.33.160 Permissive Cooperative Procurements.
- 5.33.170 Interstate Cooperative Procurements.
- 5.33.180 Small Procurements.
- 5.33.190 Intermediate Procurements.
- 5.33.200 Competitive Sealed Bidding.
- 5.33.205 Multi-Step Sealed Bids.
- 5.33.210 Competitive Sealed Proposals.
- 5.33.211 Procedures for Competitive Range, Multi-Tiered and Multi-Step Proposals.
- 5.33.220 Special Procurements.
- 5.33.300 Public Notice of Solicitation for Contracts over \$150,000.
- 5.33.310 Specifications and Brand Names.
- 5.33.320 Bids or Proposals are Offers.
- 5.33.330 Facsimile Bids and Proposals.
- 5.33.340 Electronic Procurement.
- 5.33.350 Reverse Auctions.
- 5.33.360 Contract Conditions.
- 5.33.400 Offer Preparation.
- 5.33.410 Bid or Proposal Security.
- 5.33.420 Pre-Offer Conferences.

| | |
|----------|---|
| 5.33.430 | Addenda to Solicitation Document. |
| 5.33.440 | Request for Clarification or Change. |
| 5.33.450 | Offeror Submission. |
| 5.33.460 | Pre-Closing Modification or Withdrawal of Offers. |
| 5.33.470 | Receipt, Opening and Recording of Offers. |
| 5.33.480 | Late Offers, Late Withdrawals and Late Modifications. |
| 5.33.490 | Mistakes. |
| 5.33.495 | Time for City Acceptance. |
| 5.33.500 | Responsibility of Offerors. |
| 5.33.505 | Qualified Products Lists. |
| 5.33.510 | Prequalification of Prospective Offerors; Pre-Negotiation of Contract Terms and Conditions. |
| 5.33.530 | Debarment of Prospective Offerors. |
| 5.33.540 | DBE Disqualification. |
| 5.33.610 | Offer Evaluation and Award. |
| 5.33.620 | Negotiation With Offerors Prohibited. |
| 5.33.625 | Contract Preferences. |
| 5.33.630 | Reciprocal Preferences. |
| 5.33.635 | Contract Preferences: Recycled Materials. |
| 5.33.640 | Rejection of All or Part of an Offer. |
| 5.33.645 | Rejection of All Offers. |
| 5.33.650 | Notice of Intent to Award. |
| 5.33.660 | Cancellation, Delay or Suspension of Solicitation. |
| 5.33.670 | Disposition of Offers if Solicitation Canceled. |
| 5.33.675 | Documentation of Award. |
| 5.33.685 | Availability of Award Decisions. |
| 5.33.690 | Performance and Payment Security; Waiver. |
| 5.33.695 | Notification to State of Nonresident Contractor. |
| 5.33.700 | Protests and Judicial Review of Special Procurements. |
| 5.33.710 | Protests and Judicial Review of Sole-Source Procurements. |
| 5.33.720 | Protests and Judicial Review of Multi-Tiered Solicitations. |
| 5.33.730 | Protests and Judicial Review of Solicitation Documents and the Procurement Process. |
| 5.33.740 | Protests and Judicial Review of Contract Award. |
| 5.33.750 | Protests of Other Violations. |
| 5.33.760 | Review of Prequalification and Debarment Decisions. |
| 5.33.770 | Procurement Board of Appeals. |
| 5.33.780 | Powers of the Board. |
| 5.33.790 | Appeal to Board. |
| 5.33.900 | Social Equity Contracting and Employment Programs. |
| 5.33.920 | Records Maintenance; Right to Audit Records. |
| 5.33.930 | Right to Inspect Plant or Place of Business. |
| 5.33.940 | Contract Cancellation, Contractor Termination Procedures. |

Chapter 5.34

PUBLIC IMPROVEMENTS AND CONSTRUCTION SERVICES

- 5.34.010 Definitions.
- 5.34.020 Application and Authority.
- 5.34.040 Affirmative Action.
- 5.34.060 Contracts for Construction Other than Public Improvements.
- 5.34.100 Overview of Source Selection and Contractor Selection.
- 5.34.110 Emergency Contracts; Bidding and Bonding Exemptions.
- 5.34.120 Selection of Substitute Contractor.
- 5.34.130 Joint Cooperative Purchasing.
- 5.34.140 General Rules for Joint Cooperative Procurements; Fees.
- 5.34.150 Competitive Bidding Requirement.
- 5.34.160 Intermediate Procurements; Competitive Quotations.
- 5.34.300 Solicitation Documents; Required Provisions; Assignment or Transfer.
- 5.34.310 Notice and Advertising Requirements; Posting.
- 5.34.320 Specifications and Brand Names.
- 5.34.330 Facsimile Bids and Proposals.
- 5.33.340 Electronic Procurement.
- 5.34.410 Bid or Proposal Security.
- 5.34.420 Pre-Offer Conferences.
- 5.34.430 Addenda to Solicitation Documents.
- 5.34.440 Request for Clarification or Change.
- 5.34.450 Offer Submissions.
- 5.34.460 Pre-Closing Modification or Withdrawal of Offers.
- 5.34.470 Receipt, Opening and Recording of Offers.
- 5.34.480 Late Bids, Late Withdrawals and Late Modifications.
- 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.
- 5.34.600 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.
- 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. |
| 5.34.750 | Review of Prequalification and Disqualification Decisions. |
| 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 (CM/GC). |
| 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. |

Chapter 5.36

PROPERTY CONTROL

| | |
|----------|---|
| 5.36.001 | Surplus Property Policy. |
| 5.36.010 | Disposition of Surplus Property. |
| 5.36.015 | Disposition of Unclaimed and Found Personal Property. |
| 5.36.020 | Sale of Buildings for Removal from City Property. |
| 5.25.025 | Purchase and Resale by the City of Tax-Foreclosed Property. |

- 5.36.030 Loans of Personal Property Owned by City.
- 5.36.035 Lost or Stolen City Property.
- 5.36.040 Parking Meter Fund Equipment.
- 5.36.050 Use of City Automobiles for Transporting Firing Squads.
- 5.36.060 Use of Water Bureau Property by Bureau of Shops.
- 5.36.080 Zoological Specimens.
- 5.36.090 Gifts and Loans of Property.
- 5.36.100 Use of City Property for Elections.
- 5.36.110 Use of City Property for Air Quality Measuring Stations.
- 5.36.115 Designation of "Persons In Charge."

Chapter 5.40

DEMANDS AND DISBURSEMENTS

- 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.

Chapter 5.48

CHARGES FOR SERVICES PERFORMED

- 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.

Chapter 5.50

COLLECTIONS SECTION

- 5.50.010 Collections Section.
- 5.50.020 Compromise Authorization.
- 5.50.030 Money Collected.

Chapter 5.52

PETTY CASH AND CHECKS

- 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.

| | |
|---------------------|---|
| Chapter 5.56 | AMBULANCE SERVICE |
| 5.56.010 | Police Radio Dispatch Service. |
| 5.56.020 | Acceptance by Ambulance Companies. |
| Chapter 5.60 | MISCELLANEOUS CHARGES |
| 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. |
| Chapter 5.64 | MISCELLANEOUS FISCAL PROVISIONS |
| 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. |
| Chapter 5.68 | PROFESSIONAL, TECHNICAL AND EXPERT SERVICE CONTRACTS |
| 5.68.010 | Definition. |
| 5.68.015 | General Requirements – PTE Manual. |
| 5.68.020 | Application. |
| 5.68.030 | Public Announcement of Requirements. |
| 5.68.035 | Authority to Obligate City for Professional, Technical or Expert Services. |
| 5.68.050 | Review by City Attorney. |
| 5.68.060 | Outside Legal Services. |
| 5.68.070 | Procedure for Selection of Bond Counsel. |
| 5.68.080 | Contractor's Compliance with Workers' Compensation Requirements. |
| Chapter 5.72 | ECONOMIC DEVELOPMENT PROJECTS |
| 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.

Chapter 5.73

ART EDUCATION AND ACCESS INCOME TAX

- 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 Bureau Responsibilities.
- 5.73.090 Limitation on Costs.
- 5.73.100 Confidentiality.
- 5.73.110 Frivolous Filing, False Filing and Hacking.

Chapter 5.74

ACQUISITION OF ART

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

CHAPTER 5.75

CLAIMS UNDER ORS CHAPTER 197

- 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.

Chapter 5.32

**PURCHASING AGENT
AND PROCEDURES**

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

**TITLE 5
REVENUE AND FINANCE**

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.
- 5.33.050 Authority for Golf Concession Contracts.
- 5.33.055 Authority of Appropriate Unit Managers.
- 5.33.060 Authority of Directors.
- 5.33.065 Authority for Stormwater Improvements.
- 5.33.070 Purchasing Goods, Services and Public Improvements from City Employees.
- 5.33.075 Affirmative Action.
- 5.33.080 Environmentally Preferable Procurement.
- 5.33.085 Preference for Goods Fabricated or Processed within State or Services Performed Within State.
- 5.33.090 Use of Price Agreements.
- 5.33.100 Overview of Source Selection and Contractor Selection.
- 5.33.105 Feasibility and Cost Analysis.
- 5.33.110 Qualified Rehabilitation Facilities.
- 5.33.120 Sole-Source Procurements.
- 5.33.130 Emergency Procurements.
- 5.33.135 Declaration of State of Emergency or Disaster.
- 5.33.140 Cooperative Purchasing.
- 5.33.145 Rules on all types of Cooperative Procurements.
- 5.33.150 Join Cooperative Procurements.
- 5.33.160 Permissive Cooperative Procurements.
- 5.33.170 Interstate Cooperative Procurements.
- 5.33.180 Small Procurements.
- 5.33.190 Intermediate Procurements.
- 5.33.200 Competitive Sealed Bidding.
- 5.33.205 Multi-Step Sealed Bids.
- 5.33.210 Competitive Sealed Proposals.
- 5.33.211 Procedures for Competitive Range, Multi-Tiered and Multi-Step Proposals.

**TITLE 5
REVENUE AND FINANCE**

- 5.33.220 Special Procurements.
- 5.33.300 Public Notice of Solicitation for Contracts over \$150,000.
- 5.33.310 Specifications and Brand Names.
- 5.33.320 Bids or Proposals are Offers.
- 5.33.330 Facsimile Bids and Proposals.
- 5.33.340 Electronic Procurement.
- 5.33.350 Reverse Auctions.
- 5.33.360 Contract Conditions.
- 5.33.400 Offer Preparation.
- 5.33.410 Bid or Proposal Security.
- 5.33.420 Pre-Offer Conferences.
- 5.33.430 Addenda to Solicitation Document.
- 5.33.440 Request for Clarification or Change.
- 5.33.450 Offeror Submission.
- 5.33.460 Pre-Closing Modification or Withdrawal of Offers.
- 5.33.470 Receipt, Opening and Recording of Offers.
- 5.33.480 Late Offers, Late Withdrawals and Late Modifications.
- 5.33.490 Mistakes.
- 5.33.495 Time for City Acceptance.
- 5.33.500 Responsibility of Offerors.
- 5.33.505 Qualified Products Lists.
- 5.33.510 Prequalification of Prospective Offerors; Pre-Negotiation of Contract Terms and Conditions.

- 5.33.530 Debarment of Prospective Offerors.
- 5.33.540 DBE Disqualification.
- 5.33.610 Offer Evaluation and Award.
- 5.33.620 Negotiation With Offerors Prohibited.
- 5.33.625 Contract Preferences.
- 5.33.630 Reciprocal Preferences.
- 5.33.635 Contract Preferences: Recycled Materials.
- 5.33.640 Rejection of All or Part of an Offer.
- 5.33.645 Rejection of All Offers.
- 5.33.650 Notice of Intent to Award.
- 5.33.660 Cancellation, Delay or Suspension of Solicitation.
- 5.33.670 Disposition of Offers if Solicitation Canceled.
- 5.33.675 Documentation of Award.
- 5.33.685 Availability of Award Decisions.
- 5.33.690 Performance and Payment Security; Waiver.
- 5.33.695 Notification to State of Nonresident Contractor.
- 5.33.700 Protests and Judicial Review of Special Procurements.
- 5.33.710 Protests and Judicial Review of Sole-Source Procurements.
- 5.33.720 Protests and Judicial Review of Multi-Tiered Solicitations.
- 5.33.730 Protests and Judicial Review of Solicitation Documents and the Procurement Process.

**TITLE 5
REVENUE AND FINANCE**

- 5.33.740 Protests and Judicial Review of Contract Award.
- 5.33.750 Protests of Other Violations.
- 5.33.760 Review of Prequalification and Debarment Decisions.
- 5.33.770 Procurement Board of Appeals.
- 5.33.780 Powers of the Board.
- 5.33.790 Appeal to Board.
- 5.33.900 Social Equity Contracting and Employment Programs.
- 5.33.920 Records Maintenance; Right to Audit Records.
- 5.33.930 Right to Inspect Plant or Place of Business.
- 5.33.940 Contract Cancellation, Contractor Termination Procedures.

5.33.010 Definitions.

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

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

**TITLE 5
REVENUE AND FINANCE**

10. **Chief Procurement Officer:** The individual in charge of the Procurement Services Division of the Office of Management and Finance.
11. **City:** The City of Portland, Oregon or designee.
12. **Closing:** The date and time announced in the City’s Solicitation Document as the deadline for submitting Offers.
13. **Competitive Bidding:** A selection process that involves an advertised public notice, issuance of a Written Solicitation Document inviting Persons to submit Written, signed, and sealed Bids that are received in Procurement Services and publicly opened at a designated time and place.
14. **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.
15. **Competitive Range:** The number of Proposers the City will conduct discussions or negotiate if the City intends to conduct discussions or negotiations in accordance with Chapter 5.33 or Chapter 5.34.
16. **Construction Manager/General Contractor (CM/GC):** An alternative contracting method, or a Person selected pursuant to that method, to perform a Public Improvement project. The method typically requires a Contractor to undertake design phase involvement, constructability reviews, value engineering, scheduling, estimating and acquiring subcontracting services, establishing a GMP to complete the Contract Work, acting as General Contractor, coordinating and managing the building process, and providing General Contractor expertise.
17. **Contract:** See definition for “Public Contract.”
18. **Contract Amount:** The total of the Awarded Bid or Proposal amount, including any approved alternates. The “original” Contract Amount is, depending on the context, the maximum amount that the City will pay for work performed pursuant to the Contract or an estimated amount when the amount is based on unit prices. The “final” Contract Amount is the amount that the City actually pays the Contractor after execution of change orders, Contract amendments, or variations in unit prices, which cause the original Contract price to increase or decrease.

**TITLE 5
REVENUE AND FINANCE**

19. **Contract Execution:** Contract Execution occurs when the Contract is signed by any mark, word, or symbol, in ink, by an Authorized Representative of an Offeror and the City.
20. **Contractor:** The Person with whom the City executes a Contract.
21. **Cost Estimate:** The City's most recent pre-Bid, good faith assessment of anticipated Contract costs, consisting of either the estimate of an architect, engineer or other qualified professional, or confidential cost calculation worksheets, where available, or formal planning or budgetary documents.
22. **Days:** Calendar days, including weekdays, weekends and holidays, beginning at midnight and ending at midnight twenty-four hours later, unless otherwise specified by these rules or the Solicitation Document.
23. **Descriptive Literature:** Informational materials concerning available products or services submitted by Offerors in response to the City's Solicitation Document.
24. **Electronic:** Any means of transmission of information by Electronic device, including but not limited to Electronic mail or Facsimile. A Facsimile or fax is a document that has been transmitted to the City over telephone lines and received by the City in a hard copy form by a device commonly known as a Facsimile machine.
25. **Electronic Advertisement:** A notice of the City's Solicitation Document or Request for Qualifications or information, or a request for price quotations, available over the Internet by:
 - a. the World Wide Web or some other Internet protocol; or
 - b. the City's Electronic Procurement System. An Electronic Advertisement may include a Solicitation Document.
26. **Electronic Offer:** A response to the City's Solicitation Document or request for price quotations submitted to the City via
 - a. the World Wide Web or some other Internet Protocol; or
 - b. the City's Electronic Procurement System.
27. **Electronic Procurement System:** An information system that Persons may access through the Internet or that Persons may otherwise remotely access through a computer, that enables Persons to send Electronic Offers

**TITLE 5
REVENUE AND FINANCE**

and the City to post Electronic Advertisements, receive Electronic Offers, and conduct other activities related to the City's procurement of goods and services or construction services.

- 28. 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.
- 29. Equal Employment Opportunity (EEO):** A certification program administered by the City, Certification by Contractors is required for in order to obtain most City Contracts as required by Chapter 3.100.
- 30. 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.
- 31. 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.
- 32. Goods and Services/Goods or Services:** Any combination of any of the items identified in the definitions of "goods" and "services".
- 33. Invitation to Bid (ITB):** The Written document that invites offers from prospective contractors pursuant to either ORS 279B.055 or 279C.335.
- 34. Life Cycle Costing:** A determination of the cost of a product for its estimated useful life, including without limitation acquisition costs, operation and maintenance costs, and disposal.
- 35. Local Contract Review Board:** The Portland City Council, or designee.
- 36. Nonresident Bidder:** A Bidder who is not a Resident Bidder.
- 37. Offer:** A Written response to a Solicitation Document.

**TITLE 5
REVENUE AND FINANCE**

- 38. Offeror:** A Person that submits an Offer.
- 39. Opening:** The date, time and place announced in the Solicitation Document for the public Opening of Written, sealed Offers.
- 40. 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.
- 41. 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.
- 42. 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.
- 43. Price Agreement:** A Contract for the Procurement of Goods or Services at a set price with:
- a.** No guarantee of a minimum or maximum purchase; or
 - b.** An initial order or minimum purchase combined with a continuing Contractor obligation to provide Goods or Services, in which the City or other contracting agency does not guarantee a minimum or maximum additional purchase.
- 44. Procurement:** The act of purchasing, leasing, renting or otherwise acquiring Goods or Services. Procurement includes each function and procedure undertaken or required to be undertaken by the City to enter into a Contract, administer a Contract and obtain the performance of a Contract under the State Public Contracting Code.
- 45. Procurement Services:** A division of the Bureau of Internal Business Services in the City of Portland.
- 46. Product Sample:** The exact goods, or a representative portion of the exact goods requested by a Solicitation Document.
- 47. Proposal:** A Written response to a Request for Proposals.

**TITLE 5
REVENUE AND FINANCE**

48. **Proposer:** A Person who submits a Proposal in response to the City’s Request for Proposals.
49. **Public Contract:** A sale or other disposal, or a purchase, lease, rental or other acquisition, by the City of personal property, services, including personal services, Public Improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement, but does not include “grants.”
50. **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.
51. **Qualified Rehabilitation Facility (QRF):** A nonprofit community rehabilitation program or a vocational service provider whose purpose is to assist and encourage disabled individuals and which:
- a. During the fiscal year employs disabled individuals for not less than 75 percent of the hours of direct labor required for the manufacture or provision of its products or services.
 - b. Shall be either a community rehabilitation program certified through the Oregon Vocational Rehabilitation Division or a vocational service provider certified through the Oregon Mental Health Division of the Department of Human Resources;
 - c. Meets the definition given in ORS 279.835(4); and
 - d. Shall be currently certified by the Oregon Department of Administrative Services (ODAS) as a QRF; i.e., is listed as a current certificate holder in the annual QRF Directory, published by ODAS.
52. **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.

**TITLE 5
REVENUE AND FINANCE**

- 53. Request for Proposals (RFP):** All documents used for soliciting Proposals. In accordance with these rules, or when permitted by Chapter 5.34.
- 54. Request for Qualifications (RFQ):** A Written document, issued by the City to prospective Contractors, that seeks a description of their experience and qualifications to perform certain identified Work that may or may not lead to the issuance of an RFP.
- 55. 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.
- 56. 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.
- 57. 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.
- 58. Scope:** The range and attributes of the Goods or Services described in the applicable Procurement document.
- 59. Services:** Services other than “personal” or “PTE” services covered by Chapter 5.68.
- 60. Signature:** Any Written mark, word or symbol that is made or adopted by a Person with the intent to be bound to a Contract.
- 61. Signed:** As the context requires, the term “signed” means either that a Written document contains a Signature or that the act of making a Signature has occurred.
- 62. Solicitation:** A request by the City for prospective Contractors to submit Offers.
- 63. Solicitation Document:** An Invitation to Bid, Request for Proposals or other document issued to invite Offers from prospective Contractors pursuant to ORS Chapter 279B or 279C. All documents referenced by

**TITLE 5
REVENUE AND FINANCE**

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

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

5.33.020 City Council as Local Contract Review Board.

(Amended by Ordinance Nos. 184403, 185065 and 185898, effective February 20, 2013.)

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

**TITLE 5
REVENUE AND FINANCE**

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

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

5.33.030 Application of Purchasing Code.

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

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

TITLE 5
REVENUE AND FINANCE

- 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;

- 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:

**TITLE 5
REVENUE AND FINANCE**

- 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 by not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets;
 - (2)** The assistance is provided to a recipient for the purpose of supporting or stimulating a program or activity of the recipient; and
 - (3)** No substantial involvement by the City is anticipated in the program or activity of the recipient other than involvement associated with monitoring compliance with the grant conditions.
- 7.** Acquisitions or disposals of real property or interests in real property;
 - 8.** Sole source expenditures when rates are set by law or ordinance for purposes of these rules concerning source selection;
 - 9.** Revenue Generating Contracts: Contracts whose primary purpose is generating revenue and are typically Awarded to the Offeror proposing the most Advantageous or highest monetary Offer to the City, or both, except to the extent of the Chief Procurement Officer's authority as stated in Section 5.33.040. The City Council may designate a particular Contract as a revenue-generating Contract;

**TITLE 5
REVENUE AND FINANCE**

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

5.33.040 Authority of Chief Procurement Officer.

(Amended by Ordinance Nos. 181547, 183445, 184403, 185065 and 185898, effective February 20, 2013.)

- A. For Contracts covered by Chapters 5.33 and 5.34, the Chief Procurement Officer is authorized to:
 1. Advertise for Bids or Proposals for Goods and Services without specific authorization from City Council, when the proposed purchase is included within the current fiscal year budget.
 2. Award and execute Contracts for the purchase or lease of Goods and Services, without specific authorization by ordinance of City Council whenever the Contract Amount is \$500,000 or less.
 3. Award and execute Price Agreements for the purchase or lease of Goods and Services, including revenue producing services, if the yearly estimated cost to the City, or the yearly estimated revenue or value is \$500,000 or less.
 4. Recommend the Award of a Contract for Goods and Services, including revenue producing services by a report to City Council for Contracts in excess of \$500,000. If the City Council adopts the recommendation, it shall approve the Award by ordinance.
 5. Advertise for Bids or Proposals for Goods and Services when the proposed purchase is not included within the current fiscal year budget when City Council approves of the purchase by Ordinance. Thereafter, the Chief Procurement Officer may award and execute a Contract if the Contract Amount is \$500,000 or less. If the Contract Amount exceeds \$500,000 the Chief Procurement Officer shall recommend the Award of a Contract by report to City Council.

**TITLE 5
REVENUE AND FINANCE**

- 6.** Authorize and execute amendments for Contracts, Price Agreements and Intergovernmental Agreements involving the procurement of Goods and Services that were originally executed in accordance with Chapters 5.33 and 5.34 as follows:

 - a.** Amendments not exceeding 25 percent of the original Contract Amount.
 - b.** Amendments exceeding 25 percent of the original Contract Amount, provided that the amended Contract Amount does not exceed \$500,000 and the director of the bureau in whose behalf of the Contract was issued concurs.
 - c.** Execute amendments to Price Agreements if the yearly estimated cost to the City is \$500,000 or less.
 - d.** Amendments whenever an ordinance approved by the City Council grants additional authority to the Chief Procurement Officer beyond that stated in these rules.
- 7.** Authorize final payment for a Procurement of Goods and Services after confirming that all Work is completed and accepted by the City, as follows:

 - a.** Whenever the final Contract Amount does not exceed 25 percent of the original Contract Amount; or
 - b.** Whenever the final Contract Amount exceeds 25 percent of the original Contract Amount, provided that the final Contract Amount is less than \$500,000 and the Director of the Bureau on whose behalf the Contract was issued concurs.
- 8.** Adopt forms, procedures, and administrative rules for all City purchases of Goods and Services regardless of amount. The City shall use the forms, procedures and administrative rules unless they conflict with the City Code.
- 9.** Establish a procedure providing appropriate financial control over the authorization provided by Sections 5.33.055 and 5.33.060.
- 10.** Revoke or place conditions on the authority of appropriation unit managers, directors and officers to issue limited purchase orders obligating the City for purchase of materials or services not to exceed \$5,000, in the event of violations of these rules.

**TITLE 5
REVENUE AND FINANCE**

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

5.33.050 Authority for Golf Concession Contracts.

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

- A.** The Director of Portland Parks and Recreation is authorized to execute a Contract for concessions in the parks of the City for the sale of refreshments and notions and for the performance of public service, upon such terms and conditions, and using evaluation criteria as the Director of Portland Parks and Recreation may deem to be in the public interest. Such contracts are not subject to the procurement methods otherwise provided in Chapter 5.33.
- B.** When the Chief Procurement Officer advertises for Bids or Proposals, and the Parks Director believes there is no acceptable Bid or Proposal received for a concession, a concession Contract may be granted to any entity upon such terms and conditions, including terms and conditions that are different from those advertised, as the Director of Portland Parks and Recreation deems to be in the best interest of the City. The Director of Portland Parks and Recreation may

**TITLE 5
REVENUE AND FINANCE**

renew any concession Contract or concession permit upon request of the concessionaire without calling for Bids for a total term not to exceed the five (5) year limitation imposed by City Charter Section 2-105(a)(3).

- C.** Concessions at the City’s golf courses may be Awarded in the following manner: The Chief Procurement Officer shall advertise for Bids or Proposals for golf concessions Contracts based on evaluation criteria authorized by the Director of Portland Parks and Recreation. A selection advisory committee appointed by the Director of Portland Parks and Recreation shall review all Offers. The selection advisory committee shall screen qualifications and Proposals, and shall recommend the most Advantageous Bid or Proposal to the Director of Portland Parks and Recreation. The advisory committee may reserve the right to interview prospective concessionaires after submission of Offers.
- D.** The Director of Portland Parks and Recreation is authorized to execute Contracts for golf concessions for food service operation, merchandise sales, cart rentals, golf instruction and other functions normal to clubhouse operations and for performance of public services, for a period not to exceed five (5) years, at the golf courses owned by the City, upon such terms and conditions as the Director of Portland Parks and Recreation deems to be in the best interest of the City, subject to approval by the City Council.
- E.** Renewal of any golf concession Contract upon request of the concessionaire and upon the recommendation of the Director of Portland Parks and Recreation may be authorized by the City Council without calling for new Bids or Proposals, for a term not to exceed the five year limitation imposed by City Charter Section 2-105(a)(3).

5.33.055 Authority of Appropriation Unit Managers.

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

- A.** Appropriation unit managers are authorized to obligate the City for purchases of Goods and Services for use by those managers in an amount not to exceed \$5,000 for a single transaction as specified in Section 5.33.180. Amendments to those Contracts shall be authorized only by the Chief Procurement Officer in advance of any additional Procurement of Goods and Services.
- B.** Purchases under \$5,000 shall be made by using a credit card authorized by Procurement Services known as the “Procurement Card” (“P-Card”), or by way of a document known as a Distributed Purchase Order.
- C.** State law prohibits Procurements from being artificially divided or fragmented so as to constitute Procurements under \$5,000.

5.33.060 Authority of Directors.

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)
Directors of Bureaus or Offices are authorized to:

- A. Execute Contracts to the same extent as appropriation unit managers as provided in Section 5.33.055;
- B. Execute Contracts whenever an ordinance approved by the City Council grants additional authority to a Bureau Director beyond that stated in these rules.
- C. Authorize the awarding of grants not to exceed \$5,000 when the proposed grant is included within the current fiscal year budget. Amendments to grants that increase the grant amount may occur only when the additional amount is included within the current fiscal year budget or as otherwise adopted by the City Council by ordinance.

5.33.065 Authority for Stormwater Improvements.

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

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

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

- A. Purchasing From City Employees. The Chief Procurement Officer shall not make any purchase of Goods and Services from any City employee, or any business with which a City employee is associated, except as follows:
 - 1. When the purchase is expressly authorized by ordinance; or
 - 2. During a state of Emergency as provided by Chapters 15.04 and 15.08; and when approved in Writing by the Mayor, or the person performing the Mayor's duties, under those Chapters.
- B. "Business with which a City employee is associated" means any business in which the City employee is a director, officer or owner.

5.33.075 Affirmative Action.

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

**TITLE 5
REVENUE AND FINANCE**

- A.** Pursuant to ORS 279A.100, the City may limit competition on Contracts for Goods and Services, or on other Contracts with an estimated cost of \$50,000 or less to carry out affirmative action policies, in accordance with policies and procedures established by the City.
- B.** Pursuant to ORS 279A.105, the City may require a Contractor to Subcontract some part of a Contract to, or to obtain materials to be used in performing the Contract from:

 - 1.** A business enterprise that is certified under ORS 200.055 as an emerging small business; or
 - 2.** A business enterprise that is:

 - a.** Certified under ORS 200.055 as an emerging small business; and
 - b.** Is located in or draws its workforce from economically distressed areas, as designated by the Oregon Economic and Community Development Department (OECDD); or
 - 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 disqualify a Person from consideration of Award of the City's Contracts under ORS 200.065(5) or suspend a Person's right to be on or participate in any Contract pursuant to ORS 200.075(1) after providing the Person with notice and a reasonable opportunity to be heard in accordance with these rules.

5.33.080 Environmentally Preferable Procurement.

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

A. Definitions:

1. "Alternative Environmentally Preferable Paper" is paper with environmental attributes beyond those of the U.S. Environmental Protection Agency's (EPA) Comprehensive Procurement Guidelines (CPG). These attributes include paper that is unbleached or is bleached without the use of chlorine compounds, goes beyond the EPA CPG post-consumer recycled content standard, is not derived from genetically modified organisms, or is made with fibers that come from certified, well managed forests, agricultural residues, sustainably-produced tree-free crops, or recycled non-tree fibers.
2. "Biodegradable" means capable of being broken down, especially into innocuous products, by the action of living things such as microorganisms.
3. "Energy Star[®] compliant" products mean products that meet or exceed the U.S. Environmental Protection Agency's (EPA) Energy Star[®] criteria for energy efficiency.
4. "Environmentally Preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.
5. "Industrial Oil" means any compressor, turbine or bearing oil, hydraulic oil, metal-working oil or refrigeration oil.
6. "Life Cycle Analysis" means the comprehensive examination of a product's environmental and economic aspects and potential impacts

**TITLE 5
REVENUE AND FINANCE**

throughout its lifetime, including raw material extraction, transportation, manufacturing, use, and disposal.

7. "Lubricating Oil" means any oil intended for use in an internal combustion crankcase, transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equipment or machinery powered by an internal combustion engine.
8. "Post-Consumer Waste," means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item. "Post-consumer waste" does not include manufacturing waste.
9. "Price Premium Payback Period" means the number of years it takes for the savings in operating costs to offset any additional upfront price of the product versus a lower price, less-energy efficient model. It is calculated by dividing the price premium by the annual savings in operating costs.
10. "Readily Biodegradable" shall be defined according to the Organization for Economic Cooperation and Development's (OECD) measurement guidelines.
11. "Reblended Latex Paint" or consolidated latex paint, contains 100 percent post-consumer content from good-quality surplus with no virgin materials such as resins and colorants added.
12. "Recyclable Product" means a product that, after its intended end use, can demonstrably be diverted from the solid waste stream for use as a raw material in the manufacture of another product, preferably higher value uses.
13. "Recycled Latex Paint," or reprocessed latex paint, means latex paint with a post-consumer recycled content level that at a minimum meets the requirements specified by the Environmental Protection Agency's (EPA) Recovered Materials Advisory Notice (RMAN) for reprocessed latex paint.
14. "Recycled Material" means any material that would otherwise be a useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.
15. "Recycled Oil" means used oil that has been prepared for reuse as a petroleum product by refining, reclaiming, reprocessing or other means

**TITLE 5
REVENUE AND FINANCE**

provided that the preparation or use is operationally safe, environmentally sound and complies with all laws and regulations.

16. “Recycled Paper” means a paper product with not less than:
 - a. Fifty percent of its fiber weight consisting of secondary waste materials; or
 - b. Twenty-five percent of its fiber weight consisting of post-consumer waste.
17. “Recycled PETE” means post-consumer polyethylene terephthalate material.
18. “Recycled Product” means all materials, goods and supplies, not less than fifty percent of the total weight of which consists of secondary and post-consumer waste with not less than ten percent of its total weight consisting of post-consumer waste. “Recycled product” includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product’s form.
19. "Retreaded Tire" means any tire that uses an existing casing for the purpose of vulcanizing new tread to such casing that meets all performance and quality standards in the Federal Motor Vehicle Safety Standards determined by the United States Department of Transportation.
20. "Reusable Product" means a product, such as a washable food or beverage container or a refillable ballpoint pen, that can be used several times for an intended use before being discarded.
21. “Secondary Waste Materials” means fragments of products or finished products of a manufacturing process that has converted a virgin resource into a commodity of real economic value. “Secondary waste materials” includes post-consumer waste. “Secondary waste materials” does not include excess virgin resources of the manufacturing process. For paper, “secondary waste materials" does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process.
22. "Used Oil" means a petroleum-based oil which through use, storage or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

**TITLE 5
REVENUE AND FINANCE**

23. "Virgin Oil" means oil that has been refined from crude oil and that has not been used or contaminated with impurities.
 24. "VOC" (Volatile Organic Compound) means an organic compound characterized by a tendency to readily evaporate into the air, contributing to indoor air pollution and photochemical smog.
- B.** Environmentally Preferable Procurement General Policy. In developing plans, drawings, work statements, specifications, or other product descriptions, the City shall insure, to the maximum extent economically feasible, the purchase of environmentally preferable products or services that comply with the City's Sustainable City Principles. This includes, but is not limited to, products that are durable, recyclable, reusable, readily biodegradable, energy efficient, made from recycled materials, and nontoxic. Furthermore, the City shall purchase products and services based on long-term environmental and operating costs, and find ways to include environmental and social costs in short-term prices.
- C.** Recycled Materials and Products Price Preference.
1. In accordance with ORS 279A.125, notwithstanding provisions of law requiring the City to award a contract to the lowest responsible bidder or best proposer or provider of a quotation, and subject to Subsection 5.33.080 C.2., the City shall give preference to the procurement of goods manufactured from recycled materials.
 2. In comparing goods from two or more Bidders or Proposers, and at least one Bidder or Proposer offers goods manufactured from recycled materials, and at least one Bidder or Proposer does not, the City shall select the Bidder or Proposer offering goods manufactured from recycled materials if each of the following conditions exists:
 - a. The recycled product is available;
 - b. The recycled product meets applicable standards;
 - c. The recycled product can be substituted for a comparable non-recycled product;
 - d. The recycled product's costs do not exceed the costs of non-recycled products by more than five percent, or higher if a written determination is made by the City and set forth in the Solicitation Document. For purposes of making the foregoing determination, the City shall consider the costs of the goods following any

**TITLE 5
REVENUE AND FINANCE**

adjustments the City makes to the price of the goods for purposes of evaluation pursuant to Section 5.33.610; and

- e. Offerors, when required in the Solicitation Document, certify in their submitted Offers the minimum, if not exact, percentage of post-consumer waste and total recovered materials content in the products offered.

D. Purchasing Environmentally Preferable Paper & Related Equipment.

- 1. The City shall procure recycled content paper and other alternative environmentally preferable paper according to the City's Sustainable Paper Use policy (Resolution No. 36146).
- 2. In accordance with the City's Sustainable Paper Use Policy, the City shall procure printers, copiers, and fax machines that, at a minimum, have duplex capability.

E. Purchasing Recycled Oils.

- 1. Preference for Oil Products with Greater Recycled Content: The City shall require that purchases of lubricating oil and industrial oil be made from the vendor whose oil product contains the greater percentage of recycled oil, unless a specific oil product containing recycled oil is:
 - a. Not available within a reasonable period of time or in quantities necessary to meet the City's needs;
 - b. Not able to meet the performance requirements or standard recommended by the equipment or vehicle manufacturer, including any warranty requirements; or
 - c. Available only at a cost that exceeds the price preference established in Subsection 5.33.080 C.
- 2. In accordance with ORS 279B.240 the City shall ensure that its procedures and specifications for the procurement of lubricating oil and industrial oil do not exclude recycled oils and do not require oils to be manufactured from virgin materials.

F. Purchasing Retreaded Tires.

**TITLE 5
REVENUE AND FINANCE**

1. All tires for use on the non-steering wheels of City vehicles shall be equipped with retreaded tires unless one of the following exceptions applies:
 - a. The vehicles are emergency vehicles as defined in ORS 801.260;
 - b. The vehicles are other fire suppression or emergency assistance vehicles;
 - c. The vehicles are passenger-carrying vehicles with a gross weight rating of one ton or more; or
 - d. The cost per mile differential of the retreaded tires exceeds the five percent preference set forth in Subsection 5.33.080 C.

G. Purchasing Energy Efficient Products.

1. As available, the City shall procure products that meet or exceed Energy Star[®] criteria for energy efficiency. This applies to:
 - a. any equipment that uses electricity, natural gas, or fuel oil; and
 - b. products that indirectly impact energy use, such as, but not limited to, windows, doors and skylights.
2. City procurement language for such products described in Subsection 5.33.080 G.1. shall request from vendors:
 - a. Evidence that the equipment meets or exceeds the Energy Star[®] criteria for energy efficiency; and
 - b. Savings analyses including: energy (kWh/yr, therms/yr, gallons of gasoline/yr, etc.), operating costs (\$/yr), and the price premium payback (years).
3. Price Differential and Payback Period: While many Energy Star[®] compliant products are currently available for no price premium, should a price differential exist, the City will apply a simple life cycle cost analysis. Purchases where the price premium payback period is within five years or less shall be encouraged. Where the price premium payback period is longer than five years, Energy Star[®] compliant products may still be used; however, the City shall not be obligated to purchase and use Energy Star[®] compliant products in those circumstances.

- H.** Purchasing Interior/Exterior Architectural Paint Products.
- 1.** All paint must be low-VOC by complying with the current standards set forth by the California South Coast Air Quality Management District Rule 1113 for Architectural Coatings or the VOC and chemical component limits of Green Seal's Standard GS-11, section 4.1.
 - 2.** Recycled or rebled latex paint with low-VOC properties, as demonstrated by periodic tests conducted by the manufacturer, shall be given preference and used whenever feasible to the extent that the price differential between the recycled or rebled and virgin latex paint does not exceed the five percent price preference set forth in Subsection 5.33.080 C.
 - 3.** To reduce waste and support the recycled latex paint market, all surplus latex paint shall be recycled using a local latex paint recycling program. Surplus paint includes all latex paint in excess of quantities stored for touch-up purposes. Latex paint stored for touch-up purposes may not exceed 5 percent or 5 gallons, whichever is smaller, by volume, to the nearest gallon.

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

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

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

**TITLE 5
REVENUE AND FINANCE**

5.33.090 Use of Price Agreements.

(Amended by Ordinance No. 183445, effective January 6, 2010.) If the City Awards a Price Agreement or executes a requirements contract that will allow the City to purchase whatever quantity it needs from a Contractor, then City Bureaus shall make their purchases from that Contract unless the Chief Procurement Officer grants an exemption to that requirement.

5.33.100 Overview of Source Selection and Contractor Selection.

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

- A.** The City shall Award a Contract for Goods and Services covered by this Code using any method authorized by State law or City Code. Such different methods are called methods of “source selection.” Source selection methods include Cooperative Procurements, Competitive Sealed Bidding, Competitive Sealed Proposals and small, intermediate, sole source, Emergency and Special Procurements.
- B.** State law requires the City to use the services of Qualified Rehabilitation Facilities (QRF’s) in certain instances. When required, the City shall use a QRF pursuant to Section 5.33.110 before proceeding with a purchase through other methods of source selection.
- C.** Once the appropriate source selection method has been chosen, the City may consider the best process of selecting a Contractor within the source selection method it has chosen.
- D.** The City may employ methods of Contractor selection for the Procurement of Goods and Services by using any process authorized by State law, including multi-tiered processes as set forth in Subsection 5.33.210 B.6.d., including, but not limited to:

 - 1.** An Award or Awards based solely on the ranking of Proposals;
 - 2.** Discussions leading to best and final Offers in which the City may not disclose private discussions leading to best and final Offers;
 - 3.** Discussions leading to best and final Offers, in which the City may not disclose information derived from Proposals submitted by competing Proposers;
 - 4.** Serial negotiations, beginning with the highest ranked Proposer;
 - 5.** Competitive simultaneous negotiations;

**TITLE 5
REVENUE AND FINANCE**

6. Multiple-tiered competition designed to identify, at each level, a class of Proposers that fall within a Competitive Range or to otherwise eliminate from consideration a class of lower ranked Proposers;
 7. A multi-step Request for Proposals requesting the submission of un-priced technical submittals, and then later issuing a Request for Proposals limited to the Proposers whose technical submittals the City had determined to be qualified under the criteria set forth in the initial Request for Proposals; or
 8. Any combination of methods described in Subsections 5.33.100 D.1. - 7. or as otherwise adopted by the City Council by ordinance.
- E.** The methods of Contractor selection identified in Subsection 5.33.100 D. shall conform to the procedures identified in these rules.
- F.** The Chief Procurement Officer is authorized, but not required, to waive any nonconformity with the rules of Contractor selection if the Chief Procurement Officer determines that the defect was minor and likely would not have had an effect on the outcome of the selection process.

5.33.105 Feasibility and Cost Analysis.

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

- A.** For purposes of this rule, the term “bureau” means a department, bureau, office or other subdivision of the City of Portland.
- B.** Before conducting a procurement that pertains exclusively for services other than professional services, and which is estimated to exceed \$250,000, the bureau shall conduct an analysis to determine if it is feasible to use the City’s own personnel or resources to perform the same services. The City may determine that it is not feasible if:
1. The bureau needing the services lacks the specialized capabilities, experience or technical or other expertise necessary to perform the services. In making this finding, the City shall compare the bureau’s capability, experience or expertise in the field most closely involved in performing the services with a potential contractor’s capability, experience or expertise in the same or a similar field; or
 2. Special circumstances require the bureau to procure the services by contract. Special circumstances may include, but are not limited to, circumstances in which:

**TITLE 5
REVENUE AND FINANCE**

- 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.
- 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.

**TITLE 5
REVENUE AND FINANCE**

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
 - b. Would be necessary and directly involved in performing the services or who would inspect, supervise or monitor the performance of the services;
 2. Material costs, including costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies; and
 3. Miscellaneous costs related to performing the services, including but not limited to reasonably foreseeable fluctuations in the costs for the items identified in this subsection over the expected duration of the procurement.
 4. Profit Included. Contracting Costs include the Authorized Agency's estimate of Contractor's profit in addition to the estimate of Contractor's

**TITLE 5
REVENUE AND FINANCE**

costs under Subsection 5.33.105 E. If the Authorized Agency, in the reasonably near past, received Bids or Proposals for the performance of the Services under consideration, or reasonably comparable services, the Authorized Agency may consider the pricing offered in those Bids or Proposals in making its estimate. Similarly, the Authorized Agency may consider what it actually paid under a Contract for the same or similar services. For the purposes of these examples, the reasonably near past is limited to Contracts, Bids or Proposals entered into or received within the five (5) years preceding the date of the cost estimate. The Authorized Agency must take into account, when considering the pricing offered in previous Bids, Proposals, or Contracts, adjustments to the pricing in light of measures of market price adjustments that apply to the Services, such as the Consumer Price Indexes.

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

- b. Collect and provide copies of the records described in Subsection 5.33.105 F.2.a. each calendar quarter to the City Council.

5.33.110 Qualified Rehabilitation Facilities.

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

A. As used in Section 5.33.110:

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

B. Policy: It is the policy of the City to encourage and assist Disabled Individuals to achieve maximum personal independence through useful and productive gainful employment by assuring an expanded and constant market for sheltered workshop and activity center products and services, thereby enhancing their dignity and capacity for self-support and minimizing their dependence on welfare and need for costly institutionalization. An essential element of this policy is to support sheltered employment to the fullest extent provided by law by contracting for needed Goods and services available from QRFs. The City shall identify contracting opportunities within the organization and Award appropriate Contracts to QRFs in accordance with this rule.

C. Procurements from QRFs

- 1. When the City intends to procure a product or service that is listed on the Procurement List, it shall procure that product or service, at the Price determined by the State Procurement Office, from a Qualified Rehabilitation Facility if the product or service is of Specifications

**TITLE 5
REVENUE AND FINANCE**

appropriate to the City's Procurement needs and is available within the time required by the City.

2. The City shall enter into and renew QRF Contracts only for the specific products or services that are on the Procurement List.
3. If a QRF is removed from the Procurement List, the City shall not Award or renew a QRF Contract, and the removal from the Procurement List shall constitute sufficient grounds for the City to terminate any outstanding QRF Contract.
4. No placement of a product or service on the Procurement List shall act to displace a Contractor under an existing Contract with the City for the same product or service prior to the expiration or other termination of the Contractor's Contract with the City. However, where a product or service is on the Procurement List, no existing Contract shall be renewed for such a product or service.
5. If a QRF submits a Competitive Bid, Proposal, price quotation or other Offer in a competitive Procurement for a Contract, then regardless of whether the Offer was accepted, that QRF may not, at any time during the initial term of the Contract for which the QRF submitted a Bid, Proposal or Offer, make any claim to the City that the product or service that was the subject of the Offer is on the Procurement List. If, during the Solicitation process, a QRF claims the product or service that is the subject of the Procurement is on the Procurement List, then, if the product or service is determined to have been on the Procurement List at the time the Solicitation Document was issued, the Solicitation process shall be terminated so long as a Contract has not been fully executed at the time the claim is made.

D. Determination of Price/Changes to QRF Contracts

1. When a product or service on the Procurement List is offered by more than one QRF, the City may purchase the required product or service from any QRF without competition between QRFs.
2. The City may use the formal selection procedure similar to that described in Section 5.33.050 to select a QRF to provide a service on the Procurement list, provided that:
 - a. The Solicitation shall not request any information concerning price and price shall not be a consideration in making the Award.

**TITLE 5
REVENUE AND FINANCE**

- b. The Solicitation shall not be advertised.
 - c. Notice of the Solicitation may be given to those QRFs offering the service on the Procurement List.
 - d. After selection of a QRF the price will be determined in accordance with Subsection 5.33.110 D.3.
- 3.** Price.
- a. Price for products or services where the Price is listed. For products or services on the Procurement List where the Price is listed, the Contract shall provide that the City will pay the Price that is listed.
 - b. Price for services where the Price is not listed. For services for which no Price is listed on Procurement List, the City shall proceed as follows:
 - (1) The City shall request that the QRF submit its proposed Price to the City based on the volume or Scope of the Work and Specifications provided by the City as prescribed in the proposed Contract between the QRF and the City. For janitorial and security services where a Fair Wage is required to be paid, the Specifications shall state the wage required to be paid.
 - (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

**TITLE 5
REVENUE AND FINANCE**

the Price. If the QRF and the City cannot agree on the price, the parties shall present the issue of price to the State Procurement Office for determination.

- (4) The City shall not execute or implement any Contract under the program created by ORS 279.835 to 279.850 until the State Procurement Office has transmitted notice of the Price approved determined by the State Procurement Office to the City and the QRF.
- c. Re-determinations of Price. The Price established by the State Procurement Office shall apply for the initial term or period of the Contract unless otherwise approved by the State Procurement Office. The State Procurement Office may re-determine a Price at the request of a QRF or City, or at the discretion of the State Procurement Office. Until the State Procurement Office approves a new Price, the QRF shall continue to provide, at the established Price, the service or product in accordance with the Scope of Work that was the basis for establishing the existing Price.
- d. The City shall not pay or agree to pay a QRF any amount other than the Price approved by the State Procurement Office. Any Price established by the State Procurement Office for a product or service shall remain in effect until the State Procurement Office approves a new Price.
- E. The City shall not make material changes (changes that affect the cost of providing the products or services in more than a negligible manner) to the Specifications of a QRF Contract under ORS 279.835 to 279.850 unless the changes are in Writing and have been submitted to the State Procurement Office for a re-determination of Price. If the City wishes to make a material change to the Specifications from the most recent Solicitation for the product or service, the City shall notify the QRF in Writing of the specific changes in the Scope of Work or other conditions which will be required during the new Contract period. No agreement making a material change in the Specifications shall be executed until State Procurement Office re-determines the Price.

5.33.120 Sole-Source Procurements.

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

- A. Generally. The City may Award a Contract without competition as a Sole Source Procurement if the Chief Procurement Officer or Council, depending on the amount of the Contract, makes a Written finding that:

**TITLE 5
REVENUE AND FINANCE**

1. Efficient utilization of existing Goods or Services requires the acquisition of compatible Goods or Services;
 2. The Goods or Services required for the exchange of software or data with other public or private agencies are available from only one source;
 3. The Goods or Services are for use in a pilot or an experimental project; or
 4. Any other findings that support the conclusion that the Goods or Services are available from only one source.
- B.** Negotiation with a sole source Contractor is desirable. The City is entitled to negotiate with any sole source Contractor to obtain a favorable price, terms or conditions.
- C.** Public Notice. The City shall give notice of the determination that the Goods or Services or class of Goods or Services are available from only one source when the Contract is estimated to be greater than \$50,000 by publishing a notice on Procurement Services' website at least seven (7) Days before the Contract is Awarded.

5.33.130 Emergency Procurements.

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

- A.** The City may Award a Contract as an Emergency Procurement without the use of competitive sealed Bidding or competitive sealed Proposals as authorized by ORS 279B.050(2) when the requirements of ORS 279B.080 and this rule are met.
- B.** The Council, or person authorizing the Emergency Procurement, shall document the nature of the Emergency and describe the method used for the selection of the particular Contractor. The City shall encourage competition for Emergency Procurements to the extent reasonable under the circumstances.
- C.** The authority to declare an Emergency and authorize an Emergency Procurement shall be as follows:
1. The Chief Procurement Officer or designee may declare the existence of an Emergency and authorize the City or any of its bureaus to enter into an Emergency Procurement Contract under \$150,000.
 2. The director of a City Office, Bureau or Department may declare the existence of an Emergency and authorize that Office, Bureau or Department to enter into an Emergency Procurement Contract under \$150,000 only if the Chief Procurement Officer or person to whom the

**TITLE 5
REVENUE AND FINANCE**

powers of the Chief Procurement Officer have been delegated, is not available when the Procurement needs to be made.

- 3.** A Commissioner-in-Charge of a City Office, Bureau or Department may declare the existence of an Emergency and authorize that Office, Bureau or Department to enter into an Emergency Procurement Contract not exceeding \$500,000.
- 4.** A Commissioner-in-Charge of a City Office, Bureau or Department may declare the existence of an Emergency and authorize that Office, Bureau or Department to enter into an Emergency Procurement Contract exceeding \$500,000 subject to the following procedures:

 - a.** Following the declaration of Emergency the Commissioner shall immediately prepare an ordinance for approval of the Emergency Procurement Contract by the City Council at its next regularly scheduled session or as soon as possible thereafter. That Contract shall be added to the regular agenda of the Commissioner without the need for approval for inclusion on the agenda by other Commissioners.
 - b.** If the Council adopts the ordinance, the City will pay for the Work required by the Contract. If Council disapproves the ordinance, the City only will pay for Work performed prior to the date that the Council considered the ordinance for approval. If for any reason presentation of the ordinance to the Council is delayed, the City still will only be liable for Work performed prior to the time when the ordinance first was presented to the Council.
- D.** All documentation of Emergency Procurements shall be sent to the Chief Procurement Officer for record keeping purposes.
- E.** All Emergency Procurement Contracts Awarded when there was no Emergency or reasonable perception of Emergency are void unless the Contract was otherwise valid under another portion of the City Code.
- F.** After the Award of an Emergency Procurement Contract, the City shall execute a Written Contract with the Contractor as soon as possible, and in no event later than 60 Days after the Award.
- G.** All such Contracts, whether or not signed by the Contractor, shall be deemed to contain a termination for convenience clause permitting the City to immediately terminate the Contract at its discretion and, unless the Contract was void, the City shall pay the Contractor only for Work performed prior to the date of termination

plus the Contractor's unavoidable costs incurred as a result of the termination. In no event will the City pay for anticipated lost profits or consequential damages as a result of the termination.

- H.** For an emergency procurement of construction services that are not public improvements, the City shall ensure competition for a contract for the emergency work that is reasonable and appropriate under the emergency circumstances. In conducting the procurement, the City shall set a solicitation time period that the City determines to be reasonable under the emergency circumstances and may issue written or oral requests for offers or make direct appointments without competition in case of extreme necessity.

5.33.135 Declaration of State of Emergency or Disaster.

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

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

**TITLE 5
REVENUE AND FINANCE**

- E.** All such Contracts, whether or not signed by the Contractor, shall be deemed to contain a termination for convenience clause permitting the City to immediately terminate the Contract at its discretion and, unless the Contract was illegal or void, the City shall pay the Contractor only for Work performed prior to the date of termination plus the Contractor's unavoidable costs incurred as a result of the termination. In no event will the City pay for anticipated lost profits or consequential damages as a result of the termination.
- F.** All documentation of Emergency Contracts shall be sent to the Chief Procurement Officer for record keeping purposes.
- G.** All Emergency Contracts Awarded when there was no Emergency or reasonable perception of Emergency are void unless the Contract was otherwise valid under another portion of the City's Purchasing Rules.
- H.** If an Emergency Contract is not in writing, the City shall execute a Written Contract with the Contractor as soon as possible thereafter as circumstances permit.

5.33.140 Cooperative Purchasing.

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

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

**TITLE 5
REVENUE AND FINANCE**

on the basis of a determination of the Proposer whose Proposal is most Advantageous based on evaluation factors set forth in the Request for Proposals in the case of competitive Proposals;

2. Does not permit the application of any geographic preference that is more favorable to Bidders or Proposers who reside in the jurisdiction or locality favored by the preference than the preferences provided in ORS 279A.120(2); and
 3. Uses reasonably clear and precise Specifications that promote suitability for the purposes intended and that reasonably encourage competition.
- E.** The City shall determine, in Writing, whether the Solicitation and Award process for an Original Contract arising out of a Cooperative Procurement is substantially equivalent to those identified in Sections 5.33.200, 5.33.210 or 5.33.220 in accordance with Section 5.33.140.
- F.** Protests. Protests regarding the use of all types of Cooperative Procurements shall be governed by the applicable provisions of Section 5.33.700 *et seq.*
- G.** For purposes of Sections 5.33.140 through 5.33.170 the following definitions are applicable:
1. “Administering Contracting Agency” means a governmental body in this state or in another jurisdiction that solicits and establishes the original Contract for Procurement of goods, services or Public Improvements in a Cooperative Procurement.
 2. “Cooperative Procurement” means a Procurement conducted on behalf of more than one governmental body. “Cooperative Procurement” does not include an agreement formed among only governmental bodies under ORS chapter 190 or by a statute, charter provision, ordinance or other authority for establishing agreements between or among governmental bodies or agencies or tribal governing bodies or agencies.
 3. “Cooperative Procurement Group” means a group of governmental bodies joined through an intergovernmental agreement for the purposes of facilitating Cooperative Procurements.
 4. “Interstate Cooperative Procurement” means a permissive Cooperative Procurement in which the Administering Contracting Agency is a governmental body, domestic or foreign, that is authorized under the governmental body’s laws, rules or regulations to enter into Contracts and

**TITLE 5
REVENUE AND FINANCE**

in which one or more of the participating governmental bodies are located outside this state.

5. “Joint Cooperative Procurement” means a Cooperative Procurement in which the participating governmental bodies or the Cooperative Procurement group and the bodies’ or group’s Contract requirements or estimated Contract requirements for Price Agreements are identified.
6. “Original Contract” means the initial Contract or Price Agreement solicited and Awarded during a Cooperative Procurement by an Administering Contracting Agency.
7. “Permissive Cooperative Procurement” means a Cooperative Procurement in which the Purchasing Contracting Agencies are not identified.
8. “Purchasing Contracting Agency” means a governmental body that procures goods, services or Public Improvements from a Contractor based on the Original Contract established by an Administering Contracting Agency.

5.33.145 Rules on all types of Cooperative Procurements.

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

- A. If the City is the Administering Contracting Agency, then:
 1. It may charge a fair and reasonable fee to purchasing Contract agencies that represent the excess costs of administering the Contract in light of the Purchasing Contracting Agencies use of that Contract; and
 2. Determine whether the purchasing Contract agency must enter into a Written agreement with it.
- B. If the City is a Purchasing Contracting Agency it is authorized to pay a fee to the Administering Contracting Agency that the Chief Procurement Officer determines is fair and reasonable in light of all the circumstances surrounding the Procurement, including the savings that may be obtained if a Cooperative Procurement is used, the cost of the Procurement in relationship to the fee, and other factors as may be considered. If a fee is paid, it will be borne by the Bureau or portion of the City on whose behalf the Procurement is being made.
- C. Cooperative procurements are subject to the requirements of Section 5.33.105 in regard to service contracts in excess of \$250,000.

5.33.150 Joint Cooperative Procurements.

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

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

5.33.160 Permissive Cooperative Procurements.

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

- 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 is to allow the City 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

**TITLE 5
REVENUE AND FINANCE**

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

- F.** Time: The City shall advertise the notice in the same manner as provided in Subsection 5.33.300 A. The City shall give the notice required by this rule no fewer than seven (7) Days before the deadline for submitting comments regarding its intention to establish a Contract or Price Agreement through a Permissive Cooperative Procurement.
- G.** An Administering Contracting Agency that intends to establish a Contract or Price Agreement arising out of the Permissive Cooperative Procurement it administers may satisfy the notice requirements set forth in ORS 279A.215(2)(a) by including the information required by Subsection 5.33.160 D., in the Solicitation Document related to the Permissive Cooperative Procurement, and including instructions in the Solicitation Document to potential Offerors describing how they may submit comments in response to the Administering Contracting Agency's intent to establish a Contract or Price Agreement through the Permissive Cooperative Procurement. The content and timing of such notice shall comply in all respects with ORS 279A.215(2), ORS 279A.215(3) and these Rules.
- H.** If the City receives comments on the intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement, the City shall make a Written determination that establishing a Contract or Price Agreement is in the best interest of the City before executing the Contract or using the Price Agreement.

5.33.170 Interstate Cooperative Procurements.

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

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

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

**TITLE 5
REVENUE AND FINANCE**

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.
- 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 No. 183445, effective January 6, 2010.)

- A.** For Procurements of Goods and Services not exceeding \$5,000 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 \$5,000 without prior approval of the Chief Procurement Officer before the additional Goods or Services are provided.

5.33.190 Intermediate Procurements.

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

**TITLE 5
REVENUE AND FINANCE**

Proposal acceptable or more Advantageous to the City, provided that all Offerors contacted are offered the same opportunity in order to compete on the same basis.

5.33.200 Competitive Sealed Bidding.

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

- A.** The City may procure Goods and Services by Competitive Sealed Bidding as set forth in ORS 279B.055. An Invitation to Bid (ITB) is used to initiate a competitive sealed Bid Solicitation and shall contain the information required by Subsection 5.33.200 B. Public Notice of the Competitive Sealed Bidding Solicitation shall be provided as required by Section 5.33.300.
- B.** Invitation to Bid. The ITB shall include the following:
 - 1.** General Information.
 - a.** A time and date by which the Bids must be received and a place at which the Bids must be submitted;
 - b.** The name and title of the person designated for the receipt of Bids and the person designated by the City as the contact person for the Procurement, if different;
 - c.** A Procurement description;
 - d.** A time, date, and place that Prequalification applications, if any, must be filed and the classes of Work, if any, for which Bidders must be prequalified in accordance with ORS 279B.100 and Section 5.33.510;
 - e.** A statement that the City may cancel the Procurement or reject any or all Bids in accordance with ORS 279B.100 and Section 5.33.645;
 - f.** A statement that requires the Contractor or Subcontractor to possess an asbestos abatement license, if required under ORS 468A.710;
 - g.** All Contractual terms and conditions applicable to the Procurement;
 - h.** Notice of any pre-Offer conference as follows:

**TITLE 5
REVENUE AND FINANCE**

- (1)** The time, date and location of any pre-Offer conference; and
 - (2)** Whether attendance at the conference will be mandatory or voluntary; and
 - (3)** That statements made by the City’s representatives at the conference or elsewhere are not binding upon the City unless confirmed by Written Addendum;
 - i.** The form and submission of Offers and any other special information, e.g., whether Offers may be submitted by Electronic means;
 - j.** The scheduled Closing;
 - k.** The office where the Specifications for the Goods or Services may be reviewed;
 - l.** A statement that each Bidder to an ITB must identify whether the Bidder is a “Resident Bidder,” as defined in Subsection 5.33.010 A.55.;
 - m.** Bidder’s certification of nondiscrimination in obtaining required Subcontractors in accordance with ORS 279A.110(4). (See Section 5.33.075); and
 - n.** How the City will notify Offerors of Addenda and how the City will make Addenda available. See Section 5.33.430; and
 - o.** That Bidders may be required to obtain a Business License and may be required to be EEO certified.
- 2.** City Need to Purchase. The character of the Goods or Services the City is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. The City’s description of its need to purchase must:
 - a.** Identify the scope of the work to be performed under the resulting contract, if the City awards one;
 - b.** Outline the anticipated duties of the Contractor under any resulting contract;

**TITLE 5
REVENUE AND FINANCE**

- c. Establish the expectations for the contractor's performance of any resulting contract; and
 - d. Unless the City, for Good Cause specifies otherwise, the scope of work must require the contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the City is purchasing.
- 3. Evaluation process.
 - a. The anticipated Solicitation schedule, deadlines, protest process, and evaluation process, if any;
 - b. Evaluation criteria, including the relative value applicable to each criterion, that the City will use to determine the Responsible Bidder with the lowest Responsive Bid and the evaluation criteria the City will use to determine acceptability of any Goods or Services to be purchased;
 - c. If the City intends to Award Contracts to more than one Bidder, the City must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award. The criteria shall require the City to purchase the lowest priced goods, services or personal service available from the multiple Contracts; and
 - d. The City shall set forth objective evaluation criteria in the Solicitation Document in accordance with the requirements of ORS 279B.055(6)(a). Evaluation criteria need not be precise predictors of actual future costs, but to the extent possible, such evaluation factors shall be reasonable estimates based on information the City has available concerning future use.
- 4. Preference for Goods manufactured from Recycled Materials under Section 5.33.080 and ORS 279A.125;
- 5. Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the Contract, either in whole or in part, without the City's prior Written consent. Unless otherwise agreed by the City in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the City consents in Writing to

**TITLE 5
REVENUE AND FINANCE**

an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the City for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the City otherwise agrees in Writing.

6. All Contractual terms and conditions in the form of Contract provisions the City determines are applicable to the Procurement. As required by state law, the contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

- a. The City's reduction or withholding of payment under the Contract;
- b. The City's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the statement of work or to meet the performance standards established by the resulting Contract; and
- c. The City's rights, which the City may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contractor or applicable law.

C. Good Cause. For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the City. The City shall document in the Procurement file the basis for the determination of Good Cause for specification otherwise. The City will have Good Cause to specify otherwise under the following circumstances:

- 1. The purpose to which the Goods or Services will be used does not justify a requirement that the Contractor meet the highest prevalent standards in performing the contract;
- 2. Imposing express technical, standard, dimensional, or mathematical specifications will better ensure that the Goods or services will be compatible with or will operate efficiently or effectively with components, equipment, parts, Services or information technology including hardware, Services or software with which the Goods or Services will be used, integrated, or coordinated.

**TITLE 5
REVENUE AND FINANCE**

3. The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evaluation of products, performance techniques, scientific developments, that a reliable highest prevalent standard does not exist or has not been developed.
4. Any other circumstances in which City's interest in achieving economy, efficiency, compatibility or availability in the procurement of the Goods or Services reasonably outweighs the City's practical need for the highest prevalent standard if the applicable or closed industry or business that supplies the Goods or Services to be delivered under the resulting Contract.

5.33.205 Multi-Step Sealed Bidding.

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

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

**TITLE 5
REVENUE AND FINANCE**

- a. That the solicitation is a multi-step sealed Bid Procurement and describe the process the City will use to conduct the Procurement;
 - b. That the City requests un-priced submittals and that the City will consider priced Bids only in phase two and only from those Bidders whose un-priced submittals are found eligible in phase one;
 - c. Whether Bidders must submit priced Bids at the same time as un-priced submittals and, if so, that Bidders must submit the priced Bids in a separate sealed envelope; and
 - d. The criteria to be used in the evaluation of un-priced submittals;
 - 2. Evaluation. The City shall evaluate un-priced submittals in accordance with the criteria set forth in the Invitation to Bid.
- F.** Revisions to Solicitation Specifications. After Closing of phase one, the City may issue Addenda that modify the Specifications for the Goods or Services being procured or that modify other terms and conditions of the Invitation to Bid. The City shall provide such Addenda to all Bidders who initially submitted un-priced technical Bids. The City may then require Bidders to submit revised un-priced technical Bids.
- G.** Procedure for Phase Two.
- 1. After the completion of Phase One, if the City does not cancel the Solicitation, the City shall invite each eligible Bidder to submit a priced Bid.
 - 2. Conduct. Phase Two shall be conducted as any other competitive sealed Bid Procurement except:
 - a. as specifically set forth in this rule or the Invitation to Bid; and
 - b. no public notice need be given of the invitation to submit priced Bids because such notice was previously given.

5.33.210 Competitive Sealed Proposals.

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

- A.** The City may procure Goods and Services by Competitive Sealed Proposals as set forth in ORS 279B.060 and this rule. The City shall use a Request for Proposal to initiate a competitive sealed Proposal Solicitation. The Request for Proposal must

**TITLE 5
REVENUE AND FINANCE**

contain the information required by ORS 279B.060(2) and Paragraph B. of this rule. The City shall provide Public Notice of the Competitive Sealed Proposal Solicitation as provided in Section 5.33.300.

B. Mandatory provisions in RFP Solicitation Documents. The RFP must include the following:

1. General Information.

- a.** A time, date and location when the sealed Proposals must be submitted and received;
- b.** The name and title of the person designated for the receipt of Proposals and the person designated by the City as the contact person for the Procurement, if different;
- c.** A Procurement description;
- d.** A time, date, and place that Prequalification applications, if any, must be filed and the classes of Work, if any, for which Bidders must be prequalified in accordance with ORS 279B.100 and Section 5.33.510;
- e.** A statement that the City may cancel the Procurement or reject any or all Proposals in accordance with ORS 279B.100 and Section 5.33.645;
- f.** A statement that requires the Contractor or Subcontractor to possess an asbestos abatement license, if required under ORS 468A.710;
- g.** All Contractual terms and conditions applicable to the Procurement, including warranties and bonding requirements, if necessary. If the City intends to allow discussions or negotiations regarding terms and conditions it must either specify the terms and conditions subject to negotiation or the subject matter reasonably related to the terms and conditions that it will negotiate;
- h.** Notice of any pre-Offer conference as follows:
 - (1)** The time, date and location of any pre-Offer conference; and

**TITLE 5
REVENUE AND FINANCE**

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

**TITLE 5
REVENUE AND FINANCE**

the industry or business most closely involved in providing the Goods or Services that the City is purchasing.

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

**TITLE 5
REVENUE AND FINANCE**

- 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 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,

**TITLE 5
REVENUE AND FINANCE**

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 and 185898, effective February 20, 2013.)

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

**TITLE 5
REVENUE AND FINANCE**

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 these Rules.
- D. Exclusion Protest. The City may provide before the notice of an intent to Award an opportunity for a Proposer to protest exclusion from the Competitive Range or from subsequent phases of multi-tiered or multi-step sealed Proposals as set forth in Section 5.33.720.
- E. Award Protest. A City shall provide an opportunity to protest its intent to Award a Contract pursuant to ORS 279B.410 and Section 5.33.740. An Affected Offeror may protest, for any of the bases set forth in Section 5.33.720, its exclusion from the Competitive Range or any phase of a multi-tiered from any stage of multi-tiered or multi-step sealed Proposal process, or may protest an Addendum issued following initial Closing, if the City did not previously provide Proposers the opportunity to protest the exclusion or Addendum. The failure to protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the City.
- F. Competitive Range. When the City's Solicitation process conducted pursuant to Section 5.33.210 calls for the City to establish a Competitive Range at any stage in the Procurement process, the City may do so as follows:

**TITLE 5
REVENUE AND FINANCE**

- 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.

- 1.** The City may initiate oral or Written discussions with all “eligible Proposers” on the subject matter within the general scope of the Request for Proposals.
 - a.** In conducting discussions, the City:
 - (1)** Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;
 - (2)** May disclose other eligible Proposers’ Proposals or discussions only in accordance with ORS 279B.060(8)(b) or (c);

(3) May adjust the evaluation of a Proposal as a result of a discussion under this section discussions. The conditions, terms, or price of the Proposal may be altered or otherwise changed during the course of the discussions provided the changes are within the Scope of the Request for Proposals.

- b. At any time during the time allowed for discussions, the City may:
- (1) Continue discussions with a particular eligible Proposer;
 - (2) Terminate discussions with a particular eligible Proposer and continue discussions with other eligible Proposers; or
 - (3) Conclude discussions with all remaining eligible Proposers and provide to the then-eligible Proposers, notice pursuant to Subsection 5.33.211 J. requesting best and final Offers.

H. Negotiations.

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

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

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

**TITLE 5
REVENUE AND FINANCE**

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.
- 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

**TITLE 5
REVENUE AND FINANCE**

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, the City shall give public notice for phase one in accordance with Section 5.33.300. Public notice is not required for phase two. However, the City shall give notice of the subsequent phases to all Proposers and inform any Proposers excluded from the subsequent phases of the right, if any, to protest exclusion pursuant to Section 5.33.720.
 2. Procedure for Phase One of Multi-Step Sealed Proposals. The City must initiate a multi-step sealed Proposals procurement by issuing a Request for Proposal in the form and manner required for competitive sealed Proposals except as provided by this rule. In addition to the requirements set forth in Section 5.33.210, the multi-step Request for Proposal must state:
 - a. that un-priced technical Proposals are requested;
 - b. that the Solicitation is a multi-step sealed Proposal Procurement, and that, in the second phase, priced Proposals will be accepted only from those Proposers whose un-priced technical Proposals are found qualified in phase one;
 - c. the criteria for the evaluation of un-priced technical Proposals; and
 - d. that the Goods or Services being procured shall be furnished generally in accordance with the Proposer's technical Proposal as found to be finally qualified and shall meet the requirements of the Request for Proposals.
 3. Addenda to the Request for Proposals. After receipt of un-priced technical Proposals, Addenda to the Request for Proposal shall be distributed only to Proposers who submitted un-priced technical Proposals.

**TITLE 5
REVENUE AND FINANCE**

4. Receipt and Handling of Un-priced Technical Proposals. Un-priced technical Proposals need not be opened publicly.
5. Evaluation of Un-Priced Technical Proposals. The un-priced technical Proposals submitted by Proposers shall be evaluated solely in accordance with the criteria set forth in the Request for Proposals.
6. Discussion of Un-priced Technical Proposals. The City may seek clarification of a technical Proposal of any Proposer who submits a qualified, or potentially qualified, technical Proposal. During the course of such discussions, the City shall not disclose any information derived from one un-priced technical Proposal to any other Proposer.
7. Methods of Contractor Selection for Phase One. In conducting phase one, the City may employ any combination of the methods of Contractor selection that call for the establishment of a Competitive Range or include discussions, negotiations or best and final Offers as set forth in this rule Section 5.33.211.
8. Procedure for Phase Two. On the completion of phase one, the City shall invite each qualified Proposer to submit price Proposals.
 - a. Phase two shall be conducted as any other competitive sealed Procurement except as set forth in this rule.

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

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

5.33.217 Multi-Step Sealed Proposals.

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

5.33.220 Special Procurements.

(Amended by Ordinance Nos. 181547, 183445, 184403, 184404, 185065 and 185898, effective February 20, 2013.)

- 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.

**TITLE 5
REVENUE AND FINANCE**

- 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).
 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,

**TITLE 5
REVENUE AND FINANCE**

subscriptions, curriculum materials, reference materials, audio and visual media, and non-mass marketed software from a particular publisher or its designated distributor.

4. **Financial Products:** The City may directly purchase financial products such as bond insurance, surety bonds for City bond reserves and liquidity facilities such as letters of lines of credit. The City may pay fees associated with such transactions, including, but not limited to, registrar, paying agent, and escrow agent fees and fees associated with outstanding debt issues.
5. **Employee Benefit Contracts:** Contracts relating to employee benefits may be Awarded directly to a Contractor after the City obtains a consultant pursuant to Chapter 5.68 to conduct a competitive process to acquire such contractors. Such contracts include administrators of employee Flexible Spending Account Administration and Medical Claims Third Party Administration. The City will hire a consultant to advise it on firms available to provide the Work and the consultant is authorized to solicit firms pursuant to a Request for Proposal process as well as assist the City in placing advertisements in specific publications likely to reach the attention of such contractors. The City may then negotiate or enter into the Contract that appears most Advantageous to the City without further advertisement or issuance of its own Request for Proposals.
6. **Insurance Contracts:** Contracts for insurance, may be Awarded directly to an insurer after the City obtains Proposals from an insurance consultant. The consultant shall be selected pursuant to Chapter 5.68. Among the services to be provided by the consultant is the securing of competitive Proposals from insurance carriers for all coverages for which the insurance consultant is given responsibility and advice to the City about the costs and benefits of the various Proposals. The City may then negotiate or enter into the insurance Contract that appears most Advantageous to the City without advertisement or issuance of its own Request for Proposals.
7. **Purchase of Used Personal Property or Equipment:** The City may directly purchase used personal property and equipment. Used property and used equipment is property or equipment that has been placed in use by a previous owner or user for a period of time, and which is recognized in the relevant trade or industry, if there is one, as qualifying the personal property or equipment as “used”. Used personal property or equipment generally does not include property or equipment if the City was the previous user, whether under a lease, as part of a demonstration, trial or pilot project or similar arrangement.

**TITLE 5
REVENUE AND FINANCE**

- 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, state or local agencies, dealing with the prevention of environmental pollution and the preservation of natural resources,

**TITLE 5
REVENUE AND FINANCE**

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 Supplies and Services provided under the renegotiated Contract must be reasonably related to the Original Contract's Solicitation. For example, the City may accept functionally equivalent substitutes for any Supplies and Services in the Original Contract's Solicitation.
 - (3)** Optional Term or Condition. If a Contractor offered to the City during the original Solicitation a term or condition that was rejected at that time, the City may not renegotiate for a lower price based on this rejected term or condition as a mandatory term or condition in the renegotiated Contract. If, however, a Contractor offers a lower price pursuant to a rejected term or condition without additional consideration from the City and as only an option to the City, then the City may accept the option of a lower price under the rejected term or condition. For example, if the City initially

**TITLE 5
REVENUE AND FINANCE**

rejected a Contractor's proposed condition that the price required a minimum order, any renegotiated Contract may not mandate this condition; but the City may agree to the option to order lesser amounts or receive a reduced price based upon a minimum order; and

- (4) Market. In order to avoid encouraging favoritism or diminishing competition, the City may research the accepted competitive practices and expectations of Offerors within the market for the specific Contract(s) or Classes of Contracts to be renegotiated (Market Norm). If the City researches the Market Norm, then the City must document its results in the Procurement File. Based upon this information, the City shall confirm that, if the City follows the Market Norm, favoritism is not likely to be encouraged, competition is not likely to be diminished, and substantial cost savings may be realized. Under no condition may the City accept or follow any Market Norm that likely encourages favoritism or diminishes competition, even if it is accepted or expected in the market.
11. Reverse Auctions, pursuant to the process established in Section 5.33.350.
12. Software and Hardware Maintenance, Licenses and Upgrades. The City may directly enter into a Contract or renew existing Contracts for information technology hardware or software maintenance, licenses and upgrades without Competitive Solicitation where the maintenance, upgrades 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) 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,

**TITLE 5
REVENUE AND FINANCE**

where the rate or price for such goods and services is established by federal, state, or local regulatory authority or when the services can be provided only by a specific utility.

- 15.** Goods, Services or Equipment Required by a Federal Grant Agreements. The City may directly purchase, without a competitive solicitation process, goods, services or equipment when they are required to be purchased from a specific source or when a specific brand name is required and no competition is otherwise available.
- 16.** Membership Dues. The City may directly purchase, without a competitive solicitation process, dues or memberships in professional or community organizations for the benefit of the City.
- 17.** US Postal Service. The City may directly purchase without a competitive solicitation process, permits and postage meters, pre-stamped postcards, establish on-going postage accounts, etc. from the US Postal Service.
- 18.** Services related to Legal Advice. The City may directly purchase, without a competitive solicitation process, services related to the provision of legal advice to the City:

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

**TITLE 5
REVENUE AND FINANCE**

- 21.** Stormwater Improvements. The City may enter into a Contract for stormwater improvements or watershed restoration, or both, without obtaining competitive solicitations if all or a significant portion of the improvements or restoration that the City is funding will be performed
- a.** on private property; and
 - b.** by the property owner or a contractor hired by the property owner.
- E.** Notice. The City shall give public notice of the City Council’s approval of an Individual or Class Special Procurement on its website as provided in Subsection 5.33.300 A.3. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement. The City shall give such public notice of the approval of a Special Procurement at least seven (7) Days before Award of the Contract. If the Special Procurement leads to a Solicitation Document, then the City will post a Notice of Intent to Award the contract pursuant to Section 5.33.650.
- F.** If the City plans to conduct a competitive special Procurement, it shall award the contract to the Offeror the City determines to be the most advantageous to the City and thereafter give notice of intent to Award to all prequalified Offerors who sought the Award of a Contract in the manner provided for competitive sealed Bids.

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

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

- A.** Notice and Solicitation Fee. The City shall furnish public notice of every Solicitation Document in accordance with Subsection 5.33.300 B. The City may give additional notice using any method it determines appropriate to foster and promote competition, including:
- 1.** Mailing notice of the availability of Solicitation Document to Persons that have expressed an interest in the City’s Solicitations; or
 - 2.** Placing Notice on the Oregon Department of Administrative Services’ Electronic Procurement System known as “ORPIN” (Oregon Procurement Information Network) or a successor Electronic system; or
 - 3.** Place Notice on the City’s Internet Web site.
- B.** Advertising. The City shall advertise every notice of a Solicitation Document as follows:

**TITLE 5
REVENUE AND FINANCE**

1. The City shall publish the advertisement for Offers in accordance with the requirements of ORS 297.055(4)(a) and (b); 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 office where Contract terms, conditions and Specifications may be reviewed;
 - f. The name and title of the person designated for the receipt of Bids and the person designated by the City as the contact person for the Procurement, if different;
 - g. The scheduled Opening; and
 - h. Any other information the City deems appropriate.

**TITLE 5
REVENUE AND FINANCE**

- C. Posting Advertisement for Offers. The City shall post a copy of each advertisement for Offers at Procurement Services. An Offeror may obtain a copy of the advertisement for Offers upon request.
- D. The City may charge a fee or require a deposit for the Solicitation Document.
- E. The City shall provide potential Offerors notice of any Addendum to a Solicitation Document in accordance with Section 5.33.430.

5.33.310 Specifications and Brand Names.

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

- A. Specification content is in the sole discretion of the City of Portland.
- B. The City may consult with technical experts, suppliers, prospective Contractors and representative of the industries with which the City will Contract. The City shall take reasonable measure to ensure that no person who prepares or assists in the preparation of Solicitation Documents, Specifications, plans or Scopes of Work (collectively, “documents”), and that no business with which the person is associated realizes a material competitive advantage in a Procurement that arises from the City’s use of those documents.
- C. A “brand name or equal” Specification may be used when it is Advantageous to the City. The brand name describes the standard of quality, performance, functionality and other characteristics of the product needed by the City. The City’s determination of what constitutes a product that is equal or superior to the product specified is final. Unless otherwise specified, the use of a brand name shall mean “brand name or equal.”
- D. A “brand name” Specification may be used requiring a Contractor to provide a specific brand only if the Chief Procurement Officer, or designee, makes a Written determination finding that the brand name will meet one or more of the following needs:
 - 1. The use of a brand name Specification is unlikely to encourage favoritism in the Awarding of a Contract or substantially diminish competition for Contracts; or
 - 2. The use of a brand name Specification would result in a substantial cost savings to the City; or
 - 3. There is only one manufacturer or seller of the product of the quality, performance or functionality required; or

**TITLE 5
REVENUE AND FINANCE**

- 4. Efficient utilization of existing goods requires the acquisition of compatible Goods or Services.
- E. The City's use of a brand name specification is subject to protest and review only as provided in Section 5.33.730.

5.33.320 Bids or Proposals are Offers.

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

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

5.33.330 Facsimile Bids and Proposals.

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

- A. City Authorization. The Chief Procurement Officer may authorize Offerors to submit Facsimile Offers. If the City determines that a Bid or Proposal Security is or will be required, the City should not authorize Facsimile Offers unless the City has another method for receipt of such security. Prior to authorization, the City must determine whether the City's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time and establish administrative procedures and controls:
 - 1. For receiving, identifying, recording, and safeguarding Facsimile Offers, and

**TITLE 5
REVENUE AND FINANCE**

2. To ensure timely delivery of Offers to the location of Opening; and
 3. To preserve the “sealed” requirement of competitive Procurement.
- B.** Provisions To Be Included in Solicitation Document. In addition to all other requirements, if the City authorizes a Facsimile Offer, the City will include in the Solicitation Document provisions substantially similar to the following:
1. A “Facsimile Offer,” as used in this Solicitation, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the City via a Facsimile machine.
 2. Offerors may submit Facsimile Offers in response to the Solicitation. The entire response must arrive at the place and by the time specified in this Solicitation Document.
 3. That Offerors must Sign their Facsimile Offers.
 4. The City reserves the right to Award the Contract solely on the Facsimile Offer. However, upon the City’s request the apparently successful Offeror shall promptly submit its complete original Signed Offer.
 5. The data and compatibility characteristics of the City’s receiving Facsimile machine as follows:
 - a. Telephone number;
 - b. Compatibility characteristics, e.g., make and model number, receiving speed and communications protocol.
 6. The City is not responsible for any failure attributable to the transmission or receipt of the Facsimile Offer including, but not limited to the following:
 - a. Receipt of garbled or incomplete documents.
 - b. Availability or condition of the receiving Facsimile machine.
 - c. Incompatibility between the sending and receiving Facsimile machine.
 - d. Delay in transmission or receipt of documents.

**TITLE 5
REVENUE AND FINANCE**

- e. Failure of the Offeror to properly identify the Offer documents.
- f. Illegibility of Offer documents.
- g. Security and confidentiality of data.

5.33.340 Electronic Procurement.

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

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

**TITLE 5
REVENUE AND FINANCE**

Electronic Advertisement. When the Chief Procurement Officer specifies that Persons may submit multiple Electronic Offers during a specified period of time, the City must designate a time and date on which Persons may begin to submit Electronic Offers, and a time and date after which Persons may no longer submit Electronic Offers. The date and time after which Persons may no longer submit Electronic Offers need not be specified by a particular date and time, but may be specified by a description of the conditions that, when they occur, will establish the date and time after which Persons may no longer submit Electronic Offers. When the City will accept Electronic Offers for a period of time, then at the designated date and time that the City will first receive Electronic Offers, the City must begin to accept “real time” Electronic Offers on the City’s Electronic Procurement System, and shall continue to accept Electronic Offers in accordance with Subsection 5.33.340 H.2. until the date and time specified by the City, after which the City will no longer accept Electronic Offers.

H. Receipt of Electronic Offers.

1. When the City conducts an Electronic Procurement that provides that all Electronic Offers must be submitted by a particular date and time, the City shall receive the Electronic Offers in accordance with these rules.
2. When the City specifies that Persons may submit multiple Offers during a period of time, the City shall accept Electronic Offers, and Persons may submit Electronic Offers, in accordance with the following:
 - a. Following receipt of the first Electronic Offer after the Day and time the City first receives Electronic Offers the City shall post on the City’s Electronic Procurement System, and updated on a real time basis, the lowest Electronic Offer price or the highest ranking Electronic Offer. At any time before the date and time after which the City will no longer receive Electronic Offers, a Person may revise its Electronic Offer, except that a Person may not lower its price unless that price is below the then lowest Electronic Offer.
 - b. A Person may not increase the price set forth in an Electronic Offer after the Day and time that the City first accepts Electronic Offers.
 - c. A Person may withdraw an Electronic Offer only in compliance with these rules. If a Person withdraws an Electronic Offer, it may not later submit an Electronic Offer at a price higher than that set forth in the withdrawn Electronic Offer.

I. Failure of the E-Procurement System. In the event of a failure of the City’s Electronic Procurement System that interferes with the ability of Persons to

**TITLE 5
REVENUE AND FINANCE**

submit Electronic Offers, protest or to otherwise participate in the Procurement, the City may cancel the Procurement in accordance with Section 5.33.660, or may extend the date and time for receipt of Electronic Offers by providing notice of the extension immediately after the Electronic Procurement System becomes available.

5.33.350 Reverse Auctions.

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

5.33.360 Contract Conditions

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

5.33.400 Offer Preparation.

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

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

5.33.410 Bid or Proposal Security.

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

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

**TITLE 5
REVENUE AND FINANCE**

- 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 and 185898, effective February 20, 2013.)

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

**TITLE 5
REVENUE AND FINANCE**

computing this time, the Addendum shall be deemed issued to occur when it is first posted on the City's web site or upon mailing, whichever is applicable. If both occur, the notification is complete when the first of these two events occur.

2. Notwithstanding Subsection 5.33.430 C.1., an Addendum that modifies the evaluation criteria, selection process or procedure for any tier of competition under a multi-step sealed Bid or a multi-tiered or multi-step sealed Proposal issued in accordance with Sections 5.33.205 and 5.33.210 through 5.33.211 must be issued no fewer than five (5) Days before the beginning of that tier or step of competition, unless the City determines that a shorter period is sufficient to allow Offerors to prepare for that tier or step of competition. The City shall document the factors it considered in making that determination, which may include, without limitation, the Scope of the changes to the Solicitation Document, the location of the remaining eligible Proposers, or whether shortening the period between issuing an Addendum and the beginning of the next tier or step of competition favors or disfavors any particular Proposer or Proposers.

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

5.33.440 Request for Clarification or Change.

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

- A. Time for submission of request for change. Unless otherwise provided in the Solicitation Document, an Offeror shall deliver any request for change of the Solicitation Document, Specifications or Contract provisions to the City in Writing within seven (7) Days prior to Bid or Proposal Closing. Requests for change in regard to Addenda shall be submitted in accordance within the time permitted by Subsection 5.33.430 D.
- B. Any request for change shall include a detailed statement of the legal and factual reasons for the request for change; any proposed changes to Specifications or Contract provisions; and a description of any prejudice to the Offeror; and, a statement of the form of relief requested. No request for change of the content of

**TITLE 5
REVENUE AND FINANCE**

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 or Contract by Written Addendum.

5.33.450 Offeror Submission.

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

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

**TITLE 5
REVENUE AND FINANCE**

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

5.33.460 Pre-Closing Modification or Withdrawal of Offers.

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

- A. Modifications. An Offeror may modify its Offer in Writing prior to the Closing. Unless otherwise provided in the Solicitation Document, any modifications shall be prepared on the Offeror's letterhead, signed by an Authorized Representative of the Offeror, state that the new document supersedes or modifies the prior Offer and be submitted in a sealed envelope, appropriately marked. The City may accept modifications Electronically only if it has authorized Electronic submittal of the Offer in the Solicitation document. The Offeror shall mark the submitted modification as follows:
 1. Offer Modification; and
 2. Solicitation Number or other identification as specified in the Solicitation Document.
- B. Withdrawals:
 1. An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an Authorized Representative of the Offeror, delivered to the location specified in the Solicitation Document or to Procurement Services if no location is specified, and received by the specific location or to Procurement Services, as appropriate, prior to the time and date set for Closing.

**TITLE 5
REVENUE AND FINANCE**

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.
 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.

**TITLE 5
REVENUE AND FINANCE**

- C. Availability. After Opening, Offers will be available for public inspection except for those portions of an Offer that the Offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501(2); ORS 646.461 to 646.475.
1. To the extent such designation is not in accordance with applicable law, the City shall make those portions available for public inspection. The Offeror shall separate information designated as confidential from other non-confidential information at the time of submitting its Offer.
 2. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and shall be publicly available regardless of an Offeror's designation to the contrary. The Chief Procurement Officer may determine the appropriate charge to be paid for copies made pursuant to public records requests and may request payment for such copies before they are released.
 3. Notwithstanding anything contrary above, the City is not required to disclose the contents of Proposals until after the City posts a Notice of Intend to Award pursuant to Section 5.33.650.

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

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

Facsimile transmissions shall be returned to the Offeror after keeping a copy of the last page of the transmission for the Solicitation file.

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

5.33.490 Mistakes.

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

**TITLE 5
REVENUE AND FINANCE**

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

- b. The closer the corrected Offer is to the next lowest Offer the greater the need for the City to be sure that it has clear and convincing evidence that permits a correction to ensure the integrity of the competitive process.

5.33.495 Time for City Acceptance.

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

5.33.500 Responsibility of Offerors.

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

- 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;

**TITLE 5
REVENUE AND FINANCE**

- 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 license tax account with the City; or
 - b.** The Offeror failed to make payments required by Title 7 of the City Code and has failed to make appropriate payment arrangements with the Revenue Bureau within seven (7) Days of the receipt of a Bid or Proposal, unless the City waives that requirement and decides to pursue collection through retention of Contract funds, or through other means.
 - 5.** Supplied all necessary information in connection with the inquiry concerning responsibility. If a prospective Offeror fails to promptly supply information requested by the City concerning responsibility, the City shall base the determination of responsibility upon any available information or may find the prospective Offeror non-Responsible;
 - 6.** Not been 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.

**TITLE 5
REVENUE AND FINANCE**

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:

**TITLE 5
REVENUE AND FINANCE**

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

**TITLE 5
REVENUE AND FINANCE**

- F. Limited participation. The City may allow a Debarred Person to participate in solicitations and Contracts on limited basis during the Debarment period upon Written determination that participation is Advantageous to the City. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

5.33.540 DBE Disqualification.

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

- A. The City may disqualify or suspend a Person's right to submit an Offer or to participate in a Contract (e.g., act as a Subcontractor) as follows:
 - 1. For a DBE disqualification pursuant to ORS 200.065 the City may disqualify a Person upon finding that the Person engaged in any of the activities made unlawful by ORS 200.065, or if the Person has been disqualified by another Contracting Agency pursuant to ORS 200.065.
 - 2. For a DBE disqualification pursuant to ORS 200.075, the City may suspend a Person upon finding that the Person engaged in any of the acts prohibited by ORS 200.075 (a) through (c).
- B. The City may disqualify or suspend a Person's right to submit Offers or participate in a Contract only for the length of time permitted by ORS 200.065 or ORS 200.075 as applicable.
- C. The City shall provide Written notice to the Person in Writing of a proposed DBE Disqualification pursuant to this section, served personally or by registered or certified mail, return receipt requested. This notice shall:
 - 1. State that the City intends to disqualify or suspend the Person;
 - 2. Set forth the reasons for the DBE Disqualification;
 - 3. Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the City does not receive the Person's Written request for a hearing within the time stated, the Person shall have waived its right to a hearing;
 - 4. Include a statement of the authority and jurisdiction under which the hearing will be held;
 - 5. Include a reference to the particular sections of the statutes and rules involved;

6. State the proposed DBE Disqualification period; and
 7. State the Person may be represented by legal counsel.
- D.** The City shall schedule a hearing upon the City's receipt of the Person's timely request. The City 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.
- E.** The Chief Procurement Officer may conduct the hearing or refer the hearing to the Board of Appeals or the Portland City Council for decision. The decision of the Board of Appeals or Council shall be final, with no further appeal.
- F.** The City shall provide Written notice of the DBE Disqualification to the Person. The City shall deliver the Written notice by personal service or by registered or certified mail, return receipt requested. Notification is effective, even if not served personally, if the City uses what its records show to be the last known address of the Person. The notice shall contain:
1. The effective date and period of the DBE disqualification
 2. The grounds for DBE disqualification and
 3. A statement of the Person's appeal rights and applicable appeal deadlines.

5.33.610 Offer Evaluation and Award.

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

- A.** General. If a Contract is Awarded, the City shall Award the Contract to the Responsible Offeror submitting the lowest, Responsive Bid. The City may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.
- B.** Multiple Items. An Invitation to Bid or Request for Proposal may call for pricing of multiple items of similar or related type with Award based on individual line item, group total of certain items, a "market basket" of items representative of the total requirement, or grand total of all items.
- C.** All or none Offers. All or none Bids or Proposals may be accepted if the evaluation shows an all or none Award to be the lowest cost of those submitted.
- D.** Clarification of Offers. After Opening, discussions may be conducted with apparent Responsive Offerors for the purpose of clarification to assure full understanding of the Offer. All Offers, in the City's sole judgment, needing

**TITLE 5
REVENUE AND FINANCE**

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.
 - 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 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.

**TITLE 5
REVENUE AND FINANCE**

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 relate to that determination, and provided that the same criteria apply equally to each Offeror.

**TITLE 5
REVENUE AND FINANCE**

- 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.

**TITLE 5
REVENUE AND FINANCE**

- 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 and 185898, effective February 20, 2013.)

- A.** Investigation. The City may, but is not required to, seek clarification of an Offer to determine whether it is responsive and make such investigation as necessary to determine whether an Offeror is responsible. The investigation may include:
1. An inquiry into the responsibility of the Offeror's proposed Subcontractor and suppliers;
 2. Requiring an Offeror to demonstrate its financial ability to perform the Contract. In exercising this right, the City shall notify the apparent successful Offeror in Writing to submit such documentation as the City deems necessary to complete a thorough evaluation of the Offeror's financial ability;
 3. Obtaining any credit report information that the City deems necessary to investigate and evaluate whether the Offeror is financially responsible. By submitting an Offer, the Offeror authorizes the City to investigate its

**TITLE 5
REVENUE AND FINANCE**

credit, to obtain credit reports and to cooperate in the event that credit information is requested by the City.

4. Any action necessary to ascertain whether the Offeror is responsible.

B. Grounds for Rejection.

1. The City may reject any Offer upon finding that to accept the Offer may impair the integrity of the Solicitation process or that rejecting the Offer is in the public interest.
2. The City may reject any Offer, in whole or in part, when rejection is in the best interest of the City as determined by the City. If so, the reasons for rejection shall be made part of the Solicitation file.
3. The City shall reject an Offer as nonresponsive upon the City's finding that the Offer:
 - a. is contingent upon the City's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;
 - b. takes exception to terms and conditions (including Specifications);
 - c. attempts to prevent public disclosure of matters in contravention of the terms and conditions of Solicitation Document or in contravention of applicable law;
 - d. offers Goods or Services that fail to meet the Specifications of the Solicitation Document;
 - e. is late;
 - f. is not in substantial compliance with the Solicitation Documents;
 - g. is not in substantial compliance with all prescribed public Solicitation procedures;
 - h. contains a deviation that, if the Offer was accepted, would give the Offeror a substantial advantage or benefit not shared by other Offerors; or
 - i. has failed to comply with the programs adopted pursuant to PCC Section 5.33.900.

**TITLE 5
REVENUE AND FINANCE**

4. The City shall reject an Offer upon the City's finding that the Offeror:
 - a. Has not been prequalified under ORS 279B.120 and the City required mandatory Prequalification;
 - b. Has been debarred as set forth in ORS 279B.130;
 - c. Has not met the requirements of ORS 279A.105 regarding subcontracting to emerging small businesses when required to do so by the City;
 - d. Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;
 - e. Has failed to provide the certification of nondiscrimination required by Subsection 5.33.640 D.; or
 - f. Is not a Responsible contractor pursuant to Section 5.33.500 and state law.
- 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;

**TITLE 5
REVENUE AND FINANCE**

3. Misconduct, error, or ambiguous, conflicting or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;
4. Causes other than legitimate market forces threaten the integrity of the competitive Solicitation process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;
5. The City cancels the Solicitation in accordance with Section 5.33.660; or
6. Any other circumstance indicating that Awarding the Contract would not be in the public interest.

5.33.650 Notice of Intent to Award.

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

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

**TITLE 5
REVENUE AND FINANCE**

3. Upon the conclusion of any appeal pursuant to Section 5.33.740.

5.33.660 Cancellation, delay or suspension of Solicitation.

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

5.33.670 Disposition of Offers if Solicitation Canceled.

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

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

submitted it. The City shall keep a list of returned Proposals in the Solicitation file.

5.33.675 Documentation of Award.

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

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

5.33.685 Availability of Award Decisions.

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

- A.** Contract Documents. To the extent required, the City shall deliver to the successful Offeror, a Signed purchase order, Price Agreement, or other Contract document(s), as applicable.
- B.** Notification to Unsuccessful Offerors. A Person may obtain tabulations of Awarded Bids or evaluation summaries of Proposals for a minimal charge, in person or by submitting to the City a Written request accompanied by payment. Such request shall provide the Solicitation Document number and enclose a self-addressed, stamped envelope.

**TITLE 5
REVENUE AND FINANCE**

- C.** Availability of Solicitation Files. Subject to Section 5.33.200 and ORS 279B.060 the City shall make completed Solicitation files available for public review at the City.
- D.** The City may withhold from disclosure to the public materials included in a Proposal that are exempt or conditionally exempt from disclosure under ORS 192.501 or ORS 192.502 including trade secrets, as defined in ORS 192.501 and information submitted to a public body in confidence, as described in ORS 192.502.
- E.** Copies from Solicitation Files. Subject to Section 5.33.200 and ORS 279B.060 any Person may obtain copies of material from Solicitation files upon payment of a reasonable copying charge.

5.33.690 Performance and Payment Security; Waiver.

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

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

5.33.695 Notification to State of Nonresident Contractor.

If the Contract Price exceeds \$10,000 and the Contractor is a Nonresident Contractor, the Contractor shall promptly report to the Oregon Department of Revenue on forms

provided by the Department of Revenue, the Contract Price, terms of payment, Contract duration and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report shall be forwarded to the City. The City shall satisfy itself that the above requirements have been complied with before it issues final payment on the Contract.

5.33.700 Protests and Judicial Review of Special Procurements.

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

- A.** An Affected Person may protest the City's approval of a Special Procurement or a class Special Procurement.

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

 - 2.** Contents. The Written protest must include:
 - a.** Sufficient information to identify the Request that is the subject of the protest;

 - b.** A detailed statement of all the legal and factual grounds for the protest;

 - c.** Evidence or supporting documentation that supports the grounds on which the protest is based;

 - d.** A description of the resulting harm to the Affected Person; and

 - e.** The relief requested.

- C.** Required City Response. The City shall take the following actions, as appropriate:
 - 1.** The City shall inform the Affected Person in Writing if the protest was not timely filed;

 - 2.** The City shall inform the Affected Person if it failed to meet the requirements of Subsection 5.33.700 B.2. and the reasons for that failure;

**TITLE 5
REVENUE AND FINANCE**

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

5.33.710 Protests and Judicial Review of Sole-Source Procurements.

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

- 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

**TITLE 5
REVENUE AND FINANCE**

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

**TITLE 5
REVENUE AND FINANCE**

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

5.33.720 Protests and Judicial Review of Multi-Tiered Solicitations.

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

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

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, is not grounds for protest.

D. Method of Protest:

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

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

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

**TITLE 5
REVENUE AND FINANCE**

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

**TITLE 5
REVENUE AND FINANCE**

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;
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.

**TITLE 5
REVENUE AND FINANCE**

- 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.)

- 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

**TITLE 5
REVENUE AND FINANCE**

- 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.

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.

**TITLE 5
REVENUE AND FINANCE**

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 and 185898, effective February 20, 2013.) Any violation of ORS Chapter 279A or 279B, except 279B.400 to 279B.425, by the City, for which no administrative remedy is otherwise provided by this Code, is subject to the following:

- A.** A protest by an Affected Person may be made under this section only if a Contract is about to be Awarded or has been Awarded and:
1. An alleged violation of ORS 279A or 279B, except 279B.400 to 279B.425, has occurred in the Procurement process and violation has resulted or will result in the unlawful Award of a Contract or the unlawful failure to Award the Contract;
 2. The alleged violation deprived the Affected Person of the Award of the Contract or the opportunity to compete for the Award of the Contract;

**TITLE 5
REVENUE AND FINANCE**

3. The Affected Person would have been a Responsible Bidder, Proposer or Offeror qualified to receive the Award of the Contract;
4. The Affected Person gave Written notice to the City describing the alleged violation no later than ten (10) Days after the date on which the alleged violation occurred and in no event more than ten (10) Days after the date of the execution of the Contract;
5. If the alleged violation is of ORS 279A, then it is one for which no judicial review is provided by another section of ORS Chapter 279A or 279B. If the alleged violation is of 279B, except 279B.400 to 279B.425, then it is one for which no judicial review is provided by another section of ORS Chapter 279B.

B. Method of Protest.

1. **Time:** A Written protest of the Chief Procurement Officer's Award shall be provided to the Chief Procurement Officer no later than ten (10) Days after the date on which the alleged violation occurred and in no event no later than ten (10) Days after the date of the execution of the Contract. The Chief Procurement Officer shall not consider a protest submitted after the timeline established for submitting such protest under this rule and shall not consider a protest under this section if a right to protest is elsewhere provided by this Code.
2. **Contents:** The protest must include the following information:
 - a. Sufficient information to identify the Procurement or Solicitation that is the subject of the protest;
 - b. A detailed statement of the alleged violation and all the legal and factual grounds for the protest;
 - c. Evidence or supporting documentation that supports the grounds on which the protest is based;
 - d. A description of the resulting harm to the Affected Person; and
 - e. The relief requested.

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

1. The City shall inform the Affected Person in Writing if the protest was not timely filed;

**TITLE 5
REVENUE AND FINANCE**

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 the Chief Procurement Officer shall notify the Person appealing of a time

and place of a hearing designed to consider the appeal within 30 Days or a date mutually agreed upon by both parties.

- C. The City Council delegates its authority to conduct a hearing to the Chief Procurement Officer. The Chief Procurement Officer may subdelegate the authority to conduct a hearing to any person the Chief Procurement Officer deems appropriate, including the Board of Appeals.

5.33.770 Procurement Board of Appeals.

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

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

**TITLE 5
REVENUE AND FINANCE**

- 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,

**TITLE 5
REVENUE AND FINANCE**

Attn: Chief Procurement Officer and marked “Request for Hearing by the Procurement Board of Appeals.”

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

**TITLE 5
REVENUE AND FINANCE**

5.33.900 Social Equity Contracting and Employment Programs.

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

5.33.920 Records Maintenance; Right to Audit Records.

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

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

**TITLE 5
REVENUE AND FINANCE**

- 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.

**TITLE 5
REVENUE AND FINANCE**

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

5.33.940 Contract Cancellation, Contractor Termination Procedures.

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

- 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;

**TITLE 5
REVENUE AND FINANCE**

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;

**TITLE 5
REVENUE AND FINANCE**

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

**TITLE 5
REVENUE AND FINANCE**

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
 3. Notice of the amount of time (if any) in which the City shall permit the Contractor to correct the failure to perform.

TITLE 5
REVENUE AND FINANCE

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

Chapter 5.34

**PUBLIC IMPROVEMENTS
AND CONSTRUCTION SERVICES**

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

Sections:

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

TITLE 5
REVENUE AND FINANCE

- 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.
- 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.
- 5.34.750 Review of Prequalification and Disqualification Decisions.
- 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 (CM/GC).
- 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 No. 185898, effective February 20, 2013.)

- 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 of a Person from contracting with the City for a period of time in accordance with Section 5.34.530. Disqualification may be a Conduct Disqualification or DBE 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 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 and 185898, effective February 20, 2013.)

- 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.

**TITLE 5
REVENUE AND FINANCE**

- B.** Contracts for minor alteration, ordinary repair or maintenance of public improvements, 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
 - 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 and appropriation unit managers 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 and 185065, effective January 1, 2012.)

- A.** Pursuant to ORS 279A.100, the City may limit competition on Contracts to carry out affirmative action policies, in accordance with policies and procedures established by the City.

- B.** Pursuant to ORS 279A.105, the City may require a Contractor to subcontract some part of a Contract to, or to obtain materials to be used in performing the Contract from:
 - 1.** A business enterprise that is certified under ORS 200.055 as an emerging small business; or
 - 2.** A business enterprise that is:
 - a.** Certified under ORS 200.055 as an emerging small business; and

TITLE 5
REVENUE AND FINANCE

- 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 disqualify a Person from consideration of Award of the City's Contracts under ORS 200.065(5) or suspend a Person's right to be on or participate in any Public Contract pursuant to ORS 200.075(1) after providing the Person with notice and a reasonable opportunity to be heard in accordance with 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.

**TITLE 5
REVENUE AND FINANCE**

5.34.100 Overview of Source Selection and Contractor Selection.

(Amended by Ordinance No. 185898, effective February 20, 2013.) 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 G. while individual Contracts must be authorized by the City Council by ordinance.

5.34.110 Emergency Contracts; Bidding and Bonding Exemptions.

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

- A. The City may declare that Emergency circumstances exist that require prompt execution of a Public Contract for Emergency construction. Those contracts are governed by ORS 279B.080 and Chapter 5.33 of this Code. Emergency contracts pursuant to a Proclamation of a State of Emergency or Disaster, however, are governed by Section 5.33.135.
- B. The Council or Person authorizing the Emergency Procurement shall document the nature of the Emergency and describe the method used for the selection of the particular Contractor. The Emergency declaration may exempt the Public Contract from the competitive bidding requirements of ORS 279C.335(1) and shall thereafter be kept on file as a public record.
- C. The City shall seek competition for Emergency Contracts as reasonable and appropriate under the Emergency circumstances, and may include Written requests for Offers, oral requests for Offers or direct appointment without competition in cases of extreme necessity, in whatever Solicitation time periods the City considers reasonable in responding to the Emergency.
- D. The authority to declare an Emergency and authorize an Emergency Contract shall be as follows:

**TITLE 5
REVENUE AND FINANCE**

1. The Chief Procurement Officer may declare the existence of an Emergency and authorize the City or any of its bureaus to enter into an Emergency Contract not to exceed \$150,000.
 2. A bureau director may declare the existence of an Emergency and authorize the bureau to enter into an Emergency Procurement Contract not to exceed \$150,000 only if the Chief Procurement Officer or Person to whom the powers of the Chief Procurement Officer have been delegated, is not available when the purchase needs to be made.
 3. A Commissioner-in-Charge of a bureau may declare the existence of an Emergency and authorize the City and the bureaus of which the Commissioner has responsibility to enter into an Emergency Contract not to exceed \$500,000.
 4. A Commissioner-in-Charge of a bureau may declare the existence of an Emergency and authorize the City and the bureaus of which the Commissioner has responsibility to enter into an Emergency Contract over \$500,000.
 - a. Following the declaration of an Emergency the Commissioner shall immediately prepare an ordinance for approval of the Emergency Contract by the City Council at its next regularly scheduled session or as soon as possible thereafter. That Contract shall be added to the regular agenda of the Commissioner without the need for approval for inclusion on the agenda by other Commissioners.
 - b. If the Council adopts the ordinance, the City will pay for the Work required by the Contract. If Council disapproves the ordinance, the City only will pay for Work performed prior to the date that the Council considered the ordinance for approval. If for any reason presentation of the ordinance to the Council is delayed, the City still will only be liable for Work performed prior to the time when the ordinance first was presented to the Council.
- E.** Any Contract Awarded under this section shall be Awarded within 60 Days, unless the City Council authorizes a longer period of time.
- F.** All documentation of Emergency Contracts shall be sent to the Chief Procurement Officer for record keeping purposes.

**TITLE 5
REVENUE AND FINANCE**

- G.** All Emergency Contracts Awarded when there was no Emergency or reasonable perception of Emergency are void unless the Contract was otherwise valid under another portion of the City's Purchasing Rules.
- H.** After the Award of an Emergency Contract, the City shall execute a Written Contract with the Contractor as soon as possible.
- I.** All such Contracts, whether or not signed by the Contractor, shall be deemed to contain a termination for convenience clause permitting the City to immediately terminate the Contract at its discretion and, unless the Contract was void, the City shall pay the Contractor only for Work performed prior to the date of termination plus the Contractor's unavoidable costs incurred as a result of the termination. In no event will the City pay for anticipated lost profits or consequential damages as a result of the termination.
- J.** Emergency Contracts may be modified by change order or amendment to address the conditions described in the original declaration or an amended declaration that further describes additional Work necessary and appropriate for related Emergency circumstances.
- K.** Pursuant to ORS 279C.380(4) and this rule, the Emergency declaration may also state that the City waives the requirement of furnishing a performance bond and payment bond for the Emergency Contract. After making such an Emergency declaration those bonding requirements are excused for the Procurement, but this Emergency declaration does not affect the separate Public Works bond requirement for the benefit of the Bureau of Labor and Industries (BOLI) in enforcing prevailing wage rate and overtime payment requirements. In addition, nothing herein shall prevent the Chief Procurement Officer or City Council from subsequently requesting such from bonds the Contractor after work begins.

5.34.120 Selection of Substitute Contractor.

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

5.34.130 Joint Cooperative Purchasing.

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

- A.** The City may participate in, sponsor, conduct or administer Joint Cooperative Procurements for the acquisition of Public Improvements, provided that the

**TITLE 5
REVENUE AND FINANCE**

Administering Contracting Agency's Solicitation and Award process for the original Contract was an open and impartial Competitive process that used source selection methods substantially equivalent to those found in Chapter 5.34.

- B.** A Solicitation and Award process uses source selection methods substantially equivalent to those identified in ORS 279C and Chapter 5.34 if the Solicitation and Award process:
 - 1.** Calls for Award of a Contract on the basis of a lowest Responsible Bidder or a lowest and best Bidder determination in the case of Competitive Bids, or on the basis of a determination of the Proposer whose Proposal is most Advantageous based on evaluation factors set forth in the Request for Proposals in the case of Competitive Proposals when permitted by an exemption established by the City Council;
 - 2.** Does not permit the application of any geographic preference that is more favorable to Bidders or Proposers who reside in the jurisdiction or locality favored by the preference than the preferences provided in ORS 279A.120(2); and
 - 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.

**TITLE 5
REVENUE AND FINANCE**

- B.** If the City is a Purchasing Contracting Agency it is authorized to pay a fee to the Administering Contracting Agency that the Chief Procurement Officer determines is fair and reasonable in light of all the circumstances surrounding the Procurement, including the savings that may be obtained if a cooperative Procurement is used, the cost of the Procurement in relationship to the fee, and other factors as may be considered. If a fee is paid, it will be borne by the Bureau or portion of the City on whose behalf the Procurement is being made.

5.34.150 Competitive Bidding Requirement.

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

- A.** Contracts made with Qualified Nonprofit Agencies providing employment opportunities for disabled individuals, in which case the rules stated in Section 5.33.110 shall apply.
- B.** Contracts, or classes of Contracts, exempted by the City Council pursuant to state law, including those stated in Section 5.34.830;
- C.** A public improvement contract with a value of less than \$5,000;
- D.** Contracts not exceeding \$100,000, if made under procedures for Competitive quotations pursuant to Section 5.34.160;
- E.** Public improvement contracts Awarded as Emergency Contracts;
- F.** Energy Savings performance contracts entered into in accordance with Chapter 5.34;
- G.** Contracts where federal law overrides this Chapter;
- H.** Contracts governed by ORS 279A.100 and Section 5.34.040 regarding affirmative action, and contracts identified in the Prime Contractor Development Program;
- I.** Any other Contract that is not governed by ORS 279A, 279B and 279C; and
- J.** Contracts exempted by the City Council acting as the Local Contract Review Board, from using an ITB process pursuant to ordinance, in which case the selection shall follow the rules set forth in Section 5.34.800 *et seq.* in regard to the alternative Contract method selected, unless the exemption authorizes a different method.

5.34.160 Intermediate Procurements; Competitive Quotations.

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

- A.** Public Improvement Contracts estimated by the City not to exceed \$100,000, may be Awarded through the requirements of this rule.
- B.** All requests for a price quotation for a public improvement anticipated to exceed \$50,000 shall be in Writing and include the selection criteria to be utilized in selecting a Contractor and, if the criteria are not of equal value, their relative value or ranking. The criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, Contractor capacity, responsibility and similar factors.
 - 1.** Written requests shall include the Bureau of Labor and Industries (BOLI) provisions regarding the prevailing wage, if the estimated cost exceeds \$50,000.
 - 2.** If the estimated cost is less than \$50,000, but all price quotations equal or exceed \$50,000, then the Solicitation shall be cancelled and a new request for Written price quotations, containing the BOLI provisions regarding prevailing wage shall be included.
- C.** Requests for quotations for public improvements estimated to be \$50,000 or less can be made orally, provided the City seeks at least three competitive quotations, and keeps a Written record of the sources and amounts of the quotations received. If three quotations are not reasonably available the City shall make a Written record of the effort made to obtain those quotations.
- D.** The City shall Award the Contract to the prospective Contractor whose Price Quotation will best serve the interests of the City, taking into account the announced selection criteria. If Award is not made to the Offeror offering the lowest price, the City shall make a Written record of the basis for Award.
- E.** Intermediate level Public Improvement Contracts obtained by competitive quotations may be increased above the original amount of Award by change order or amendment within the limitations pursuant to Subsection 5.34.020 C.3.

5.34.300 Solicitation Documents; Required Provisions; Assignment or Transfer.

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

- A.** The Solicitation Document for a public improvement Contract shall include the following:

**TITLE 5
REVENUE AND FINANCE**

1. Identification of the Public Improvement project, including the character of the Work, and applicable plans, Specifications and other Contract documents;
2. Notice of any pre-Offer conference as follows:
 - a. The time, date and location of any pre-Offer conference;
 - b. Whether attendance at the conference will be mandatory or voluntary; and
 - c. That statements made by the City's representatives at the conference are not binding upon the City unless confirmed by Written Addendum;
3. The deadline for submitting mandatory Prequalification applications and the class or classes of Work for which Offerors must be Prequalified if Prequalification is a requirement;
4. The name and title of the authorized City representative designated for receipt of Offers and contact representative (if different);
5. Instructions and information concerning the form and submission of Offers, including the address of the office to which Offers must be delivered, any Bid or Proposal Security requirements, and any other required information or special information, e.g., whether Offers may be submitted by Facsimile or Electronic means (see Section 5.34.330 regarding Facsimile Bids or Proposals and Section 5.34.340 regarding Electronic Procurement);
6. The time, date and place of Opening;
7. The time and date of Closing after which the City will not accept Offers, which time shall be not less than five (5) Days after the date of the last publication of the advertisement, and may, in the sole discretion of the City, direct or permit the submission and receipt of bids by electronic means. If the City is issuing an ITB that may result in a Public Improvement Contract with a value in excess of \$100,000, the City shall designate a time of Closing consistent with the first-tier Subcontractor disclosure requirements of ORS 279C.370(1)(b) and Section 5.34.493. For timing issues relating to Addenda, see Section 5.34.430;
8. The office where the Specifications for the Work may be reviewed;

**TITLE 5
REVENUE AND FINANCE**

9. A statement that each Bidder to an ITB must identify whether the Bidder is a "Resident Bidder," as defined in Subsection 5.33.010 A.55.;
 10. If the Contract resulting from a Solicitation will be a Contract for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. § 3141 to 3148), or both the state and federal prevailing rates of wage, a statement that no Offer will be received or considered by the City unless the Offer contains a statement by the Offeror as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of ORS 279.838 or ORS 279C.840 or 40 U.S.C. § 3141 to 3148, or both";
 11. A statement that the City will not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board.
 12. Whether a Contractor or a Subcontractor under the Contract must be licensed under ORS 468A.720 regarding asbestos abatement projects;
 13. Contractor's certification of nondiscrimination in obtaining required Subcontractors in accordance with ORS 279A.110(4) and Section 5.34.040;
 14. How the City will notify Offerors of Addenda and how the City will make Addenda available (see Section 5.34.430); and
 15. When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in Section 5.34.493.
 16. A statement that the Offeror must obtain EEO certification and have a valid City business license, if required.
- B.** The Solicitation Document shall also contain the following information about the evaluation process:
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;

**TITLE 5
REVENUE AND FINANCE**

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

**TITLE 5
REVENUE AND FINANCE**

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

**TITLE 5
REVENUE AND FINANCE**

22. Contractor's certification that all Subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board. or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the Subcontractors commence Work under the Contract.
- E. Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the Contract, either in whole or in part, without the City's prior Written consent, which must be approved as to form by the City Attorney's Office. Unless approved in Writing and approved as to form, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the City consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the City for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the City otherwise agrees in Writing.

5.34.310 Notice and Advertising Requirements; Posting.

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

- A. The City shall furnish "Notice" as set forth in Subsections 5.34.310 A.1. through 3. to a number of Persons sufficient for the purpose of fostering and promoting competition. The Notice shall indicate where, when, how and for how long the Solicitation Document may be obtained and generally describe the Public Improvement project or Work. The Notice may contain any other appropriate information. The City may charge a fee or require a deposit for the Solicitation Document. The City may furnish Notice using any method determined to foster and promote competition, including:
1. Mailing Notice of the availability of Solicitation Documents to Persons that have expressed an interest in the City's Procurements;
 2. Placing Notice on the Oregon Department of Administrative Services' Electronic Procurement System known as "ORPIN"(Oregon Procurement Information Network) or a successor electronic System; or
 3. Placing Notice on the City's Internet Web site.
- B. Pursuant to ORS 279C.360 and this rule, the City shall advertise every Solicitation for competitive bids or competitive proposals for a Public Improvement Contract, unless the City Council has exempted the Solicitation

**TITLE 5
REVENUE AND FINANCE**

from the advertisement requirement as part of a competitive bidding exemption under ORS 279C.335 and Section 5.34.820.

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

- 2.** The City Council finds that publishing Notice Electronically is likely to be cost effective. The City may publish by Electronic Advertisement if:
 - a.** The City has published a Notice that it may publish future advertisements for Offers by Electronic Advertisement. The City shall publish such Notice weekly, for no less than four (4) consecutive weeks. The City Notice shall include the World Wide Web location (i.e., Uniform Resource Locator or URL) where the City will publish future Electronic Advertisements or alternatively, the Web location where the City will publish information on accessing the Electronic Advertisement via a Telnet application;

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

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

 - d.** All advertisements for Offers shall set forth:
 - (1)** The Public Improvement project;

 - (2)** The office where Contract terms, conditions and Specifications may be reviewed;

**TITLE 5
REVENUE AND FINANCE**

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

5.34.320 Specifications and Brand Names.

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

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

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

5.34.330 Facsimile Bids and Proposals.

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

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

**TITLE 5
REVENUE AND FINANCE**

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

5.34.340 Electronic Procurement.

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

**TITLE 5
REVENUE AND FINANCE**

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

**TITLE 5
REVENUE AND FINANCE**

2. Timely Submission. Bidders or Proposers may submit Electronic Bids or Proposals in response to this Solicitation Document. The entire Electronic Bid or Proposal shall arrive at the place and by the time specified in the Solicitation Document.
3. Rejection of Bids or Proposals. Electronic Bids or Proposals that fail to furnish required representations or information, that are contingent or that reject or take exception to any of the terms, conditions, and provisions of the Solicitation Document, may be rejected and excluded from consideration, as otherwise provided by this Chapter.
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 and 185898, effective February 20, 2013.)

- 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(45) 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

**TITLE 5
REVENUE AND FINANCE**

Improvement Contracts with a value, estimated by the City, of more than \$150,000. The Chief Procurement Officer nonetheless may require Bid security from any Offeror, or for any project, even if the City Council has exempted a class of Solicitations from Bid security if the Chief Procurement Officer believes it necessary to secure payment and performance. The Chief Procurement Officer may require Proposal Security in RFPs. (see ORS 279C.400(5)).

C. Form of Bid or Proposal Security. The City may accept only the following forms of Bid or Proposal Security:

1. A surety bond, signed by the surety's authorized Attorney in Fact, from a company authorized to do business in the State of Oregon and that is duly listed in the United States Treasury list as published in the Federal Register, or which is otherwise approved by the City Attorney. The surety company's seal shall be affixed to the bond and a Power of Attorney for the Attorney in Fact shall be submitted. The City Attorney has the authority to waive the requirement of the corporate seal: or
2. A signed irrevocable letter of credit issued by an insured institution as defined in ORS 706.008(12); or
3. A Cashier's check, or Offeror's certified check.

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

5.34.420 Pre-Offer Conferences.

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

- A.** The City may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the Procurement requirements, obtain information or to conduct site inspections.
- B.** The City may require attendance at the pre-Offer conference as a condition for making an Offer. Unless otherwise specified in the Solicitation Document, a mandatory attendance requirement is considered to have been met if, at any time during the mandatory meeting, a representative of an offering firm is present.

**TITLE 5
REVENUE AND FINANCE**

- C. If the City holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.
- D. Statements made by the City's representative at the pre-Offer conference, or elsewhere do not change the Solicitation Document unless the City confirms such statements with a Written Addendum to the Solicitation Document.
- E. The City must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with Section 5.34.300.

5.34.430 Addenda to Solicitation Documents.

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

- A. **Issuance; Receipt.** A Solicitation Document may be changed only by a Written Addendum. An Offeror shall provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the City otherwise specifies in the Addenda or Solicitation Document. If an Offeror submits an Offer and the Solicitation Document states that the Offeror is bound by all Addenda published in accordance with these rules, then the Offeror shall be bound by all Addenda so issued.
- B. **Notice and Distribution.** The City shall notify prospective Offerors of Addenda consistent with the standards of Notice set forth in Section 5.34.310. The Solicitation Document shall specify how the City will provide Notice of Addenda and how the City will make the Addenda available (see, Section 5.34.300). For example, the Solicitation Document could say: "City will not mail Notice of Addenda, but will publish Notice of any Addenda on City's Web site." Addenda may be downloaded off the City's Web site. Offerors should frequently check the City's Web site until Closing, (i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing).
- C. **Timelines; Extensions.** The City shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The City should extend the Closing if the Chief Procurement Officer determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent that the Chief Procurement Officer determines that the public interest requires it, the City shall not issue an Addendum less than 72 hours before the Closing unless the Addendum also extends the Closing. Notice of the Addenda shall be deemed to occur when the Addendum is posted on the City's web site or upon mailing, whichever is applicable. If both occur, the notification is complete when the first of these two events occur.

- D.** Request for Change or Protest. Unless a different deadline is set forth in the Addendum, an Offeror must submit a Written request for change or protest to the Addendum, as provided in Section 5.34.440 by the close of the City's next business Day after issuance of the Addendum. The City shall consider only an Offeror's request for change or protest to the Addendum; the City shall not consider a request for change or protest to matters not added or modified by the Addendum. Notwithstanding any provision of this Paragraph, the City is not required to provide a protest period for Addenda issued during a multi-tiered Solicitation process pursuant to Section 5.34.850.

5.34.440 Request for Clarification or Change.

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

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

**TITLE 5
REVENUE AND FINANCE**

- E.** A Proposer may request a change to add alternate terms and conditions for negotiation if the Solicitation Document permits negotiation. In this circumstance, request for change procedure shall be governed by the Solicitation Document and Subsections 5.34.840 E. and 5.34.850 F.
- F.** Clarification. Prior to the deadline for submitting a request for change, an Offeror may request in Writing that the City clarify any provision of the Solicitation Document or Contract. The City's clarification, whether oral or in Writing, does not change the Solicitation Document or Contract and is not binding on the City unless the City amends the Solicitation Document or Contract by Written Addenda.

5.34.450 Offer Submissions.

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

- A.** Offer and Acceptance. A Bid, Proposal or Price Quotation is an Offer to enter into a Contract. The Offer is a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the City's acceptance for not less than 30 Days from closing unless otherwise specified in the Solicitation Document. After the 30 Days the Offer shall lapse unless extended. The extension may occur after the expiration of the 30-Day period.
- B.** The Offer may be extended beyond 30 Days if the Offeror and the City so agree. If agreement is reached the time period for extension shall be reduced to Writing and the Offer will remain valid, irrevocable and binding on the Offeror for the agreed-upon extension period.
- C.** The City's Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.
- D.** Responsive Offer. The City may Award a Contract only to a Responsible Offeror with a Responsive Offer.
- E.** A competitive Proposal is a "Firm Offer" for the period specified as provided in section A above, but the City may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document with the Proposer. Where negotiation is permitted by the rules or the Solicitation Document, Proposers are bound to an obligation to negotiate in good faith and only on those terms and the rules or the Solicitation Document has reserved for negotiation.
- F.** The City may Award a Contract only to a Responsible Offeror with a Responsive Offer.

**TITLE 5
REVENUE AND FINANCE**

- G.** Contingent Offers. Except to the extent that a Proposer is authorized to propose certain terms and conditions pursuant to Section 5.34.850, a Proposer shall not make, and the City shall not accept, an Offer contingent upon the City's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.
- H.** Offeror's Acknowledgement. By signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits Proposal of alternative terms under Section 5.34.850, the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the City in Writing.
- I.** Instructions. An Offeror shall submit and Sign its Offer in accordance with the Solicitation Document. Bids requiring a Written and non-electronic signature shall be signed in ink by an Authorized Representative of the Offeror. An Offeror shall initial and submit any correction or erasure to its Offer prior to the Opening in accordance with the requirements for submitting an Offer under the Solicitation Document.
- J.** Forms. An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.
- K.** Documents. An Offeror shall provide the City with all documents and Descriptive Literature required under the Solicitation Document.
- L.** Facsimile or Electronic Submissions If the City permits Facsimile or Electronic Offers in the Solicitation Document, the Offeror may submit Facsimile or Electronic Offers in accordance with the Solicitation Document. The City shall not consider Facsimile or Electronic Offers unless authorized by the Solicitation Document.
- M.** Product Samples and Descriptive Literature. The City may require Product Samples or Descriptive Literature if it is necessary or desirable to evaluate the quality, features or characteristics of the offered items. The City will dispose of Product Samples, or return or make available for return Product Samples to the Offeror in accordance with the Solicitation Document.
- N.** Identification of Offers.

**TITLE 5
REVENUE AND FINANCE**

1. To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the City, whichever is applicable.
 2. The City is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.
- O.** Receipt of Offers. The Offeror is responsible for ensuring that the City receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

5.34.460 Pre-Closing Modification or Withdrawal of Offers.

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

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

**TITLE 5
REVENUE AND FINANCE**

- C. Documentation. All documents relating to the modification or withdrawal of Bids or Proposals shall be made a part of the appropriate Bid or Proposal Solicitation file.
- D. Late Requests for Modification or Withdrawal. Any request for modification or withdrawal of a Bid or Proposal made after the time for Bid or Proposal Closing is late as provided by Section 5.34.480. Any late submission shall be returned to the Bidder or Proposer unopened. If any late submission is opened inadvertently, the procedure provided by Section 5.34.470 shall apply except the submission shall be returned to the sender.

5.34.470 Receipt, Opening and Recording of Offers.

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

- A. Receipt. Each Offer, and modifications to Offers, shall, upon receipt, be Electronically or mechanically time-stamped by Procurement Services time clock, or marked by hand, but not opened, and shall be stored in a secure place until Bid or Proposal Opening. If Offers or modifications are opened inadvertently or opened prior to the time and date set for Bid or Proposal Opening because they were improperly identified by the Offeror, the opened Offers or modification documents shall be resealed and stored for Opening at the correct time. When this occurs, documentation of the resealing shall be placed in the file.
- B. Opening and Recording. Offers and modifications to Offers shall be opened publicly, at the time, date, and place designated in the Solicitation Document. In the case of Invitations to Bid, to the extent practicable, the name of each Bidder, the Bid price(s), and such other information as considered appropriate shall be read aloud. In the case of Requests for Proposals or on voluminous Bids, the City may 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

**TITLE 5
REVENUE AND FINANCE**

remainder of the Offer. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment shall be publicly available regardless of the Offeror's designation to the contrary. Copies of public records will be made available upon payment of the City's charges.

5.34.480 Late Bids, Late Withdrawals and Late Modifications.

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

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

5.34.490 Mistakes.

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

**TITLE 5
REVENUE AND FINANCE**

- 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
 - 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.

**TITLE 5
REVENUE AND FINANCE**

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

5.34.493 First-Tier Subcontractors; Disclosure and Substitution.

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

- A. Required Disclosure. Within two working hours after the Bid Closing on an ITB for a Public Improvement having a Contract Price estimated by the City to exceed \$100,000, all Bidders shall submit to the City a disclosure form as described by ORS 279C.370(2), identifying any first-tier Subcontractors that will be furnishing labor or labor and materials on the Contract, if Awarded, whose subcontract value would be equal to or greater than:
 1. Five percent of the total Contract Price, but at least \$15,000; or
 2. \$350,000, regardless of the percentage of the total Contract Price.

**TITLE 5
REVENUE AND FINANCE**

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

**TITLE 5
REVENUE AND FINANCE**

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

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

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

5.34.500 Responsibility of Offerors.

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

- A.** Contracts shall be Awarded only to Responsible Offerors. Pursuant to ORS 279C.375, the City shall consider whether the Offeror has:
 - 1.** Available the appropriate financial, material, equipment, facility and personnel resources and expertise, necessary to indicate the capability of the prospective Offeror to meet all contractual responsibilities;

**TITLE 5
REVENUE AND FINANCE**

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

 - a. The Person does not have a business license with the City; or
 - b. The Person failed to make payments required by Title 7 of the City Code and has failed to make appropriate payment arrangements with the Revenue Bureau within seven (7) Days of the receipt of

**TITLE 5
REVENUE AND FINANCE**

a Bid or Proposal, unless the City waives that requirement and decides to pursue collection through retention of Contract funds, or through other means.

5. Supplied all necessary information in connection with the inquiry concerning responsibility. If a prospective Offeror fails to promptly supply information requested by the City concerning responsibility, the City shall base the determination of responsibility upon any available information or may find the prospective Offeror non-Responsible;
 6. Not been disqualified by the City pursuant to ORS 279C.440 and Section 5.34.530.
- B.** In the event the City determines an Offeror is not Responsible it shall prepare a Written determination of non-responsibility as required by ORS 279C.375.

5.34.510 Prequalification of Offerors.

(Amended by Ordinance Nos. 183445, 184403, 185065 and 185898, effective February 20, 2013.)

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

TITLE 5
REVENUE AND FINANCE

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

**TITLE 5
REVENUE AND FINANCE**

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

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

5.34.520 Eligibility to Bid or Propose; Registration or License.

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

5.34.530 Disqualification of Persons.

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

- 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.

**TITLE 5
REVENUE AND FINANCE**

1. Standards for Conduct Disqualification. As provided in ORS 279C.440, the City may disqualify a Person for:
 - a. Conviction for the commission of a criminal offense as an incident in obtaining or attempting to obtain a public or private Contract or subcontract, or in the performance of such Contract or subcontract;
 - b. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the Person's responsibility as a Contractor;
 - c. Conviction under state or federal antitrust statutes; or
 - d. Violation of a Contract provision that is regarded by the City to be so serious as to justify Conduct Disqualification. A violation under Subsection 5.34.530 A.1.d. may include but is not limited to material failure to perform the terms of a Contract or an unsatisfactory performance in accordance with the terms of the Contract. However, a Person's failure to perform or unsatisfactory performance caused by acts beyond the Person's control is not a basis for Disqualification.

2. Standards for DBE Disqualification. As provided in ORS 200.065, 200.075 or 279A.110, the City may disqualify a Person's right to submit an Offer or to participate in a Contract (e.g., as Subcontractors) as follows:
 - a. For a DBE Disqualification under ORS 200.065, the City may disqualify a Person upon finding that:
 - (1) The Person fraudulently obtained or retained or attempted to obtain or retain or aided another Person to fraudulently obtain or retain or attempt to obtain or retain certification as a disadvantaged, minority, women or emerging small business enterprise; or
 - (2) The Person knowingly made a false claim that any Person is qualified for certification or is certified under ORS 200.055 for the purpose of gaining a Contract or subcontract or other benefit; or

TITLE 5
REVENUE AND FINANCE

- (3) The Person has been disqualified by another public contracting agency pursuant to ORS 200.065.
 - b. For a DBE Disqualification under ORS 200.075, the City may disqualify a Person upon finding that:
 - (1) The Person has entered into an agreement representing that a disadvantaged, minority, women, or emerging small business enterprise, certified pursuant to ORS 200.055 ("Certified Enterprise"), will perform or supply materials under a Public Improvement Contract without the knowledge and consent of the Certified Enterprise; or
 - (2) The Person exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any Certified Enterprise; or
 - (3) The Person uses a Certified Enterprise to perform Work under a Public Improvement Contract to meet an established Certified Enterprise goal, and such enterprise does not perform a commercially useful function, as defined by ORS 200.075(3), in performing its obligations under the Contract.
 - c. If a Person is Disqualified for a DBE Disqualification under ORS 200.075, the City shall not permit such Person to participate in the City's Contracts.
 - d. For a DBE Disqualification under ORS 279A.110, the City may disqualify a Person if the City finds that the Person discriminated against minority, women or emerging small business enterprises in Awarding a subcontract under a Contract with that City.
- B.** Notice of Intent to Disqualify. The City shall notify the Person in Writing of a proposed Disqualification personally or by registered or certified mail, return receipt requested. This notice shall:
- 1. State that the City intends to disqualify the Person;
 - 2. Set forth the reasons for the Disqualification;
 - 3. Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the Chief Procurement Officer does not receive the Person's Written request for a

hearing within the time stated, the Person shall have waived its right to a hearing;

4. Include a statement of the authority and jurisdiction under which the hearing will be held;
 5. Include a reference to the particular sections of the statutes and rules involved;
 6. State the proposed Disqualification period; and
 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.

5.34.600 Bid or Proposal Evaluation Criteria.

- 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

**TITLE 5
REVENUE AND FINANCE**

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 279C.335(3), 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 and 185898, effective February 20, 2013.)

- 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;

**TITLE 5
REVENUE AND FINANCE**

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 successor Person). The standards for Conduct Disqualification under Section 5.34.540 may be used to determine an Offeror's integrity. The City shall make its basis for determining that an Offeror is not Responsible under this paragraph part of the Solicitation file;
4. Is qualified legally to Contract with the City, including having a current City business license and EEO certification. The Procurement Services may determine that such a Person is not legally qualified if:
 - a. The Person does not have a business license with the City; or
 - b. The Person failed to make payments required by Title 7 of the City Code and has failed to make appropriate payment arrangements with the Revenue Bureau within seven (7) Days of the receipt of a Bid or Proposal, unless the City waives that requirement and decides to pursue collection through retention of Contract funds, or through other means.
5. 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.

**TITLE 5
REVENUE AND FINANCE**

- C.** Documenting City Determinations: The City shall document its compliance with ORS 279C.375(3) and the above sections of this rule on a Responsibility Determination Form substantially as set forth in ORS 279.375(3)(c) and file that form with the Construction Contractors Board within 30 days after Contract Award,
- D.** City Evaluation. The City shall evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The City shall not evaluate an Offer using any other requirement or criterion.
- E.** Offeror Submissions.

 - 1.** The City may require an Offeror to submit Product Samples, Descriptive Literature, technical data, or other material and may also require any of the following prior to Award:

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

- I. The City may award a public improvement contract or may award multiple public improvement contracts when specified in the Invitation to Bid or the Request for Proposals.

5.34.620 Negotiation With Bidders Prohibited.

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

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

5.34.625 Contract Preferences; Resident Bidders.

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

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

**TITLE 5
REVENUE AND FINANCE**

- 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 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 No. 185898, effective February 20, 2013.)

- 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
 - a.** whether the Nonresident Bidder's state gives preference to in-state Bidders, and

- b. the amount of such preference. Bidders or Proposers who believe that information is inaccurate shall notify the City prior to submitting their Bid to permit a reasonable investigation. Otherwise, the City shall rely on that information in making its determination.

5.34.640 Negotiation When Bids Exceed Cost Estimate.

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

- A. Generally. In accordance with ORS 279C.340, if all Responsive Bids from Responsible Bidders on a competitively Bid Project exceed the City's Cost Estimate, prior to Contract Award the City may negotiate Value Engineering and Other Options with the Responsible Bidder submitting the lowest, Responsive Bid in an attempt to bring the Project within the City's Cost Estimate. The Subcontractor disclosure and substitution requirements of Section 5.34.493 do not apply to negotiations under this rule.
- B. Definitions. The following definitions apply to this administrative rule:
 - 1. **"Cost Estimate"** means the City's most recent pre-Bid, good faith assessment of anticipated Contract costs, consisting either of an estimate of an architect, engineer or other qualified professional, or confidential cost calculation Worksheets, where available, and otherwise consisting of formal planning or budgetary documents.
 - 2. **"Other Options"** means those items generally considered appropriate for negotiation in the RFP process, relating to the details of Contract performance as specified in Section 5.34.850, but excluding any material requirements previously announced in the Solicitation process that would likely affect the field of competition.
 - 3. **"Project"** means a Public Improvement.
 - 4. **"Value Engineering"** means the identification of alternative methods, materials or systems which provide for comparable function at reduced initial or life-time cost. It includes proposed changes to the plans, Specifications, or other Contract requirements which may be made, consistent with industry practice, under the original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the Public Improvement. Cost savings include those resulting from Life Cycle Costing, which may either increase or decrease absolute costs over varying time periods.

**TITLE 5
REVENUE AND FINANCE**

- C.** Rejection of Bids. In determining whether all Responsive Bids from Responsible Bidders exceed the Cost Estimate, only those Bids that have been formally rejected, or Bids from Bidders who have been formally disqualified by the City, shall be excluded from consideration.
- D.** Scope of Negotiations. Contracting Agencies shall not proceed with Contract Award if the Scope of the Project is significantly changed from the original Bid. The Scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other Bidders would have been expected by the City to participate in the Bidding process had the change been made during the Solicitation process rather than during negotiation. This rule shall not be construed to prohibit resolicitation of trade subcontracts.
- E.** Discontinuing Negotiations. The City may discontinue negotiations at any time, and shall do so if it appears to the City that the apparent low Bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to rebid any portion of the project, or to obtain Subcontractor pricing information upon request, shall be considered a lack of good faith.
- F.** Limitation. Negotiations may be undertaken only with the lowest Responsive, Responsible Bidder pursuant to ORS 279C.340.
- G.** Public Records. ORS 279C.340 shall not be construed as creating any additional public records where that result is not otherwise contemplated by the Public Records law, ORS Chapter 192. Records of a Bidder used in Contract negotiations may not become public records unless they are also submitted to the City.

5.34.645 Rejection of Offers.

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

- A.** Rejection of an Offer.

 - 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:

**TITLE 5
REVENUE AND FINANCE**

- 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 Good Faith Efforts 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;
 - c.** Has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries and the Contract is for a Public Work;
 - d.** Is listed as not qualified by the Construction Contractors Board or the Landscape Contractors Board, when required;

**TITLE 5
REVENUE AND FINANCE**

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

**TITLE 5
REVENUE AND FINANCE**

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

5.34.650 Notice of Intent to Award.

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

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

**TITLE 5
REVENUE AND FINANCE**

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.

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

5.34.675 Documentation of Award.

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

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

5.34.680 Time for City Acceptance; Extension.

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

- A.** Time for Offer Acceptance. An Offer submitted as a Firm Offer is irrevocable, valid and binding on the Offeror for not less than 30 Days from Closing unless otherwise specified in the Solicitation Document. After 30 Days, or such other

**TITLE 5
REVENUE AND FINANCE**

period of time specified in the Solicitation Document, the Offer shall lapse unless extended.

- B.** Extension of Acceptance Time. The City may request, orally or in Writing, that Offerors extend, in Writing, the time during which the City may consider and accept their Offer(s). If an Offeror agrees to such extension, the Offer shall continue as a Firm Offer, irrevocable, valid and binding on the Offeror for the agree-upon extension period. The extension may occur after the 30-Day time period referenced in Subsection 5.34.680 A.

5.34.685 Availability of Award Decisions.

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

5.34.690 Performance and Payment Security; Waiver.

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

- 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 separate payment bond each in a sum equal to the Contract Price for all Public Improvement Contracts. 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

**TITLE 5
REVENUE AND FINANCE**

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).

- 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

**TITLE 5
REVENUE AND FINANCE**

- 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.
- 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
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:

**TITLE 5
REVENUE AND FINANCE**

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 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.

**TITLE 5
REVENUE AND FINANCE**

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;
 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

**TITLE 5
REVENUE AND FINANCE**

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:
 - 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.

**TITLE 5
REVENUE AND FINANCE**

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;
 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).

**TITLE 5
REVENUE AND FINANCE**

- 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:

**TITLE 5
REVENUE AND FINANCE**

- 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:
 - 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

**TITLE 5
REVENUE AND FINANCE**

decision in Writing and provide that decision to the Affected Person within a reasonable time of the receipt of the protest.

4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.

D. Optional City Response: In addition to the requirements of Subsection 5.34.730 C., the City may take any or all of the following:

1. Agree with the Protest and issue a revised Notice of Intent to Award or take any other corrective action that may be necessary to ensure that the Contract is Awarded to the appropriate Offeror;
2. Issue a Written response to the protest and provide that decision to the Affected Person.
3. Refer the protest and any response to the Board of Appeals for decision;
4. Refer the protest and any response to the City Council for decision; or
5. Take any other action that is in the best interest of the City while giving full consideration to the merits of the protest.

E. Judicial Review. An Affected Person may not seek judicial review unless it fully has complied with the protest requirements of this rule and has exhausted all avenues of appeal provided by the Chief Procurement Officer.

5.34.740 Protests of Other Violations.

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

- A.** An Affected Person can file a protest under this section only if a Public Contract is about to be Awarded or has been Awarded and:
1. An alleged violation of ORS 279C has occurred in the Solicitation process and violation has resulted or will result in the unlawful Award of a Contract or the unlawful failure to Award the Contract;
 2. The alleged violation deprived the Affected Person of the Award of the Contract or the opportunity to compete for the Award of the Contract;

**TITLE 5
REVENUE AND FINANCE**

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;
 - b. A detailed statement of the alleged violation and all the legal and factual grounds for the protest.
 - c. Evidence or supporting documentation that supports the grounds on which the protest is based;
 - d. A description of the resulting harm to the Affected Person; and
 - e. The relief requested

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

1. The City shall inform the Affected Person in Writing if the protest was not timely filed;
2. The City shall inform the Affected Person if it failed to meet the requirements of Subsection 5.34.740 B.2. and the reasons for that failure;
3. If the protest was timely filed and provides the information required by Subsection 5.34.740 B.2., the City shall issue a decision in Writing and

**TITLE 5
REVENUE AND FINANCE**

provide that decision to the Affected Person within a reasonable time of the receipt of the protest.

4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.

D. Optional City Response: In addition to the requirements of Subsection 5.34.740 C., the City may take any or all of the following:

1. Agree with the Protest and take any corrective action necessary;
2. Issue a Written response to the protest and provide that decision to the Affected Person;
3. Refer the protest and any response to the Board of Appeals for decision.
4. Refer the protest and any response to the City Council for decision; or
5. Take any other action that is in the best interest of the City while giving full consideration to the merits of the protest

E. Judicial Review. An Affected Person may not seek judicial review of any violations covered by this rule unless it fully has complied with the protest requirements of this rule and has exhausted all avenues of appeal provided by the Chief Procurement Officer.

5.34.750 Review of Prequalification and Disqualification Decisions.

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

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

5.34.760 Procurement Board of Appeals.

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

- A.** Purpose. The purpose of this rule is to provide for the prompt, effective and efficient resolution of appeals and protests of Affected Persons in regard to City decisions when such matters are referred to it by the Chief Procurement Officer or when authorized or required by this Chapter.

- B.** Board Created. Pursuant to Portland City Charter Section 2-103, City Council hereby creates the Procurement Board of Appeals for the purposes described above.

- C.** Jurisdiction of Board. The Procurement Board of Appeals shall hear and resolve protests and appeals arising from City decisions arising under this Chapter only when such matters are referred to it by the Chief Procurement Officer.

- D.** Composition of Board.
 - 1.** The Procurement Board of Appeals shall consist of three members. A quorum shall consist of three members.

 - 2.** The members of the Board shall be:
 - a.** A representative from the public purchasing sector;

 - b.** The City Engineer or designee;

 - c.** A member of the general public with affiliation to the purchasing industry.

 - 3.** The public members shall be appointed by the Mayor, subject to confirmation by City Council and shall serve for a period of up to two years, which may be extended by the Chief Procurement Officer.

 - 4.** A member of the board shall serve as chairperson.

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

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

**TITLE 5
REVENUE AND FINANCE**

- 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.

**TITLE 5
REVENUE AND FINANCE**

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

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

**TITLE 5
REVENUE AND FINANCE**

279C.335 pertaining to the adoption of model rules appropriate for use by the City govern the procedures for entering into ESPCs.

5.34.810 Definitions for Alternative Contracting Methods.

(Amended by Ordinance No. 185898, effective February 20, 2013.) The following definitions shall apply to Sections 5.34.800 through 5.34.890, unless the context requires otherwise:

- A. Alternative Contracting Methods.** Innovative Procurement techniques for obtaining Public Improvement Contracts, utilizing processes other than the traditional method of design-Bid-build with Award 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, as well as other developing techniques such as 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 form of Procurement that results in a Public Improvement Contract for a Construction Manager/General Contractor to undertake project team involvement with design development; constructability reviews; value engineering, scheduling, estimating and subcontracting services; establish a Guaranteed Maximum Price to complete the Contract Work; act as General Contractor; coordinate and manage the building process; provide general Contractor expertise; and act as a member of the project team along with the City, architect/engineers and other consultants. CM/GC also refers to a Contractor under this form of Contract.
- C. 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 Person provides the City with all of the Personal Services and Work necessary to both design and construct the project.
- D. 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

**TITLE 5
REVENUE AND FINANCE**

costs and materials costs associated with maintenance of the building or structure. Maintenance services are not Energy Conservation Measures, for purposes of Section 5.34.880.

- E. 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.
- F. Energy Savings Performance Contract (or "ESPC").** A Public Improvement Contract between The City and a Qualified Energy Service Company for the identification, evaluation, recommendation, design and construction of Energy Conservation Measures, including a Design-Build Contract, that guarantee energy savings or performance.
- G. Guaranteed Maximum Price (or "GMP").** 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, as defined by the Public Improvement Contract, except for material changes in the Scope of Work. It may also include particularly identified contingency amounts.
- H. Measurement and Verification (or "M & V").** As used in ESPC Procurement, the examination of installed ECMs using the International Performance Measurement and Verification Protocol ("IPMVP"), or any other comparable protocol or process, to monitor and verify the operation of energy-using systems pre-installation and post-installation.
- I. Project Development Plan.** A secondary phase of Personal Services and Work performed by an ESCO in an ESPC Procurement when the ESCO performs more extensive design of the agreed-upon ECMs for the project, provides the detailed provisions of the ESCO's Energy Savings Guarantee that the fully installed and commissioned ECMs will achieve a particular energy savings level for the building or structure, and prepares an overall report or plan summarizing the ESCO's Work during this secondary phase of the Work and otherwise explaining how the agreed-upon ECMs will be implemented during the design and construction phase of the Work; The term "Project Development Plan" can also

**TITLE 5
REVENUE AND FINANCE**

refer to the report or plan provided by the ESCO at the conclusion of this phase of the Work.

- J. Qualified Energy Service Company (or "ESCO").** As used in ESPC Procurement, a company, firm or other legal Person with the following characteristics: demonstrated technical, operational, financial and managerial capabilities to design, install, construct, commission, manage, measure and verify, and otherwise implement Energy Conservation Measures and other Work on building systems or building components that are directly related to the ECMs in existing buildings and structures; a prior record of successfully performing ESPCs on projects involving existing buildings and structures that are comparable to the project under consideration by the City; and the financial strength to effectively guarantee energy savings and performance under the ESPC for the project in question, or the ability to secure necessary financial measures to effectively guarantee energy savings under an ESPC for that project.
- K. Technical Energy Audit.** As used in ESPC Procurement, the initial phase of Personal Services to be performed by an ESCO that includes a detailed evaluation of an existing building or structure, an evaluation of the potential ECMs that could be effectively utilized at the facility, and preparation of a report to the City of the ESCO's Findings during this initial phase of the Work; the term "Technical Energy Audit" can also refer to the report provided by the ESCO at the conclusion of this phase of the Work.

5.34.820 Use of Alternative Contracting Methods.

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

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

- C. 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 for which the competitive bidding process was not used. The purpose of this evaluation is to determine whether it was actually in the City's best interest to use an Alternative Contracting Method. 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. The Chief Procurement Officer shall forward such reports to the City Council in a timely manner. 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 and 185898, effective February 20, 2013.)

- A.** The City Council may by ordinance exempt a Contract from the requirements of an ITB process 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 to the City. The "substantial cost savings" criterion at ORS 279C.335(2)(b) requires consideration of the type, cost, amount of the Contract, number of Entities available to Bid, and "such other factors as may be deemed appropriate" as further described in Subsection 5.34.830 E.; 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.

**TITLE 5
REVENUE AND FINANCE**

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 process 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.
- 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. Operational, budget and financial data;
 2. Public benefits;
 3. Value Engineering;
 4. Specialized expertise required;
 5. Public safety;
 6. Market conditions;

**TITLE 5
REVENUE AND FINANCE**

7. Technical complexity; and
 8. Funding sources.
- 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 the Competitive Bidding requirement of using an ITB. 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" requirement may be addressed by a combination of:
1. Specified Findings that address the factors and other information specifically identified by statute; 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

**TITLE 5
REVENUE AND FINANCE**

utilized, that the Procurement will be formally advertised, competition will be encouraged, and Award made based upon identified selection criteria.

H. Class Exemptions. In making the findings supporting a class exemption the City shall clearly identify the class with respect to its defining characteristics. Those characteristics shall include some combination of Project descriptions or locations, time periods, Contract values or method of Procurement or other factors that distinguish the limited and related class of Projects from the City's overall construction program. Classes shall not be defined solely by funding sources, such as a particular bond fund, or by method of Procurement, but must be defined by characteristics that reasonably relate to the exemption criteria set forth in ORS 279C.335(2). The following classes of Contracts are hereby exempt from the Competitive low Bidding requirements of this Chapter:

1. 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;
2. 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:
 - a. The improvements are paid for in part, or in whole, by the tenant;
 - b. The improvements are primarily for the tenant's benefit; and
 - c. The tenant hires the Contractor to perform the Work, whether or not a competitive process is used by the tenant.
3. Deficiency Corrections/Contractor on site. The City may hire a private Contractor to perform Work if:
 - a. The City finds that a Contractor hired by a private developer or Person is at or near the site where City Work needs to be performed and the cost proposed by the private Contractor is reasonable and the cost of the Work will be less than \$25,000; or
 - b. The City finds that a Contractor hired by the City is at or near the site where City Work needs to be performed; and
 - (1) 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

- (2) 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
- (3) 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 No. 185898, effective February 20, 2013.)

- A. General Application: The City may utilize the RFP outlined in Subsections 5.34.840 C. through E. below for Public Improvement Contracts, allowing flexibility in both Proposal evaluation and Contract negotiation, only in accordance with 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. ESPCs: For ESPCs, the RFP outlined in Subsections 5.34.840 C. through E. below shall be utilized if the City desires the Procurement process to be exempt from the competitive bidding requirements of ORS 279C.335. The RFP process for the Alternative Contracting Methods identified in Subsections 5.34.800 to 5.34.890 includes the following steps:
 - C. 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).
- D. Evaluation Factors.
 - 1. In basic negotiated construction contracting, where the only reason for an RFP is to consider factors other than price, those factors may consist of firm and personnel experience on similar projects, adequacy of equipment

TITLE 5
REVENUE AND FINANCE

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 affect cost or quality.

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, coordination of multiple disciplines, the time required to commence and complete the improvement, and related matters that affect cost or quality.
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.
4. In Energy Savings Performance Contracting (ESPC), in addition to the factors set forth in Subsections 5.33.840 D.1., 2. and 3., those factors may also include sample Technical Energy Audits from similar projects, sample M & V reports, financial statements and related information of the ESCO for a time period established in the RFP, financial statements and related information of joint ventures comprising the ESCO, the ESCO's capabilities and experience in performing energy baseline studies for facilities (independently or in cooperation with an independent third-party energy baseline consultant), past performance of the ESCO in meeting energy guarantee Contract levels, the specific Person that will provide the Energy Savings Guarantee to be offered by the ESCO, the ESCO's management plan for the project, information on the specific methods, techniques and equipment that the ESCO will use in the performance of the Work under the ESPC, the ESCO's team members and consultants to be assigned to the project, the ESCO's experience in the Energy Savings Performance Contracting field, the ESCO's experience acting as the prime Contractor on previous ESPC projects (as opposed to a sub-contractor or consultant to a prime ESCO), the ESCO's vendor and product neutrality related to the development of ECMs, the ESCO's project history related to removal from an ESPC project or the inability or unwillingness of the ESCO to complete an ESPC project, the ESCO's M & V capabilities and experience (independently or in cooperation with an independent third-party M & V consultant), the ESCO's ability to explain the unique risks associated with ESPC projects and the assignment of risk in the particular

**TITLE 5
REVENUE AND FINANCE**

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.

- E.** 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. In ESPC contracting, terms that may be negotiated also include the Scope of preliminary design of ECMs 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 Section 5.34.880 below.

5.34.845 Requests for Qualifications (RFQ)

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

5.34.850 Requests for Proposals (RFP).

(Amended by Ordinance Nos. 184403, 185065 and 185898, effective February 20, 2013.)

- A.** Generally. The use of competitive Proposals must be specifically authorized for a Public Improvement Contract under the Competitive Bidding requirement of ORS 279C.335(1), Section 5.34.150 and Sections 5.34.800 to 5.34.890. Also see ORS

**TITLE 5
REVENUE AND FINANCE**

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 aware 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.
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 team may include legal, technical 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.

**TITLE 5
REVENUE AND FINANCE**

- 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 determine and rank the Proposers in the Competitive Range.
 - b.** The City may increase the number of Proposers in the Competitive Range if the City's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial Competitive Range are closely Competitive, or have a reasonable chance of being determined the best Proposer after the City's evaluation of revised Proposals submitted in accordance with the process described in this rule.
- 2. Protesting Competitive Range.** The City shall provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Proposer that is not within the Competitive Range may protest the City's evaluation and determination of the Competitive Range in accordance with Section 5.34.710.
- 3. Intent to Award; Discuss or Negotiate.** After the protest period provided in accordance with these rules expires, or after the City has provided a final response to any protest, whichever date is later, the City may either:
 - a.** Provide Written notice to all Proposers in the Competitive Range of its intent to Award the Contract to the highest-ranked Proposer in the Competitive Range.
 - (1)** An unsuccessful Proposer may protest the City's intent to Award in accordance with Section 5.34.740.
 - (2)** After the protest period provided in accordance with Section 5.34.740 expires, or after the City has provided a final response to any protest, whichever date is later, the City shall commence final Contract negotiations with the highest-ranked Proposer in the Competitive Range; or
 - b.** Engage in Negotiations with all Proposers in the Competitive Range, as provided in Subsection 5.34.850 F. below; or

TITLE 5
REVENUE AND FINANCE

- (2) Shall not discuss other Proposers' Proposals;
 - (3) Shall not suggest specific revisions that a Proposer should make to its Proposal, and shall not otherwise direct the Proposer to make any specific revisions to its Proposal. Nothing in this paragraph, however, shall prevent the City from identifying deficiencies in a Proposal, as provided in Subsection 5.34.850 E.1.a. above.
- b. At any time during the time allowed for discussions, the City may:
 - (1) Continue discussions with a particular Proposer;
 - (2) Terminate discussions with a particular Proposer and continue discussions with other Proposers in the Competitive Range; or
 - (3) Conclude discussions with all remaining Proposers in the Competitive Range and provide notice to the Proposers in the Competitive Range to submit revised Proposals.
3. Revised Proposals. If the City does not cancel the Solicitation at the conclusion of the City's discussions with all remaining Proposers in the Competitive Range, the City shall give all remaining Proposers in the Competitive Range notice of the date and time by which they must submit revised Proposals. This notice constitutes the City's termination of discussions, and Proposers must submit revised Proposals by the date and time set forth in the City's notice.
 - a. Upon receipt of the revised Proposals, the City shall score the revised Proposals based upon the evaluation criteria set forth in the Request for Proposals, and rank the revised Proposals based on the City's scoring.
 - b. The City may conduct discussions with and accept only one revised Proposal from each Proposer in the Competitive Range unless otherwise set forth in the Request for Proposals.
4. Intent to Award; Protest. The City shall provide Written notice to all Proposers in the Competitive Range of the City's intent to Award the Contract. An unsuccessful Proposer may protest the City's intent to Award in accordance with Section 5.34.740. After the protest period provided in accordance with that rule expires, or after the City has provided a final

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

F. Negotiations.

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

**TITLE 5
REVENUE AND FINANCE**

terminate discussions or negotiations with the Proposer with whom it is currently conducting discussions or negotiations if the City reasonably believes that;

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

5.34.860 RFP Pricing Mechanisms.

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

- A. A Request for Proposals may result in a lump sum Contract Price, as in the case of competitive Bidding. Alternatively, a cost reimbursement Contract may be negotiated.
- 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 total least cost mechanisms such as Life Cycle Costing.
- C. A Guaranteed Maximum Price (GMP) is used as the pricing mechanism for CM/GC 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 Work has been completed.
 1. If this collaborative process is successful, the Contractor shall propose a final GMP, which may be accepted by the City and included within the Contract.
 2. If this collaborative process is not successful, and no mutually agreeable resolution on GMP can be achieved with the Contractor, then the City shall terminate the Contract. The City may then proceed to negotiate a new Contract (and GMP) with the firm that was next ranked in the original selection process, or employ other means for continuing the project under ORS Chapter 279C.
- D. When cost reimbursement Contracts are utilized, regardless of whether a GMP is included, the City shall provide for audit controls that will effectively verify rates and ensure that costs are reasonable, allowable and properly allocated.

5.34.870 Design-Build Contracts.

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

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

**TITLE 5
REVENUE AND FINANCE**

- E.** Licensing. If a Design-Build Contractor is not an Oregon licensed design professional, the City shall require that the Design-Build Contractor disclose in its Written Offer that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(2)(g) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction Work.
- F.** Performance Security. ORS 279C.380(1)(a) provides that for Design-Build Contracts the surety's obligation on performance bonds, or the Bidder's obligation on cashier's or certified checks accepted in lieu thereof, includes the preparation and completion of design and related Personal Services specified in the Contract. This additional obligation, beyond performance of construction services, extends only to the provision of professional services and related design revisions, corrective Work and associated costs prior to final completion of the Contract (or for such longer time as may be defined in the Contract). The obligation is not intended to be a substitute for professional liability insurance, and does not include errors and omissions or latent defects coverage.
- G.** Contract Requirements. The City shall conform its Design-Build contracting practices to the following requirements:

 - 1.** Design Services. The level or type of design services required must be clearly defined within the Procurement documents and Contract, along with a description of the level or type of design services previously performed for the project. The Personal Services and Work to be performed shall be clearly delineated as either design Specifications or performance standards, and performance measurements must be identified.
 - 2.** Professional Liability. The Contract shall clearly identify the liability of design professionals with respect to the Design-Build Contractor and the City, as well as requirements for professional liability insurance.
 - 3.** Risk Allocation. The Contract shall clearly identify the extent to which the City requires an express indemnification from the Design-Build Contractor 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 No. 185898, effective February 20, 2013.)

- 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.
- B. ESPC Contracting Method. The ESPC form of contracting, as defined in Subsection 5.34.810 F., has unique technical complexities associated with the determination of what ECMs are feasible for the City, as well as the additional technical complexities associated with a Design-Build Contract. The City shall only utilize the ESPC contracting method with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to utilize the ESPC contracting process, the City must be able to reasonably anticipate one or more of the following types of benefits:
 1. Obtaining, through an ESCO, the following types of integrated Personal Services and Work: facility profiling, energy baseline studies, ECMs, Technical Energy Audits, project development planning, engineering design, plan preparation, cost estimating, Life Cycle Costing, construction administration, project management, construction, quality control, operations and maintenance staff training, commissioning services, M & V services and required documentation as a fully integrated function with a single point of responsibility;
 2. Obtaining, through an ESCO, an Energy Savings Guarantee;

**TITLE 5
REVENUE AND FINANCE**

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.
- C.** 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.
- D.** 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.
- E.** Selection. ESPC selection criteria may include those factors set forth above in Subsections 5.34.840 B.1., 2., 3., and 4. 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.

**TITLE 5
REVENUE AND FINANCE**

- F.** 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.
- G.** Licensing. If the ESCO is not an Oregon licensed design professional, the City shall require that the ESCO disclose in the ESPC that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(5) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction Work.
- H.** 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.
- I.** 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.

**TITLE 5
REVENUE AND FINANCE**

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

 - (1)** The Technical Energy Audit phase of the Work;
 - (2)** The Project Development Plan phase of the Work;
 - (3)** A third phase of the Work that constitutes a Design-Build Contract, during which the ESCO completes any plans and Specifications required to implement the ECMs that have been agreed to by the parties to the ESPC, and the ESCO performs all construction, commissioning, construction administration and related Personal Services or Work to actually construct the project; and
 - (4)** A final phase of the Work, whereby the ESCO, independently or in cooperation with an independent consultant hired by the City, performs M & V services to ensure that the Energy Savings Guarantee identified by the ESCO in the earlier phases of the Work and agreed to by the parties has actually been achieved.
- 2.** Design-Build Contracting Requirements in ESPCs. At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the City shall conform its Design-Build contracting practices to the Design-Build contracting requirements set forth in Subsection 5.34.870 G. above.
- 3.** Pricing Alternatives. The City may utilize one of the following pricing alternatives in an ESPC:

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

**TITLE 5
REVENUE AND FINANCE**

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

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

5.34.890 Construction Manager/General Contractor (CM/GC).

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

- A. **General.** The CM/GC form of contracting, as defined in Subsection 5.34.810 B., is a technically complex project delivery system. Unlike the Design-Build form of contracting, the CM/GC form of contracting does not contemplate a "single point of responsibility" under which the Contractor 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 in CM/GC there is a separate Contract between the City and design professional. In order to utilize the CM/GC method, the City must be able to reasonably anticipate the following types of benefits:

1. Time Savings. 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. Early Contractor input during the design process is expected to contribute to significant cost savings. The City may consider value

**TITLE 5
REVENUE AND FINANCE**

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. The Public Improvement presents significant technical complexities that are best addressed by a collaborative or team effort between the City, design professionals and Contractor, in which the Contractor will assist in addressing specific project challenges through pre-construction services. The City may consider the need for Contractor 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 form of contracting only in accordance with the requirements of these rules. 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 B.2.
- D. Basis for Payment.** The CM/GC process adds specified Construction Manager Personal Services to traditional General Contractor Work, requiring full Contract performance within a negotiated Guaranteed Maximum Price (GMP). The basis for payment is reimbursable direct costs as defined under the Contract, plus a fee constituting full payment for Work and Personal Services rendered, which together shall not exceed the GMP. See GMP definition at Subsection 5.34.810 G. and Pricing Mechanisms in Section 5.34.860.
- E. Contract Requirements.** Contracting Agencies shall conform their CM/GC contracting practices to the following requirements:

 - 1.** Setting the GMP. The GMP shall be set at an identified time consistent with industry practice, after supporting information reasonably considered necessary to its use has been developed, and the supporting information shall define with particularity both what is included and excluded from the GMP. A set of drawings and Specifications shall be produced establishing the GMP Scope.
 - 2.** Adjustments to the GMP. The Contract shall clearly identify the standards or factors under which changes or additional Work will be considered

**TITLE 5
REVENUE AND FINANCE**

outside of the Work Scope that warrants an increase in the GMP, as well as criteria for decreasing the GMP. The GMP shall not be increased without a concomitant increase to the Scope defined at the establishment of the GMP or most recent GMP amendment.

3. **Cost Savings.** The Contract shall clearly identify the disposition of any cost savings resulting from completion of the Work below the GMP; that is, under what circumstances, if any, the CM/GC might share in those cost savings, or whether they accrue only to the City's benefit. (Note that unless there is a clearly articulated reason for sharing such cost savings, they should accrue to the City .)
4. **Cost Reimbursement.** The Contract shall clearly identify what items or categories of items are eligible for cost reimbursement within the GMP, including any category of "General Conditions" (a general grouping of direct costs that are not separately invoiced, subcontracted or included within either overhead or fee), and may also incorporate a mutually-agreeable cost-reimbursement standard.
5. **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.
6. **Fee.** Compensation for the CM/GC's Personal Services and Work 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 should be expressly defined wherever possible. The fee, first expressed 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 when the GMP is established.
7. **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).
8. **Controlled Insurance Programs.** For projects anticipated to exceed \$75 Million, 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;

**TITLE 5
REVENUE AND FINANCE**

- b.** the allocation of cost savings; and
 - c.** safety responsibilities and/or incentives.
- 9.** Early Work. The RFP shall clearly identify, whenever feasible, the circumstances under which any of the following activities may be authorized and undertaken for compensation prior to establishing the GMP:
 - a.** Early Procurement of materials and supplies;
 - b.** Early release of Bid packages for such things as site development; and
 - c.** Other advance Work related to critical components of the Contract.
- 10.** Subcontractor Selection. The Contract shall clearly describe the methods by which the CM/GC shall publicly receive, open and record Bids or price quotations, and competitively select Subcontractors to perform the Contract Work based upon price, as well as the mechanisms by which the City may waive those requirements. The documents shall also describe completely the methods by which the CM/GC and its affiliated or subsidiary entities may compete to perform the Work, including, at a minimum, advance notice to the public of the CM/GC's intent to compete and a public Opening of Bids or quotations by an independent party.
- 11.** 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 Procurement protests of Subcontractors and suppliers. The related procedures and reporting mechanisms shall be established with certainty, including whether the CM/GC acts as the City's representative in this process and whether the CM/GC's subcontracting records are considered to be public records. In any event, the City shall retain the right to monitor the subcontracting process in order to protect City's interests.
- 12.** CM/GC Self-Performance. Whenever feasible, the Contract shall establish the elements of Work the CM/GC may self-perform without competition, including, for example, the Work of the job-site general conditions. In the alternative, the Contract shall include a process for City approval of CM/GC self-performance.
- 13.** Socio-Economic Programs. The Contract shall clearly identify conditions relating to any required socio-economic programs (such as Good Faith

Efforts and Workforce Training and Hiring), 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.

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 and 185898, effective February 20, 2013.)

- 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

**TITLE 5
REVENUE AND FINANCE**

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:
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;

**TITLE 5
REVENUE AND FINANCE**

- (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;
 - (2) As to bonds or securities for which the “Bid” and “asked” prices are not published in the Wall Street Journal or the New York Times, the value shall be either: the average “Bid” price for the bond or security, on the date value is determined, as established by any two nationally recognized government securities dealers (selected by the City in its sole discretion) making a market in such investments; or, the “Bid” price published by a nationally recognized pricing service;
 - (3) As to certificates of deposit and bankers acceptances, the value shall be the face amount thereof, plus accrued interest.
- d.** At the time the City determines that all requirements for the protection of the City’s interest have been fulfilled, all bonds and securities deposited as above provided shall be released to the Contractor.

**TITLE 5
REVENUE AND FINANCE**

2. Execution of Escrow Agreement. The Chief Procurement Officer is authorized to execute any escrow agreement necessary to safeguard deposit of securities with the City subject to approval as to form by the City Attorney.
 3. Deposit in Interest-Bearing Accounts. Upon Written request of the Contractor, the City shall deposit any amounts withheld as retainage in an interest-bearing account in a bank, savings bank, trust company or savings association for the benefit of the City. Earnings on such account shall accrue to the Contractor but the interest shall remain in the account until the City authorizes its release. The account shall be established through the City Treasurer.
- E.** Recovery of Costs. If the City incurs additional costs as a result of the exercise of any of the options for retainage, the City may recover such costs from the Contractor by reduction of the final payment. As Work on the Contract progresses, the City shall, upon request, inform the Contractor of all accrued costs.
- F.** Additional Retainage When Certified Payroll Statements not Filed. Pursuant to ORS 279C.845(7), if a Contractor is required to file certified payroll statements and fails to do so, the City shall retain 25 percent of any amount earned by the Contractor on a Public Works Contract until the Contractor has filed such statements with the City. The City shall pay the Contractor the amount retained under this provision within 14 days after the Contractor files the certified statements, regardless of whether a subcontractor has filed such statements.

5.34.930 Social Equity Contracting and Employment Programs.

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

5.34.940 Public Works Contracts.

(Amended by Ordinance Nos. 181547, 183445 and 185065, effective January 1, 2012.)

- A. Required Contract Conditions.** Every Public Works Contract must contain the following provisions:
1. City authority to pay certain unpaid claims and charge such amounts to Contractors, as set forth in ORS 279C.515A.

2. Maximum hours of labor and overtime, as set forth in ORS 279C.520(1).
3. Employer notice to employees of hours and days that employees may be required to Work, as set forth in ORS 279C.520(2).
4. Contractor required payments for certain services related to sickness or injury, as set forth in ORS 279C.530.
5. Requirement for payment of prevailing rate of wage, as set forth in ORS 279C.830(1).

B. Requirements for Specifications. The Specifications for every Public Works Contract, consisting of the procurement package (such as the Project Manual, Bid or Proposal Booklets, Request for Quotations or similar Procurement Specifications), must contain the following provisions:

1. The state prevailing rate of wage, and, if applicable, the federal prevailing rate of wage, as required by ORS 279C.830(1)(a):
 - a. physically contained within or attached to hard copies of Procurement Specifications;
 - b. included by a statement incorporating the applicable wage rate publication in the Specifications by reference; or
 - c. when the rates are available electronically or by Internet access, the rates may be incorporated into the Specifications by referring to the rates and providing adequate information on how to access them.
2. If both state and federal prevailing rates of wage apply, a requirement that the contractor shall pay the higher of the applicable state or federal prevailing rate of wage to all workers.

5.34.950 City Payment for Unpaid Labor or Supplies.

A. Contract incomplete. If the Contract is still in force, the City may, in accordance with ORS 279C.515(1), pay a valid claim to the Person furnishing the labor or services, and charge the amount against payments due or to become due to the Contractor under the Contract. If the City chooses to make such a payment as provided in ORS 279C.515(1), the Contractor and the Contractor's surety shall not be relieved from liability for unpaid claims.

**TITLE 5
REVENUE AND FINANCE**

- 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 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.

**TITLE 5
REVENUE AND FINANCE**

- 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:
 - 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.

**TITLE 5
REVENUE AND FINANCE**

- C.** Contractual Provisions. Contracts may provide that the City may inspect supplies and services at the Contractor's or Subcontractor's or supplier's office or facility and perform tests to determine whether they conform to the Solicitation Document, or, after Award, to the Contract requirements, and are acceptable. Such inspections and tests shall be conducted in accordance with the terms of the Contract.
- D.** Procedures for Inspection, Trial Use and Testing. The City may establish operational procedures governing the inspection, testing and trial use of equipment, materials and the application of resulting information and data to Specifications or Procurements.
- E.** Conduct of Inspections and Tests:

 - 1.** Inspectors and testers. Inspections or tests shall be performed so as not to unduly delay the Work of the Contractor or Subcontractor. No change of any provision of the Specifications or the Contract may be required by the inspector or tester without Written authorization of the City, unless otherwise specified in the Solicitation Document. The presence or absence of an inspector or tester shall not relieve the Contractor or Subcontractor from any requirement of the Contract;
 - 2.** Location. When an inspection is made in the plant or place of business of a Contractor or Subcontractor, such Contractor or Subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the inspector or tester;
 - 3.** Time of inspection or testing. Inspection or testing of supplies and services performed at the plant or place of business of any Contractor or Subcontractor shall be performed at reasonable times during normal business hours.

5.34.980 Contract Cancellation, Contractor Termination Procedures.

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

- A.** Grounds for Cancellation or Termination. The City may, at its option, cancel a Contract or terminate the Contractor's performance, if cancellation or termination is in the best interest of the City; or, for any material violation of the provisions of the Contract. Such provisions generally include, but are not limited to:

 - 1.** Standard terms and conditions included in Contracts;
 - 2.** Product or service Specifications;

**TITLE 5
REVENUE AND FINANCE**

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

**TITLE 5
REVENUE AND FINANCE**

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.
- 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

**TITLE 5
REVENUE AND FINANCE**

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
 3. Notice of the amount of time (if any) in which the City shall permit the Contractor to correct the failure to perform.

TITLE 5
REVENUE AND FINANCE

- J.** The Contract documents may provide Contract cancellation or Contractor termination procedures that are different from, or in addition to, those provided in Section 5.34.980. If a Contract contains a cancellation or termination clause, that clause rather than Section 5.34.980 shall determine the respective rights and responsibilities of the parties in the event of cancellation or termination.

Chapter 5.36

PROPERTY CONTROL

Sections:

- 5.36.001 Surplus Property Policy.
- 5.36.010 Disposition of Surplus Property.
- 5.36.015 Disposition of Unclaimed Found Personal Property.
- 5.36.020 Sale of Buildings for Removal from City Property.
- 5.25.025 Purchase and Resale by the City of Tax-Foreclosed Property.
- 5.36.030 Loans of Personal Property Owned by City.
- 5.36.035 Lost or Stolen City Property.
- 5.36.040 Parking Meter Fund Equipment.
- 5.36.050 Use of City Automobiles for Transporting Firing Squads.
- 5.36.060 Use of Water Bureau Property by Bureau of Shops.
- 5.36.080 Zoological Specimens.
- 5.36.090 Gifts and Loans of Property.
- 5.36.100 Use of City Property for Elections.
- 5.36.110 Use of City Property for Air Quality Measuring Stations.
- 5.36.115 Designation of "Persons In Charge."

5.36.001 Surplus Property Policy.

(Replaced by Ordinance No. 179813, effective January 6, 2006.) It is the policy of the City to dispose of surplus property in the most efficient and cost-effective manner possible in accordance with the guidelines in this Chapter and any related administrative rules or policies. Temporary, full-time and part-time City employees, persons acting on the employee's behalf, and any business with which a City employee is associated, as defined by Chapter 5.33, may not purchase or receive surplus property unless offered for public sale.

5.36.010 Disposition of Surplus Property.

(Replaced by Ordinance No. 179813; Amended by Ordinance No. 181483, effective January 18, 2008.)

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.

**TITLE 5
REVENUE AND FINANCE**

- 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.
- 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:

**TITLE 5
REVENUE AND FINANCE**

- 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
 - c.** The bureau applies the proceeds of the sale to its property disposition expenses in the following order: storage, transportation, publication fees and other costs of safekeeping and sale, and then to the City fund owning the property at the time of sale unless otherwise directed by the City Council.
- 4.** Public Sale through State - Surplus property may be sold pursuant to an established intergovernmental agreement with the State of Oregon Surplus Property Program. When surplus property is sent to the State Surplus Program for sale on behalf of the City, a minimum sale price shall first be established when appropriate. Any revenue received from the sale of surplus property through the State Surplus Program shall be credited to the bureau that owned the surplus property.
- 5.** Donation - Surplus property may be donated to the State of Oregon Surplus Property Program, other public agencies, or to charitable organizations certified under the Internal Revenue Code Section 501(c)(3) as follows:

 - a.** Donations with an individual or aggregate current market value of \$5,000 or less must be approved by the Commissioner-In-Charge, or designee, of the bureau that owns the property.
 - b.** Donations with an individual or aggregate current market value of more than \$5,000 must be approved by the City Council, by ordinance.
 - c.** The City shall provide the recipient of donated property with appropriate documentation transferring ownership of the property to the recipient. The recipient shall agree to hold harmless, defend and indemnify the City of Portland, its officers, agents and employees from any claims, demands, actions and suits (including attorney fees) arising from its use or receipt of the surplus property.

**TITLE 5
REVENUE AND FINANCE**

- d.** The Director of the Bureau or Office that owned the surplus property shall complete and retain a donation form for each donation made during the fiscal year and submit all forms to the City Auditor at the end of the fiscal year. The donation form shall contain:

 - (1)** A description of the surplus property donated; and,
 - (2)** The name of the recipient of the surplus property; and,
 - (3)** The originating bureau; and,
 - (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.

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 Nos. 153293 and 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.

**TITLE 5
REVENUE AND FINANCE**

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.

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.

**TITLE 5
REVENUE AND FINANCE**

- 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 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

**TITLE 5
REVENUE AND FINANCE**

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.

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

**TITLE 5
REVENUE AND FINANCE**

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, that no such written permission shall be granted unless and until the requesting governmental body has stated in writing that the temporary installation will be accomplished without injury or damage to the City property and that said governmental body will reimburse City for all costs or expenses to City incident to the installation.

5.36.115 Designation of “Persons In Charge” for Purposes of Excluding Persons From City Property.

(Added by Ordinance No. 161538, effective Feb. 4, 1989.)

- A.** For purposes of ordering persons to leave City property, each Commissioner In Charge is authorized to designate persons in charge of City property within that Commissioner’s assigned bureaus and departments or to which that Commissioner otherwise has authority. The designation shall be made in writing, and any person so designated shall be a “person in charge” as that term is defined in ORS 164.205(5) until the designation is removed by the Commissioner In Charge or the designated person ceases to be an employee or officer of the City of Portland.
- B.** City elected officials and the administrator of each City bureau shall advise the Commissioner In Charge on the selection of individuals to be designated as “persons in charge” of City property, and shall advise the Commissioner In Charge of the City property over which such individuals exercise control. They

shall also advise the Commissioner In Charge when the list of designated “persons in charge” is in need of amendment.

- C. The Commissioner In Charge shall maintain a list of all persons who have been designated as “persons in charge” of City property. Upon request, the City shall provide a copy of the list to the District Attorneys of Multnomah, Clackamas and Washington counties.
- D. For purposes of this Section, “City property” shall include all real property either owned by the City or in which the City has a property interest.

Chapter 5.40

DEMANDS AND DISBURSEMENTS

Sections:

- 5.40.010 Drawing Checks in Payments of Claims.
- 5.40.020 Certain Demands to be Submitted to Council.
- 5.40.030 Appropriation to be Charged for All Demands.
- 5.40.040 Requisitions Required.
- 5.40.070 Funds Held for Benefit of Police Contributions Committee.
- 5.40.080 Requisition of Funds for Purchasing Police Evidence.

5.40.010 Drawing Checks in Payments of Claims.

(Amended by Ordinance Nos. 139226 and 173369, effective May 12, 1999.) The Mayor and the Auditor shall have the authority to draw checks on City funds upon approved requisition, duly executed contract, or order of the Council when the Auditor has determined that payment is legally due and payable.

5.40.020 Certain Demands to be Submitted to Council.

(Amended by Ordinance No. 173369, effective May 12, 1999.) All demands for expenses of litigation, damages, relief and other demands of like character, except as hereinafter provided, shall be examined by the Auditor and submitted to the Council by him with any recommendations, explanations or information he may deem pertinent thereto. When the demands are approved by the Council, checks shall be drawn in payment thereof.

5.40.030 Appropriation to be Charged for All Demands.

The Auditor hereby is directed to charge all demands for the furnishing of supplies, materials, equipment, etc. to appropriations therefor.

**TITLE 5
REVENUE AND FINANCE**

5.40.040 Requisitions Required.

Before any obligation is incurred under the provisions of this Chapter, except emergency purchases as provided in Section 5.32.030 and except specific payments directed by the Council, a requisition properly signed shall be presented to the Auditor in order that he may determine that the proposed expenditure is budgeted and that appropriation is available therefor. Each requisition shall state in detail the articles or services to be purchased and appropriation accounts proposed to be charged.

5.40.050 Payment of the City's Contribution to the Public Employees Retirement Board and the State Industrial Accident Commission.

(Repealed by Ordinance No. 139226; passed Dec. 19, 1974, effective Jan. 20, 1975.)

5.40.070 Funds Held for Benefit of Police Contributions Committee.

No money held by the City Treasurer in the Trustee Fund for the benefit of Police Contributions Committee shall be disbursed by him except on written request of the Chief of Police who shall first be advised in writing by the Secretary of the Affirmative Action of the above-named Committee to pay a sum certain to a particular named donee. The 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**

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

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

**TITLE 5
REVENUE AND FINANCE**

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.
 - 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.
- 2. Plus 42 percent of the foregoing straight time amount or 15 percent of the foregoing for labor provided at overtime rates for indirect costs for the vacation, sick leave, holiday and leave with pay, and for the cost of disability, retirement and insurance.

B. Material Costs.

- 1. In addition to the foregoing amount, there shall be charged for material costs, \$6.22 per hour for the time City's recording equipment is in use.

C. General Overhead.

- 1. To the total of the above there shall be added 10 percent for general overhead.

5.48.036 Office of City Attorney and OMF Risk Management Division - Records - Rates.

(Added by Ordinance No. 151447; Amended by Ordinance No. 181483, effective January 18, 2008.) In making public records available for inspection by members of the public and in providing the members of the public with copies thereof, the office of City Attorney and the OMF Risk Management Division shall charge therefor on the basis of actual costs of making available and copying the records, as set out in Section 5.48.030. This Section shall not apply to those cases in which the charge would be \$5 or less, in which cases the charge shall be the amount set out in Section 5.60.020.

5.48.040 Collection of Money Due the City.

(Amended by Ordinance Nos. 147159, 149198, 165955 and 181483; effective January 18, 2008.) The Office of Management and Finance of the City shall bill for all services

**TITLE 5
REVENUE AND FINANCE**

performed for other persons by the City and for all City accounts receivable, contracts receivable and grants receivable except for bills and statements regularly sent by the Bureau of Water Works, the City Treasurer, the OMF Risk Management Division, the Assessment Division of the City Auditor's Office and payments made under leases managed by the OMF Business Operations Division.

It shall be the duty of the officers of various departments, bureaus and divisions of the City to furnish the Office of Management and Finance, daily, a list or journal of all charges that are to be billed, together with supporting data.

If payment of a City bill sent by the Office of Management and Finance is not received within 30 days after the date of billing, it shall be delinquent. It shall be the duty of the Office of Management and Finance to pursue collection of these delinquent accounts using appropriate collection methods. When collection efforts do not result in payment, invoices will be forwarded to the City Attorney for collection, or in appropriate cases to the City Auditor's Office to submit to the Council an ordinance assessing the unpaid bill upon property chargeable therewith. The Director of the Bureau of Administrative Services may select delinquent accounts to refer to a collection agency if the director deems such referral appropriate.

Interest of 1 percent per month shall be charged on all bills which remain unpaid for 30 days or more after the invoice billing date. Interest shall be computed from the invoice date and compounded monthly.

The Director of the Bureau of Administrative Services may add a rebill charge to delinquent accounts. The rebill charge shall be the greater of \$5.00 or 25 percent of the amount which is delinquent, up to a maximum charge of \$25.00. The rebill charge may be reassessed every 60 days, until the account is paid, assessed, canceled or waived.

The Director of the Bureau of Administrative Services may offer an early payment incentive discount of up to 2 percent on any or all invoices paid within 10 days of the billing date.

5.48.050 Improvements Without Assessment.

(Amended by Ordinance No. 144020; effective July 11, 1977.)

A. Whenever the City is requested to construct an improvement without using assessment procedures, and the improvement is to be constructed under contract in the name of the City, the person or agency submitting the request shall make an advance deposit into the Trustee Fund to protect the City against loss on account of obligations to be assumed in connection with the improvement. The advance deposit shall cover the following items:

- 1.** Estimated amount of the contract for the improvement;
- 2.** A fee for engineering and superintending equal to the engineer's estimate of the cost of providing such services. Use accounting procedure 5.48.030.

**TITLE 5
REVENUE AND FINANCE**

3. Overhead of City in advertising for bids, preparing the contract, disbursing funds, etc., at 1/2 percent of the estimated contract amount with a minimum of \$100.

Additional deposits may be required by the Commissioner In Charge at any time he may deem necessary to protect the City.

- B. Advertising for bids and executing contract shall be authorized only by the City Council. In no event shall a contract be awarded for more than 93 percent of the funds on deposit.
- C. The deposited funds shall be disbursed by the City Treasurer on order of the Commissioner In Charge of the improvement project and after approval by the City Auditor. Disbursements shall be made as follows:
 1. Contract payments shall be paid directly to the contractor;
 2. Engineering fees and overhead shall be paid to the appropriate fund as revenue after the final cost of the contract has been determined.
 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.

**TITLE 5
REVENUE AND FINANCE**

Chapter 5.50

COLLECTIONS SECTION

(Added by Ordinance No. 147159; passed
and effective Feb. 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.

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.

**TITLE 5
REVENUE AND FINANCE**

Chapter 5.52

PETTY CASH AND CHECKS

(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.

**TITLE 5
REVENUE AND FINANCE**

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 City. Such reimbursements for these specific purchases shall be restricted to the \$100 limitation for petty cash purposes.

5.52.020 Cancellation of Checks and Issue of in Lieu Checks.

(Amended by Ordinance No. 173369, effective May 12, 1999). The Mayor and Auditor shall have the authority to cancel any City check issued for the payment of money and to issue in lieu thereof one or more checks; provided, that in lieu checks shall be drawn against the same fund and shall not exceed in the aggregate the amount of the check cancelled; and provided further, that such in lieu checks shall state on the face thereof the numbers and date of the check in lieu of which they are issued. In the event that a check is claimed to have been lost, stolen, or destroyed the payee or holder shall promptly give notice to the City Treasurer to stop payment and file with the Auditor a request for a new check which shall include a statement of facts concerning the claimed loss, theft or destruction of the check. The Mayor and the Auditor shall have the authority to issue a new check in place of the lost check; provided, however, that before delivery of the substitute check, the Auditor shall require from the payee a document relieving the City, its officers and employees from all harm in connection with the drawing and delivery of the substitute check, which document shall be approved as to form by the City Attorney.

5.52.030 Cancellation of City assessments on Mortgage Records.

The City Auditor is hereby authorized and empowered to cancel when paid, any and all assessments which have been or may be entered in the mortgage records for the cost of constructing sewers, drains, and all works necessary therefor by the City. Such cancellations may be made by endorsing a cancellation on the margin of the record as in case of release of mortgage or by executing and acknowledging a formal instrument of cancellation. Such cancellation shall be made only where payment has been duly received by the City Treasurer and duplicate copy of the receipt for such payment has been presented to the City Auditor.

5.52.040 When Checks Are to Be Canceled.

(Amended by Ordinance No. 173369, effective May 12, 1999.) At the close of each fiscal year the Auditor of the City is hereby authorized and directed to cancel all checks the date of which shall be in excess of 6 years prior to the time of such cancellation.

5.52.050 Drawing Checks on Charter Appropriations.

(Amended by Ordinance No. 173369, effective May 12, 1999.) The Mayor and the Auditor shall draw checks on the appropriations provided for by Section 2-108 and Section 2-105 (14) of the Charter when a memorandum requisition for funds has been

**TITLE 5
REVENUE AND FINANCE**

submitted to the Auditor which has been signed personally by the Commissioner of Finance and Administration. The proceeds from the checks shall be held by the Commissioner of Finance and Administration for disbursement.

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

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

Chapter 5.56

AMBULANCE SERVICE

Sections:

5.56.010 Police Radio Dispatch Service.

5.56.020 Acceptance by Ambulance Companies.

5.56.010 Police Radio Dispatch Service.

In order to prevent a duplication or multiplicity of ambulance service at the scene of any emergency or disaster, the Bureau of Police Radio Dispatcher will notify by direct phone furnished by the ambulance operator, the ambulance nearest the emergency or disaster scene. In consideration for the emergency dispatching service herein provided for, the private ambulance operators shall pay to the City the sum of \$600 per month. Each ambulance operator shall pay monthly a sum equal to \$600 divided by the number of ambulance companies participating in the dispatching service.

All monies due the City by the terms of this Section shall be paid by the 10th day of the month following the month in which dispatching service was furnished. All such money received by the City shall be credited to the General Fund Revenue Account, police charges, Code 432.

5.56.020 Acceptance by Ambulance Companies.

No monies shall be paid out or received by the City under the authority contained in this Chapter until the ambulance company requesting payment from the City or offering payment to the City shall have executed an acceptance of the terms of this Chapter in writing in form approved by the City Attorney.

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.

(New Section substituted by Ordinance No. 136092; passed and 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 Dec. 26, 1984.)

5.60.040 Employee Lists Furnished by the Accounting Division Manager

(Amended by Ordinance No. 155770, April 4, 1984.)

- A. Upon written application, the Accounting Division Manager may furnish to any applicant a list of names of City employees.
- B. The Accounting Division Manager may charge a fee for providing such information with such fee determined by the Accounting Division Manager to be reasonable and approximating the cost to the City of providing the information.
- C. The information provided by the Accounting Division Manager pursuant to this Section shall be limited to names of employees only, and shall not include addresses, or phone numbers.
- D. This Section is not intended to prevent, nor is it related to, the verification of personal information provided voluntarily by employees to others.

5.60.050 Licensees' Lists Furnished by License Bureau.

Upon written application accompanied by the fee hereinafter set out, the Bureau of

**TITLE 5
REVENUE AND FINANCE**

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 No. 176577, effective July 1, 2002.) Access to the City's automated Lien Accounting System shall be provided by internet access. Fees for use of the System by internet will be assessed on a per search basis. The City Auditor shall set the fee per search and the fee may be adjusted annually. Agencies and individuals not affiliated with the City of Portland shall be billed monthly for searches on the System.

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.

**TITLE 5
REVENUE AND FINANCE**

5.64.040 Bureau of Water Works Accounts.

The Auditor of the City is hereby directed to exercise the same supervision and authority over the accounts and financial affairs of the Bureau of Water Works as he is authorized, directed, and required by the Charter and ordinances of the City to exercise over other bureaus.

5.64.050 Execution of Releases from Claims for Damages.

The City Treasurer, or Deputy Treasurer, in the absence or inability to serve of the City Treasurer, is hereby authorized upon receiving payment in full of claims for damages, to execute and deliver on behalf of the City a formal release and discharge of and from any further liability upon such claim; provided, that such release be first approved by the City Attorney.

5.64.060 Cancellation of Refund checks.

The City Treasurer shall cancel outstanding refund checks after 6 years. The amount represented by such checks shall be transferred from the refund account to the General Fund. In order that persons having refunds due which are represented by outstanding refund checks may not be precluded from establishing their right to such refund in the future, any person entitled to a refund, for which refund a check has been issued and has not been presented for payment within 6 years, and which refund has been canceled under the provisions of this Section, may petition the Council at any time for the allowance of such refund. The Council may after hearing upon such claim allow and pay the amount of such refund from the General Fund. Such payment however shall be made only by ordinance.

5.64.070 Refunds.

(Amended by Ordinance No. 173369, effective May 12, 1999.)

- A.** The Mayor and Auditor are authorized to draw checks making refunds for any purpose except as provided in Subsection B below. A check may be drawn when a properly signed memorandum requisition is presented which contains a statement showing the necessity for the refund and the amount thereof, or which is supported by such statement. The statement shall bear the approval of the bureau head responsible for determining the amount of refund and he shall initiate the necessary requisition. A refund in any amount may be paid from petty cash if funds are available and if the required statement is submitted.
- B.** The Mayor and Auditor are authorized to draw checks for the refund of assessments paid in error after such refunds have been properly recorded in the Auditor's refund register, provided that no refund shall be made on account of assessments paid where the description of property assessed is found to be erroneous unless such refund is first authorized by Council.

- C. A refund shall be charged against appropriations if the amount to be refunded was previously credited to a budgetary fund. It shall be charged to the fund receipts previously credited if the amount to be refunded was credited to a nonbudgetary account.

5.64.090 Investment of Available Funds.

The City Treasurer hereby is authorized to invest any uninvested surplus balance to the credit of the General Fund or any sinking fund or special fund in interest bearing securities such as may be lawfully held by the City under Section 7-105 of the City Charter. The Treasurer may purchase such securities on the open market and may bid on new issues of such securities. The Treasurer may sell such securities on the open market, if there is an established market therefor, as necessary to meet the cash needs of the various funds.

The authority herein granted to the Treasurer may only be exercised with the approval of the Commissioner of Finance and Administration and, in the case of the investment of sums held in special funds or sinking funds, with the approval of Commissioner In Charge of the budget of such sinking fund or special fund.

5.64.100 Determination of City's Subrogation for Time Loss Payments.

The City Attorney shall determine the amount of any City claim under Charter Section 2-608 for time loss payments made to any officer or employee of the City. In making such determination the City Attorney shall consider the amount of time loss paid by the City, the amount of recovery, the nature and degree of the injury, the costs and expenses incident to the injury or to the recovery of damages, the testimony and evidence insofar as the same is conveniently available, the legal factors involved and all other facts and circumstances which he finds relevant to the particular situation. A tentative determination of the City claim may be made prior to recovery if the City Attorney finds it to be appropriate to assist in settlement of the claim of the officer or employee against another person. Such determination by the City Attorney on the basis of settlement or adjudication of the claim of the officer or employee shall in each case be deemed the amount of the City's claim by subrogation.

5.64.110 Procedure Upon Obtaining Real Property with Outstanding Liens, Assessments or Accumulated Interest.

In all cases where the City acquires a parcel of real property by purchase, gift, trade or otherwise, and the City is obligated to pay an outstanding lien and/or assessment with or without accumulated interest, the officer or Commissioner In Charge of the department or bureau acquiring the real property shall be responsible for the payment of the outstanding lien and/or assessment with accumulated interest, if any, from the appropriate fund at the time of acquisition.

**TITLE 5
REVENUE AND FINANCE**

Chapter 5.68

**PROFESSIONAL, TECHNICAL AND
EXPERT SERVICE CONTRACTS**

(Chapter replaced by Ordinance No.
177244, effective July 1, 2003.)

Sections:

- 5.68.010 Definition.
- 5.68.015 General Requirements – PTE Manual.
- 5.68.020 Application.
- 5.68.030 Public Announcement of Requirements.
- 5.68.035 Authority to Obligate City for Professional, Technical or Expert Services.
- 5.68.050 Review by City Attorney.
- 5.68.060 Outside Legal Services.
- 5.68.070 Procedure for Selection of Bond Counsel.
- 5.68.080 Contractor’s Compliance with Workers’ Compensation Requirements.

5.68.010 Definition.

(Amended by Ordinance Nos. 182213, 184427 and 185065, effective January 1, 2012.)

- A. For the purposes of this Chapter, “professional, technical and expert” refers to any individual or group, excluding regular City employees, who, for a fee, provides services or gives professional advice regarding matters in the field of their special knowledge or training. This includes but is not limited to: planners, architects, engineers, lawyers, accountants, doctors, dentists, ministers, and counselors in investments, insurance, advertising, graphics, training, public relations, communications, data processing and management systems. Such contracts may include incidental materials such as written reports, architecture or engineering renderings, and similar supplemental materials. The Chief Procurement Officer has authority to classify services not specifically addressed in this provision as professional services if those services require professional advice in a field of special knowledge or training similar to those listed above.
- B. “QBS Consultant” means an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor or provider of Related Services. A QBS Consultant includes a business entity that employs Architects, Engineers,

**TITLE 5
REVENUE AND FINANCE**

Photogrammetrists, Transportation Planners, Land Surveyors or providers of Related Services, or any combination of the foregoing.

- C.** "Estimated Fee" means City's reasonably projected fee to be paid for a QBS Consultant's services under the anticipated Contract, excluding all anticipated reimbursable or other non-professional fee expenses. The Estimated Fee is used solely to determine the applicable Contract solicitation method and is distinct from the total amount payable under the Contract.
- D.** "Price Agreement", for purposes of the QBS Rules is limited to mean an agreement related to the procurement of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under agreed-upon terms and conditions and possibly at a set price with:
1. No guarantee of a minimum or maximum purchase; or
 2. An initial order or minimum purchase, combined with a continuing QBS Consultant obligation to provide Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services in which the City does not guarantee a minimum or maximum additional purchase.
- E.** "Project" means all components of a City's planned undertaking that gives rise to the need for a QBS Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under a Contract.
- F.** "Transportation Planning Services" include Project-specific transportation planning involved in categorical exclusions, environmental assessments, environmental impact statements and other documents required for compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services do not include transportation planning for corridor plans, transportation system plans, interchange area management plans, refinement plans and other transportation plans not associated with an individual Project which will require compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services also do not include transportation planning for Projects not subject to the National Environmental Policy Act, 42 USC 4321 et. seq.
- G.** "Related Services" means personal services, other than architectural, engineering, photogrammetric, mapping, Transportation Planning or land surveying services, that are related to planning, designing, engineering or overseeing public improvement projects or components of public improvements, including, but not

**TITLE 5
REVENUE AND FINANCE**

limited to, landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services, and owner's representation services or land-use planning services.

5.68.015 General Requirements– PTE Manual.

(Amended by Ordinance Nos. 182213 and 184427, effective February 23, 2011.) The Chief Procurement Officer of Procurement Services shall create and publish a Professional, Technical and Expert (PTE) Services Manual that shall govern selection and award of PTE contracts. The Chief Procurement Officer may amend the PTE Manual to ensure that the interests of the public and PTE contractors are fully served and that the process promotes accountability and competition among all segments of the citizens of Portland. The PTE Manual shall include procedures providing for adequate notice of contract award to potential contractors and shall provide the exclusive means by which selection decisions may be protested before the contract is executed.

5.68.020 Application.

(Amended by Ordinance Nos. 179802, 182213 and 184427, effective February 23, 2011.)

- A. This Chapter applies to City procurement of professional, technical and expert services.
- B. The following services are exempt from the selection process outlined in the City's Professional, Technical and Expert Services Manual and can be made by direct appointment:
 - 1. Processing of any claim for workers' compensation benefits;
 - 2. Determining 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. The City Attorney's retention of expert witnesses, consultants to assist the City Attorney's Office in providing legal advice to the City, and outside legal counsel.
- C. If any emergency as defined in the PTE Manual exists the Chief Procurement Officer may authorize selection of a contractor without following the requirements of this Chapter.

**TITLE 5
REVENUE AND FINANCE**

- D.** If the services or expertise required for a project are only available from a “sole source” as defined in the PTE Manual, then the Chief Procurement Officer may authorize selection of a contractor without following these requirements.
- E.** The Chief Procurement Officer shall include all emergency and sole source contracts in periodic reports to the City Council.
- F.** If professional, technical or expert services are required in conjunction with the acquisition of goods, services, public improvements, construction services or some combination thereof, the Chief Procurement Officer may permit the acquisition of such services through the provisions of Chapter 5.33 or 5.34 of this Code instead of this Chapter.

5.68.030 Public Announcement of Requirements.

(Amended by Ordinance Nos. 182213 and 184427, effective February 23, 2011.) The Professional, Technical and Expert Services Manual shall set forth the procedures to be followed by all bureaus in announcing and advertising City PTE solicitations. The procedures in the Manual shall be designed to make information about such solicitations readily available to interested PTE contractors, including state certified minority, women and emerging small business (M/W/ESB) firms and Disabled Veteran owned or controlled firms as defined in ORS 408.225. From time to time, the City may adopt programs designed to promote competition, enhance economic opportunity and stimulate hiring among all of Portland’s citizens. When such programs are adopted, the Chief Procurement Officer shall take steps to ensure that PTE contractors wishing to enter into contracts with the City are aware of their requirements.

5.68.035 Authority to Obligate City for Professional, Technical or Expert Services.

(Amended by Ordinance Nos. 182213 and 184427, effective February 23, 2011.)

- A.** All professional, technical or expert services contracts or purchase orders shall be in writing in a form approved by the City Attorney as provided in Section 5.68.050. The Chief Procurement Officer, or designee, is authorized to execute contracts for PTE services required by the City in any amount not exceeding \$100,000 without the need for an ordinance specifically authorizing the contract if the contract is included within the current fiscal year budget of the bureau seeking the contract.
- B.** The Chief Procurement Officer has authority to execute amendments to such contracts, provided the amendments do not, in the aggregate, exceed 25 percent of the original contract amount. Otherwise, the original contract or contract amendment must be approved by the City Council. Except for contracts executed with outside counsel, contracts executed pursuant to Subsection 5.68.020 B.4. may be amended in excess of 25 percent without Council approval provided the City Attorney and the Chief Procurement Officer both approve the amendment.

**TITLE 5
REVENUE AND FINANCE**

Periodic reports of such actions shall be provided to City Council by the City Attorney's Office.

- C. The Chief Procurement Officer is authorized, but not required, to waive any procedural irregularities in the PTE selection process provided the irregularities had no material 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 and 184427, effective February 23, 2011.)

- A. The City Attorney and the Chief Procurement Officer shall review and approve the form of all Requests for Proposals, Requests for Qualifications and other similar solicitation documents for all PTE contracts estimated to exceed \$100,000, prior to issuance.
- B. The City Attorney or designee shall approve the form of all PTE contracts and shall ensure that all required documentation, including, but not limited to insurance, is present before the contract is executed. Such approval shall occur before work begins.

5.68.060 Outside Legal Services.
(Amended by Ordinance Nos. 179802, 180659, 182213 and 184427, effective February 23, 2011.)

- A. Except as specifically exempted by this Section, and in addition to the other requirements of this Chapter for professional, technical and expert service contracts, the following procedures and requirements shall apply to any contracts for legal services to be provided by attorneys outside of the Office of the City Attorney.
 - 1. All City bureaus and agencies shall submit in writing to the City Attorney all requests for legal services from outside the City Attorney's Office before any agreement is made to obtain any such outside legal services.
 - 2. The Chief Procurement Officer has the authority to sign and approve contracts and contract amendments for outside counsel to the same extent as other contracts for professional, technical and expert services. However, all billings and invoices for outside legal counsel's services

shall be directed to the City Attorney for review and approval prior to payment.

3. The Chief Procurement Officer shall not process any purchase requisition for outside legal services without the written approval of the City Attorney or designee.
4. The Accounts Payable Division shall not process for payment any billing or invoice for outside legal services without the written approval of the City Attorney or designee.
5. This Section does not apply to selection of bond counsel, who are selected in accordance with Section 5.68.070 of this Code. However, all billings and invoices of bond counsel shall be directed to the City Attorney for review and approval prior to payment.

5.68.070 Procedure for Selection of Bond Counsel.

(Amended by Ordinance No. 182213, effective September 24, 2008.)

- A. At the time a bureau determines it will need bond counsel for a project or series of projects, the bureau will notify the City Attorney. The City Attorney or designee shall notify each counsel listed in the Oregon Section of the Bond Buyer's Directory of Municipal Bond Dealers (Red Book), requesting that those interested in serving as bond counsel for the project or series of projects submit proposals. The notice shall indicate the nature of the project or series of projects, the type and approximate amount of bonds, the approximate date for the sale or sales of bonds, the bond counsel services required, and the date proposals are due.
- B. Those counsel interested shall provide the following information to the City Attorney:
 1. A statement of the fee arrangement proposed by the firm.
 2. Such other information as the City Attorney deems appropriate.
- C. On receipt of the proposals the City Attorney shall refer them to a consultant selection committee consisting of the City Attorney or designee; the Chief Administrative Officer or designee; and the Bureau Director or designee. The Committee shall consider only firms that are listed in the Red Book. The Committee may interview any or all firms, including more than once. The Committee may authorize firms to modify their proposals during the interview period.

**TITLE 5
REVENUE AND FINANCE**

- D.** The Consultant Selection Committee shall select a law firm to serve as bond counsel for the project or series of projects. The selection shall be based on fee, experience, or such other criteria as the Committee deems appropriate.

5.68.080 Contractor's Compliance with Workers' Compensation Requirements.

Prior to the performance of any work under a professional, technical or expert services contract awarded by the City, a contractor shall comply with the Workers' Compensation Law, ORS Chapter 656, as it may be amended, and if Workers' Compensation Insurance is required by ORS Chapter 656, shall maintain coverage for all subject workers as defined by ORS Chapter 656, and shall maintain a current, valid certificate of Workers' Compensation Insurance on file with the City Auditor for the entire period during which work is performed under the contract.

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

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

5.68.100 Direct Contracts with Architects, Engineers and Land Surveyors.

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

5.68.110 Two-Tiered Selection Process.

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

**TITLE 5
REVENUE AND FINANCE**

**TITLE 5
REVENUE AND FINANCE**

Chapter 5.72

**ECONOMIC DEVELOPMENT
PROJECTS**

(Added by Ordinance No. 145441; amended by
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

**TITLE 5
REVENUE AND FINANCE**

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.

- 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

**TITLE 5
REVENUE AND FINANCE**

construction of the project, including, but not limited to, costs of relocation and moving expenses according to a project plan developed by the City, and the financing of the construction of the project thereof, including reimbursement to any state or other governmental agency or any lessee of such project for the expenditures made with the approval of the City that would be costs of the project under this Chapter had they been made directly by the City, and any costs incurred after bond issuance by the City for audits or monitoring.

- E.** “**Qualified historic project**” shall mean a project which includes the restoration or rehabilitation of a structure or structures designated as a City of Portland Historic Landmark. Such rehabilitation or restoration shall require the approval of the City of Portland Landmarks Commission to assure conformance with the Secretary of the Interior’s standards for historic preservation projects.

5.72.030 Economic Development - Applications.

- A.** The Portland Development Commission shall be responsible for receipt of applications and review and processing thereof. Applications shall be in a form established by the Portland Development Commission and shall include, in addition to other information deemed necessary by the Portland Development Commission:
- 1.** Company/applicant information.
 - 2.** Project information.
 - 3.** Description of labor force at existing and proposed locations.
 - 4.** Financial information.
 - 5.** Environmental control information.
 - 6.** Any information required by law or otherwise which is reasonable and necessary to effectuate the purposes of this Chapter.
 - 7.** An agreement to indemnify and hold harmless the Portland Development Commission and the City of Portland, its officers and employees, from any and all liability for loss or damage to the company or any third person or entity arising from or alleged to have arisen from the processing of this application or any error or omission in any official statement or representation related to the contemplated financing.

- B.** The applicant must certify by letter that the issuance of revenue bonds is an inducement to locate, retain, or expand the project in Portland.
- C.** The requirements herein shall be considered to be minimums, and the Portland Development Commission and the City reserve the right to add additional requirements on a case-by-case basis. Likewise, the requirements herein stated pertain only to the Commission and the City and are not exclusive. Qualified bond counsel or the original purchaser may make additional requirements.

5.72.040 Economic Development -Initial Review, Standards.

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

**TITLE 5
REVENUE AND FINANCE**

- C. No application shall be recommended for City Council approval unless the Portland Development Commission determines that the proposed project does not conflict with adopted City plans and policies, and conforms to the following uses:
1. Manufacturing or other industrial production.
 2. Agricultural development or food processing.
 3. Transportation or freight facilities.
 4. Warehousing or distribution.
 5. A project for the primary purpose of reducing air, water, or solid waste pollution.
 6. Other activities that represent new technology or types of economic enterprise that the City determines are needed to diversify the economic base of the community.
 7. Parking in close proximity to the Portland Performing Arts Center. Such a parking facility may include space for retail and commercial uses in addition to parking.
 8. Commercial uses when a part of a qualified historic project or publicly initiated urban development project.

5.72.050 Housing - Applications.

- A. The Portland Development Commission shall be responsible for receipt of applications and review and processing thereof, including, but not limited to, advice of bond counsel and legal advice. Applications shall be in a form established by the Portland Development Commission and shall include, in addition to other information deemed necessary by the Portland Development Commission:
1. The applicant's name, address and telephone number.
 2. A brief description of the applicant's company history and past relevant performance.
 3. A legal description of the property upon which the project will be located.
 4. A detailed description of the project including the number, size and type of dwelling units; dimensions of structures; parcel size, proposed lot

**TITLE 5
REVENUE AND FINANCE**

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.
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.

**TITLE 5
REVENUE AND FINANCE**

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.
 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.
- 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.

**TITLE 5
REVENUE AND FINANCE**

- 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 (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.)

**TITLE 5
REVENUE AND FINANCE**

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.

**TITLE 5
REVENUE AND FINANCE**

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.

5.72.100 Administrative Fees.

(Amended by Ordinance Nos. 160540, 160608; and 166996, effective Sept. 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.

**TITLE 5
REVENUE AND FINANCE**

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.)

- 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 Bureau 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 No. 185827, effective December 19, 2012.) 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. “Director” means the Director of the Revenue Bureau, or authorized designee.
- C. “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.
- D. “Net Revenues” means the revenue remaining after interest, collection, administrative and other costs and refunds are deducted from Gross Revenues.
- E. “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.
- F. “Resident” or “resident of the City” means:
 - 1. An individual who is domiciled in this City unless the individual:

**TITLE 5
REVENUE AND FINANCE**

- 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.
- G.** “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.
- H.** “Schools” means those educational institutions defined as schools by the Oregon Department of Education, but do not include on-line schools.
- I.** “School Districts” means the Portland Public, David Douglas, Centennial, Parkrose, Reynolds and Riverdale school districts.

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.

Net Revenues will be paid by the Revenue Bureau to the Arts Education and Access Fund for distribution by the City as follows:

**TITLE 5
REVENUE AND FINANCE**

- 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.
 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 Bureau Responsibilities.

The Revenue Bureau 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;
- 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.

**TITLE 5
REVENUE AND FINANCE**

- 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.

- A.** The Revenue Bureau's first year start-up costs are capped at \$500,000. Ongoing administrative costs are capped at an average 5 percent or less of Gross Revenues over a five year period.
- B.** The City's contract amendment with RACC will require RACC to:
 - 1.** Limit any additional RACC arts education coordination costs incurred as a result of receiving funds to a maximum of 3 percent of Net Revenues;
 - 2.** Ensure that highly qualified persons will coordinate and work with the School Districts in the provision of high quality arts and/or music education;
 - 3.** Seek additional funds from other sources for arts education and access to supplement the goals of the Arts Education and Access Fund;
 - 4.** Provide quality oversight to the programs of the School Districts as well as the expenditures made by RACC; and
 - 5.** Coordinate between School Districts and arts organizations to ensure high quality arts education for Portland students.

5.73.100 Confidentiality.

(Added by Ordinance No. 185827, effective December 19, 2012.) 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 Bureau's administrative rules to divulge, release or make known in any manner any financial information submitted or disclosed to the City under the terms of the Arts Education and Access Income Tax, unless otherwise required by law. This Section does not prohibit:

- A.** Disclosure to the taxfiler or authorized representative of the taxfiler;
- B.** Disclosure of the names and addresses of any persons that paid the Tax;
- C.** Disclosure of general statistics in a form which would prevent the identification of financial information regarding an individual taxfiler;

- D.** Disclosure to the City Attorney’s Office to obtain payment on unpaid accounts or to receive legal advice; or
- E.** Disclosure to an outside collection agency for collection of any unpaid account balance receivable. Assignment to an outside collection agency permits the Bureau to collect a reasonable collection fee, above and beyond any amount otherwise owed to the Bureau;
- F.** 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.

**TITLE 5
REVENUE AND FINANCE**

Chapter 5.74

ACQUISITION OF PUBLIC ART

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

Sections:

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

5.74.010 Purpose.

It is the purpose of this Chapter and the policy of the City of Portland to dedicate two percent of the total Eligible Costs or two percent of the total Eligible Funds of all Improvement Projects (whichever is less) to the selection, acquisition, fabrication, installation, maintenance, management, deaccessioning, community education, documentation and registration of Public Art.

5.74.020 Definitions.

(Amended by Ordinance No. 178946, effective January 7, 2005.)

A. As used in this Chapter:

1. Improvement Project means any project paid for wholly or in part by a Participating Bureau in which the Participating Bureau's contribution of Eligible Funds equals \$50,000 or more for the construction, rehabilitation, remodeling, improvement or purchase for a public use of any building, structure, park, public utility, street, sidewalk or parking facility or any portion thereof within the limits of the City of Portland.
2. Maintenance and repair does not constitute an Improvement Project.
3. Improvement Projects which are developed privately and leased back to the City of Portland are not exempt from the provisions of this Chapter.
4. The purchase of improved or unimproved property by the Portland

**TITLE 5
REVENUE AND FINANCE**

Development Commission solely for resale or redevelopment, in which property is not otherwise to be put to a governmental use, shall not constitute an Improvement Project subject to the provisions of this Chapter.

- B.** Eligible Costs means the Participating Bureau's capitalized costs for completion of an Improvement Project, including costs for capitalized tenant improvements. Eligible Costs do not include costs for: design and engineering, administration, fees and permits, building demolition, relocation of tenants, environmental testing, environmental remediation, non-construction contingency or indirect costs, such as interest during construction, advertising and legal fees. When an improvement project involves the acquisition of real property, costs attributable to land acquisition are not Eligible Costs, while costs attributable to improvements on the real property are Eligible Costs.
- C.** Eligible Funds means a Participating Bureau's monetary contribution to an Improvement Project. The following are not Eligible Funds: private development revenue, federal and state grants that preclude Public Art as an object for expenditure, Local Improvement District revenue, Water Operating Fund revenue, Water Construction Fund revenue, Sewer Systems Operating Fund revenue, Sewer Systems Construction Fund revenue and revenue from any other funding source subject to legal restrictions which preclude Public Art as an object for expenditure.
- D.** Public Art means original artwork which is accessible to the public and/or public employees, and which has been approved as public art by the Regional Arts and Culture Council, acting on behalf of the City of Portland.
- E.** Participating Bureau means a City of Portland Bureau or Commission that funds an Improvement Project within the meaning of this Chapter.
- F.** Selection Panel means a group responsible for reviewing proposed Public Art and making recommendations to the Regional Arts & Culture Council on the selection of Public Art. Selection Panels shall include a representative of the Participating Bureau, the Improvement Project architect or engineer, artists and citizens.

5.74.030 Dedication.

Any City of Portland official or employee acting on behalf of a Participating Bureau who authorizes or appropriates expenditures for an Improvement Project shall include in the capital improvement program of the City's capital budget, and disburse to the Regional Arts & Culture Council, a monetary contribution for Public Art equal to Two percent (2%) of the total Eligible Costs or two percent of the total Eligible Funds of the Improvement Project, whichever is less. The Office of Management and Finance and the Portland Development Commission shall each adopt administrative rules to implement

**TITLE 5
REVENUE AND FINANCE**

this section, which to the greatest extent practicable shall set forth the same procedures to be followed by all Participating Bureaus, including the Portland Development Commission.

5.74.040 Public Art Trust Fund.

The Regional Arts & Culture Council shall maintain a special fund called the Public Art Trust Fund into which funds dedicated to Public Art pursuant to section 5.74.030 shall be deposited.

- A.** Such funds shall be deposited into the Public Art Trust Fund, and shall be allocated as follows:
 - 1.** 63 percent shall be used by the Regional Arts & Culture Council for costs associated with Public Art including, but not limited to the acquisition, fabrication, and installation of Public Art.
 - 2.** 27 percent shall be used by the Regional Arts & Culture Council for costs associated with Public Art, including, but not limited to costs of selection, project management, community education and registration of Public Art.
 - 3.** 10 percent shall be used by the Regional Arts & Culture Council for the maintenance, conservation and deaccessioning of Public Art.
- B.** Such funds shall be deposited in separate accounts within the Public Art Trust Fund if separate accounting is requested by the Participating Bureau or required by law.
- C.** Disbursements from the Public Art Trust Fund shall be made by the Regional Arts & Culture Council.
 - 1.** Disbursements shall be made according to the terms of this Chapter and any guidelines adopted hereunder by the Regional Arts & Culture Council.
 - 2.** If an Improvement Project is funded by revenue sources whose expenditure is restricted by the City Charter or other law, the Regional Arts & Culture Council, prior to making a disbursement for Public Art from such a restricted account in the Public Art Trust Fund, shall adopt written findings demonstrating that the proposed disbursement complies with all applicable restrictions.
 - 3.** The Regional Arts & Culture Council will report annually to Participating Bureaus on the disbursement of funds from the Public Art Trust Fund.

5.74.050 Siting.

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

5.74.060 Guidelines.

The Regional Arts & Culture Council shall, after consultation with Participating Bureaus, adopt guidelines to:

- A. Provide for annual reporting to Participating Bureaus;
- B. Develop an annual plan for Public Art that takes into account the views of the Participating Bureau;
- C. Provide a method for the appointment of representatives to Selection Panels;
- D. Determine a method or methods of selecting and contracting with artists for the design, execution and siting of Public Art;
- E. Determine the dedication and disbursement process for the Public Art Trust Fund;
- F. Determine a process for the ongoing care, maintenance and conservation of Public Art;
- G. Determine a process to deaccession art;
- H. Set forth any other matter appropriate to the administration of this Chapter.

5.74.070 Ownership.

All Public Art acquired pursuant to this Chapter shall be acquired in the name of the City of Portland, and title shall vest in the City of Portland.

5.74.080 Decisions.

Except as limited by other sections of this Chapter, the Regional Arts & Culture Council's decisions as to the acquisition, fabrication, installation, deaccessioning, management, community education and registration of Public Art, and disbursement of the Public Art Trust Fund, shall be final.

5.74.090 Implementation.

The Regional Arts & Culture Council, or its designee, shall implement the provisions of this Chapter, in cooperation with the Office of Management and Finance and all Participating Bureaus.

**TITLE 5
REVENUE AND FINANCE**

CHAPTER 5.75

**CLAIMS UNDER
ORS CHAPTERS 195 and 197**

(Replaced by Ordinance No. 181640,
effective February 28, 2008.)

Sections:

- 5.75.010 Purpose.
- 5.75.020 Definitions.
- 5.75.030 Filing an Amended Claim.
- 5.75.040 Review of Amended Claim by Program Manager.
- 5.75.050 Hearing on Amended Claim by City Council.
- 5.75.060 Filing a New Claim.
- 5.75.070 Review of New Claim by Program Manager.
- 5.75.080 Hearing on New Claim by City Council.
- 5.75.090 Claim Processing Fee.
- 5.75.100 Determination of Common Law Vested Right.
- 5.75.110 Hearing on a Common Law Vested Right By City Council.

5.75.010 Purpose.

The purpose of this Chapter is to establish a procedure by which owners of private real property located within the City of Portland may file claims pursuant to Chapters 195 and 197 of the Oregon Revised Statutes as amended by Ballot Measure 49 (November 6, 2007) (referred to in this chapter as "Measure 49") and to provide for consideration of claims by the City Council.

5.75.020 Definitions.

- A. Appraisal.** A written statement prepared by a person certified under ORS chapter 674 or a person registered under ORS chapter 308 that complies with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institution Reform, Recovery and Enforcement Act of 1989.
- B. Approved Measure 37 Claim.** A claim filed under ORS 197.352 and approved by the City Council before December 6, 2007.

- C. Department.** The Oregon Department of Land Conservation and Development.
- D. Exempt Land Use Regulation.** A land use regulation that:
1. Restricts or prohibits activities commonly and historically recognized as public nuisances under common law;
 2. Restricts or prohibits activities for the protection of public health and safety;
 3. Is required in order to comply with federal law;
 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,

**TITLE 5
REVENUE AND FINANCE**

pollution, disease, crime or other natural or human disaster or threat to persons or property including, but not limited to, building and fire codes, health and sanitation regulations, solid or hazardous waste regulations and pollution control regulations.

- J. Reduction in Value.** A decrease in fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after enactment, plus interest, adjusted by any ad valorem property taxes not paid as a result of any special assessment of the property under ORS 308A.050 to 308A.128, 321.257 to 321.390, 321.754 or 321.805 to 321.855, plus interest, offset by any severance taxes paid by the claimant and by any recapture of potential additional tax liability that the claimant has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703.
- K. Waiver.** Action by the Portland City Council to modify, remove or not apply one or more land use regulations found to have caused a reduction in value.

5.75.030 Filing an Amended Claim.

- A.** A person may amend a Measure 37 claim that was filed with the City of Portland on or before June 28, 2007.
- B.** To qualify for compensation or waiver, a person filing an amended claim under this section must establish that:
- 1.** The claimant is an owner of the property;
 - 2.** All owners of the property have consented in writing to the filing of the claim;
 - 3.** The property is located, in whole or in part, within the City of Portland;
 - 4.** On the claimant's acquisition date, the claimant lawfully was permitted to establish at least the number of single family dwellings on the property that are authorized under Measure 49;
 - 5.** The property is zoned for residential use;
 - 6.** A land use regulation prohibits the establishment of a single-family dwelling;
 - 7.** The establishment of a single-family dwelling is not prohibited by a land use regulation described in ORS 197.352(3);

**TITLE 5
REVENUE AND FINANCE**

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:
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;

**TITLE 5
REVENUE AND FINANCE**

7. A description of the claimant's proposed use of the property if the Council chooses to waive a land use regulation instead of paying compensation;
 8. If the property is or has been enrolled in one or more of the special assessment programs listed in Section 5.75.020 J., information regarding tax amounts not paid as a result of the program or programs; and
 9. A statement whether the claimant filed a claim with other public entities on or before June 28, 2007, involving the same property and a copy of any decision made by the entity on the claim.
- D.** The Program Manager shall notify all claimants who filed claims on or before June 28, 2007, and whose claims were not decided by the City Council prior to December 6, 2007, that they may amend their claims under this section and shall provide a form for amended claims. A claimant must submit an amended claim under this section to the Program Manager within 120 days after the date of notice under this paragraph or the claimant is not entitled to relief.

5.75.040 Review of Amended Claim by Program Manager.

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

- C. The Program Manager's recommendation to approve or deny a claim under Subsection B of this section shall be in writing and shall be supported by a brief explanation for the basis of the recommendation.

5.75.050 Hearing on Amended Claim by City Council.

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

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:

**TITLE 5
REVENUE AND FINANCE**

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;
 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

**TITLE 5
REVENUE AND FINANCE**

within the prescribed 60 days, the claim shall be considered complete on the date it was filed with the Program Manager.

- B.** A claim filed under this section shall not be considered complete until the claimant has submitted the information required by this section. If the claimant fails to submit a complete claim within 60 days after the notice prescribed in Subsection A, the claim shall be deemed withdrawn.
- C.** The Program Manager shall conduct a preliminary review of a claim to determine whether it satisfies all of the following prerequisites for full evaluation of the claim:

 - 1.** The property lies within the City of Portland’s jurisdictional boundary;
 - 2.** The land use regulation that is the basis for the claim is a provision of a city land use regulation; and
 - 3.** The claimant acquired an interest in the property before the effective date of the land use regulation and has continued to have an interest in the property since the effective date.
- D.** If the claim fails to satisfy one or more of the prerequisites in subsection C of this section, the Program Manager shall prepare a report to that effect and recommend to the City Council that it dismiss the claim following a public hearing under Section 5.75.080.
- E.** If the claim satisfies each of the prerequisites in Subsection C of this section, the Program Manager shall complete the review of the claim to determine whether it satisfies the criteria in Section 5.75.060.
- F.** The Program Manager may commission an appraisal or direct other research in aid of the determination whether a claim meets the requirements of ORS 197.352 and to assist in the development of a recommendation regarding appropriate relief for a valid claim.
- G.** The Program Manager shall prepare a written report with the determinations required by Subsection E of this section and the reasoning to support the determination. The report shall include a recommendation to the City Council on the validity of the claim and, if valid, whether the City of Portland should compensate the claimant for the reduction of value or waive the regulation. If the Program Manager recommends compensation or waiver, the report shall recommend any conditions that should be placed upon the compensation or waiver to help achieve the purpose of this chapter and the policies of the City of Portland’s comprehensive plan. If the Program Manager recommends waiver, the

**TITLE 5
REVENUE AND FINANCE**

report shall recommend the specific number of single-family dwellings the City of Portland should authorize commensurate to the reduction in fair market value of the property.

- H. The Program Manager shall provide the report to the City Council, the claimant, Metro, and other persons who request a copy.

5.75.080 Hearing on New Claim by City Council.

- A. The City Council shall hold a public hearing on a claim prior to its final determination. The Program Manager shall schedule the hearing for a date within 180 days after the filing of a completed claim.
- B. The Program Manager shall provide notice of the date, time and location of the public hearing at least 30 days before the hearing to the claimant and owners of the subject property, owners and occupants of property within 100 feet of the subject property, the Department, Metro, and Multnomah County. The notice shall indicate that:
 - 1. A copy of the Program Manager's recommendation is available upon request;
 - 2. Judicial review of the City of Portland's final determination is limited to the written evidence and arguments submitted to the City of Portland prior to or at the public hearing; and
 - 3. Judicial review is available only for issues that are raised with sufficient specificity to afford the City of Portland an opportunity to respond in its final determination.
- D. After the close of the public hearing the City Council shall make its final determination on the claim and enter an order with findings of fact and conclusions of law, based upon the record made before the City of Portland, that explain the determination. The Program Manager shall mail a copy of the final determination to the claimant, Multnomah County, and any person who submitted written or oral testimony prior to the close of the public hearing.
- E. The City Council will make its final determination within 180 days of the date the claim is complete.

5.75.090 Claim Processing Fee

A claimant shall pay a \$250 fee to file a claim under Sections 5.75.030 and 5.75.060 of this Chapter. A claim will not be considered complete until the fee is paid. For any claims submitted on or after December 2, 2004 for which a fee was not paid at the time of claim

submittal, the Program Manager may bill the owner for the fee at any time during the claim review process and prior to a final decision on the claim.

5.75.100 Determination of Common Law Vested Right.

- A.** A person with an approved Measure 37 claim may apply for a determination that the person has a common law vested right to continue and complete a use or development allowed by an approved Measure 37 claim consistent with Measure 49.

- B.** An applicant seeking to establish a common law vested right for an approved Measure 37 claim must submit the following information:
 - 1.** The name, mailing address, and telephone number of the applicant.
 - 2.** A legal description and tax lot numbers of the subject property as well as a street address for the property, if any.
 - 3.** A copy of the approved Measure 37 claim decision from the City of Portland and, if appropriate, the State of Oregon.
 - 4.** Additional information sufficient to address each of the factors listed in Subsection C of this Section.

- C.** The factors to be considered by the Program Manager and the City Council in determining whether the applicant has a common law vested right to continue and complete a use or development allowed by an approved Measure 37 claim are:
 - 1.** The amount of money spent on developing the use in relation to the total cost of establishing the use.
 - 2.** The good faith of the property owner.
 - 3.** Whether the property owner had notice of the proposed change in law before beginning development.
 - 4.** Whether any improvements could be used for other allowed uses.
 - 5.** The kind of use, and the location and cost of the development.
 - 6.** Whether the property owner's acts are more than mere contemplated use or preparation, such as the leveling of land, boring test holes, or preliminary negotiations with contractors or architects.

**TITLE 5
REVENUE AND FINANCE**

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;
 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.

TITLE 5
REVENUE AND FINANCE

- 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.

**TITLE 7
BUSINESS LICENSES**

Chapter 7.02

BUSINESS LICENSE LAW

- 7.02.005 Short Title.
- 7.02.010 Fees for Revenue.
- 7.02.020 Conformity to State Income Tax Laws.
- 7.02.100 Definitions.
- 7.02.110 Income Defined.
- 7.02.200 Administration.
- 7.02.210 Administrative Authority.
- 7.02.220 Presumption of Doing Business.
- 7.02.230 Confidentiality.
- 7.02.240 Persons to Whom Information May be Furnished.
- 7.02.250 Taxfiler Representation.
- 7.02.255 Representation Restrictions.
- 7.02.260 Information Request; Examination of Books, Records or Persons.
- 7.02.270 Records.
- 7.02.280 Deficiencies and Refunds.
- 7.02.290 Protests and Appeals.
- 7.02.295 Business License Appeals Board.
- 7.02.300 Certificates of Compliance.
- 7.02.310 Duplicate Certificates of Compliance.
- 7.02.330 Account Merger or Division.
- 7.02.350 License Tax Year Term.
- 7.02.400 Exemptions.
- 7.02.500 Tax Rate.
- 7.02.510 Registration Form and Tax Return Due Dates.
- 7.02.520 Quarterly Estimates.
- 7.02.530 Schedule for Payment of Estimated Tax.
- 7.02.545 Tax Returns.
- 7.02.550 Presumptive Tax.
- 7.02.560 Payment Plan Fee.
- 7.02.600 Income Determinations.
- 7.02.610 Apportionment of Income.
- 7.02.620 Changes to Federal and/or State Tax Returns.
- 7.02.630 Income Long Term Construction Contract Methods.
- 7.02.700 Penalties.
- 7.02.710 Interest.
- 7.02.715 Payments Applied.
- 7.02.720 Interest on Refunds.
- 7.02.730 Criminal Penalties for Violation of the Business License Law by City Employee or Agent.

- 7.02.800 Refundable Credit.
- 7.02.810 Credits Issued.
- 7.02.820 Obligations of Participating Businesses.
- 7.02.830 Collection and Remittance of Donations to “Work for Art,” a Program of the Regional Arts & Culture Council.
- 7.02.840 Frivolous Filing.
- 7.02.850 Hacking.
- 7.02.860 First Year Adjustment Credit.
- 7.02.870 Business Retention Credit for Qualifying Investment Management Firms.
- 7.02.880 Youth Employment Credit Programs.
- 7.02.881 Foster Youth Employment Opportunity Credit.
- 7.02.882 Youth Career Readiness Credit.

Chapter 7.03

TEMPORARY BUSINESSES

- 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.

Chapter 7.12

PUBLIC SERVICE PERMITS, FRANCHISES AND REGULATIONS

- 7.12.010 Auditor to Keep Record of Franchises.
- 7.12.020 Holder of Franchise to Keep Accounts and Make Reports.
- 7.12.030 Bureau of Licenses or Designee Authorized to Inspect Books and Prescribe Forms.
- 7.12.040 Interest Payable on Deposits.
- 7.12.050 Contents of Franchise.
- 7.12.060 Privilege Tax Levies.
- 7.12.070 Privilege Tax Applicable to Other Cases.
- 7.12.080 Report of Gross Earnings.
- 7.12.090 Time of Payment of Tax.
- 7.12.100 No Waiver or Estoppel.
- 7.12.110 Credits Allowable.
- 7.12.120 Restricted to City Business.
- 7.12.200 Penalty Applicable.
- 7.12.210 Additional Annual Report.
- 7.12.220 Depreciation Accounts of Public Utilities.

Chapter 7.14

UTILITY LICENSE LAW

- 7.14.005 Short Title.
- 7.14.010 Fees for Revenue.
- 7.14.020 License Required.
- 7.14.030 Administration.

- 7.14.040 Definitions.
- 7.14.050 Application and Issuance.
- 7.14.060 Fees and Payment.
- 7.14.065 Limitations.
- 7.14.070 Deductions.
- 7.14.080 Reports and Review of Records.
- 7.14.085 Refunds by City to Licensee.
- 7.14.090 Appeals.
- 7.14.100 Interest.
- 7.14.110 Civil Penalties.
- 7.14.120 Collection of Delinquencies.
- 7.14.130 Confidential Financial Information.

Chapter 7.22 STREET AND SIDEWALK USE PERMITS

- 7.22.010 Purpose.
- 7.22.020 Authorization.
- 7.22.030 Permit Required.
- 7.22.040 Revocation of Permit.
- 7.22.050 Permit Subject to Ordinances and Regulations.
- 7.22.060 Diversion of Traffic.
- 7.22.070 Interference Prohibited.

Chapter 7.24 PRIVATE PROPERTY IMPOUND TOWING

- 7.24.010 Towing of Vehicles from Private Property.
- 7.24.020 Administrative Authority.
- 7.24.030 Definitions.
- 7.24.040 Private Property Impound (PPI) Tower Registration.
- 7.24.050 Towing Regulations.
- 7.24.060 Towing and Storage Rates.
- 7.24.070 Conditions.
- 7.24.080 Prohibitions.
- 7.24.090 Remedies.
- 7.24.100 Appeals.

Chapter 7.25 PAY AND PARK AND NON-PAY PRIVATE PARKING FACILITIES

- 7.25.010 Purpose.
- 7.25.020 Savings Clause.
- 7.25.030 Definitions.
- 7.25.040 Authorization.
- 7.25.050 Registration as the Operator of a Facility.
- 7.25.060 Registration of a Facility.
- 7.25.070 Payment Device.
- 7.25.080 Signage Requirements.

- 7.25.090 Assessment of Penalties.
- 7.25.100 Parking Penalty Notice.
- 7.25.110 Penalty Payment Letters.
- 7.25.120 Unlawful to Tow Vehicles.
- 7.25.130 Complaint Handling Procedures.
- 7.25.140 Maintenance of Records.
- 7.25.150 Insurance Required.
- 7.25.160 Prohibitions.
- 7.25.170 Remedies.
- 7.25.180 Appeals.
- 7.25.190 Locking Parked Cars.

Chapter 7.26

REGULATION OF PAYDAY LENDING

- 7.26.010 Purpose.
- 7.26.020 Definitions.
- 7.26.030 Permits.
- 7.26.040 Administrative Authority.
- 7.26.050 Payment of Principal Prior to Payday Loan Renewal.
- 7.26.060 Cancellation of Payday Loan.
- 7.26.070 Payment Plan for a Payday Loan.
- 7.26.080 Remedies.
- 7.26.090 Appeals.
- 7.26.100 Complaints.
- 7.26.110 Severability.

7.02.510 Registration Form and Tax Return Due Dates.

(Amended by Ordinance No. 183727, effective May 28, 2010.)

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

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

TITLE 7
BUSINESS LICENSES

- 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 Bureau 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.

7.02.545 Tax Returns.

Except as provided in Section 7.02.540, 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.

- 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 Bureau 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 Bureau will send notice of the determination and assessment to the taxfiler.

7.02.560 Payment Plan Fee.

If a person fails to pay the business tax when due, the Bureau 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 and 185781, effective January 4, 2013.)

- 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 Bureau determines the exact deduction amount and publishes the amount on forms. Any increase or decrease under this paragraph that is not a multiple of \$500 will be rounded up or down to the next multiple of \$500 at the Bureau’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. For tax years beginning on or after January 1, 2014, 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

**TITLE 7
BUSINESS LICENSES**

lesser of actual compensation and interest paid or the amounts listed in Subsection A. per compensated limited partner.

- 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.

**TITLE 7
BUSINESS LICENSES**

- G. Taxes Based on or Measured by Net Income.** 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.
- 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.

**TITLE 7
BUSINESS LICENSES**

7.02.610 Apportionment of Income.

(Amended by Ordinance Nos. 182427 and 184597, effective June 17, 2011.)

- 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 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 Bureau 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 Bureau 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.

- 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 Bureau 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 Bureau 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 Bureau 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 Bureau within the time limits set forth in Subsection A.

**TITLE 7
BUSINESS LICENSES**

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.

7.02.700 Penalties.

- 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:

**TITLE 7
BUSINESS LICENSES**

7.02.710 Interest.

- 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
 - 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 Bureau by the due date of the fourth quarterly payment, the Bureau 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 Bureau, unless specifically provided for by written policy.

7.02.715 Payments Applied.

Business taxes received will be applied first to any penalty accrued, then to interest accrued, then to business taxes due, unless the Bureau 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.

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 Bureau, 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
- 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.

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:

**TITLE 7
BUSINESS LICENSES**

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,
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 he/she currently is, or has 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.

**TITLE 7
BUSINESS LICENSES**

- 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 Bureau 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.

**TITLE 7
BUSINESS LICENSES**

- 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, 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.

The Revenue Bureau 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 Bureau, the taxfiler may not cancel the donation or request that it be instead credited to any other outstanding receivable owed to the Bureau.

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.

- A.** Any individual who intentionally accesses the Bureau's computer database without authorization will be fined:
 - 1.** \$500 if the individual acquires any information regarding any business account found in the database;
 - 2.** \$1,000 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.** \$5,000 or the cost of the loss (whichever is greater) if the individual causes the transmission of a program, information, code, or command to the Bureau'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 "Bureau's computer database" means computer application(s) used by the Bureau 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,

**TITLE 7
BUSINESS LICENSES**

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 No. 182427, effective January 16, 2009.)

- 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 Bureau 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 Bureau 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 Bureau 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.

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.

**TITLE 7
BUSINESS LICENSES**

- 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.
 - d.** In the fourth 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 b. above.
- C.** “Investment Management Firm” means a taxpayer that satisfies each of the following requirements during the tax year that the credit is sought:
- 1.** At least 90 percent of the firm’s gross income for the tax year must consist of fees that are
 - a.** Received from Diversified Investing Fund or from persons unrelated to the firm, and

**TITLE 7
BUSINESS LICENSES**

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 Bureau 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, effective August 5, 2011.)

- 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).

**TITLE 7
BUSINESS LICENSES**

- 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 Bureau will issue either a credit certificate or credit letter authorizing the maximum credit(s) for the tax year.

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 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:

TITLE 7
BUSINESS LICENSES

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.

Chapter 7.03

TEMPORARY BUSINESSES

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

- 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.

**TITLE 7
BUSINESS LICENSES**

- 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.
- E. “Seasonal Vendor” means a vendor operating in a temporary location and conducting limited, seasonal sales (including, but not limited to, Christmas trees and fireworks).
- F. “Special Events Vendor” means a vendor operating in a temporary location and selling special event-related merchandise (including, but not limited to, sporting events).

7.03.040 License Required; Fees.

Temporary businesses must apply for and obtain temporary business license certificates from the Revenue Bureau of the City of Portland. Temporary business license fees must be paid as provided below:

- A. Temporary Structure Vendors and Special Events Vendors must pay \$10 per day per vendor, not to exceed \$100 per location.
- B. Amusement Ride Operators must pay \$10 per day per vendor and \$10 per day for each ride operated.
- C. Promoters and Production Companies must pay \$25 per day.
- D. Seasonal Sales Vendors must pay \$10 per day for each location, not to exceed \$100 per location.

Chapter 7.04

ADMINISTRATION

(Chapter repealed by Ordinance No. 166676,
effective June 24, 1993.)

Chapter 7.06

LICENSE REQUIREMENTS & APPLICATIONS

(Chapter repealed by Ordinance No. 166676,
effective June 24, 1993.)

Chapter 7.08

LICENSE FEES

(Chapter repealed by Ordinance No. 166676,
effective June 24, 1993.)

Chapter 7.10

VIOLATIONS

(Chapter repealed by Ordinance No. 166676,
effective June 24, 1993.)

**TITLE 7
BUSINESS LICENSES**

Chapter 7.12

**PUBLIC SERVICE PERMITS,
FRANCHISES AND REGULATIONS**

Sections:

- 7.12.010 Auditor to Keep Record of Franchises.
- 7.12.020 Holder of Franchise to Keep Accounts and Make Reports.
- 7.12.030 Bureau of Licenses or Designee Authorized to Inspect Books and Prescribe Forms.
- 7.12.040 Interest Payable on Deposits.
- 7.12.050 Contents of Franchise.
- 7.12.060 Privilege Tax Levies.
- 7.12.070 Privilege Tax Applicable to Other Cases.
- 7.12.080 Report of Gross Earnings.
- 7.12.090 Time of Payment of Tax.
- 7.12.100 No Waiver or Estoppel.
- 7.12.110 Credits Allowable.
- 7.12.120 Restricted to City Business.
- 7.12.200 Penalty Applicable.
- 7.12.210 Additional Annual Report.
- 7.12.220 Depreciation Accounts of Public Utilities.

7.12.010 Auditor to Keep Record of Franchises.

The Auditor shall keep a separate record of each grantee of a franchise from the City rendering a service to be paid for wholly or in part by users of such service, which record shall show in the case of each such grantee:

- A.** The true and entire cost of construction, equipment, maintenance, and of the administration and operation thereof; the amount of stock issued, if any; the amount of cash paid in; the number and par value of shares; the amount and character of indebtedness, if any; the rate of taxes; dividends declared; the character and amount of all fixed charges; the allowance, if any, for interest, and for wear and tear or depreciation; all amounts and sources of income;
- B.** The amount collected annually from the City Treasury and the character and extent of the service rendered therefor to the City;
- C.** The amount collected annually from other users of the service and the character and extent of the service rendered therefor to them. Such books of record shall be open to public examination at any time during the business hours of the Auditor's Office. Such information, in addition to any further data which may be required

by the Auditor, under the City Charter, shall be furnished by the grantees or holders of such franchises to the Auditor upon his request, and at such grantees' own cost and expense.

In case any grantee or holder of a franchise fails or refuses to furnish such information when required so to do, on behalf of the City, the City Attorney shall petition the Circuit Court of the State of Oregon for Multnomah County to compel such grantee or holder to furnish the information required herein and to pay the costs of the proceedings in said Court.

7.12.020 Holder of Franchise to Keep Accounts and Make Reports.

Every person or corporation operating a public utility, whether under a franchise granted by the City or otherwise operating within the City and rendering service to be paid for wholly or in part by the users of such service, shall keep full and correct books and accounts and make stated quarterly reports in writing to the Council, verified by such person or officer of the corporation, which shall contain an accurate statement in summarized form as well as in detail of all receipts from all sources and all expenditures for all purposes, together with a full statement of all assets and debts including stock and bond issues, as well as such other information as to the cost and profits of the service, and the financial condition of such grantee as the Council may require, as provided for by Section 10-107, Quarterly Reports, of the Charter of the City, which Section of the Charter is incorporated in this Section by reference.

7.12.030 Bureau of Licenses or Designee Authorized to Inspect Books and Prescribe Forms.

(Amended by Ordinance No. 158792, effective July 17, 1986.) The Bureau of Licenses or designee is hereby authorized to inspect or examine, cause to be inspected or examined, at all reasonable hours, any and all books of account and vouchers of the grantee. Such books of account shall be kept and such reports made in accordance with forms and methods prescribed by the Bureau of Licenses, and so far as practicable shall be uniform for all grantees and holders of franchises, and shall conform to such reports as are required by State or federal public utilities commissions.

7.12.040 Interest Payable on Deposits.

Any person engaged in the business of furnishing or supplying gas or electricity for lighting, heating, or power purposes, or telephone service in the City, requiring of any patron the deposit of a sum of money as security for the prompt payment of bills when due, shall return to the patron within 1 year from the date the same is made the amount of the deposit together with interest thereon at the rate of 6 percent per year; provided, the patron is not indebted to the person at the date the deposit is returned. Such interest shall be payable at the time the deposit is returned; provided, however, that any person engaged in furnishing telephone service in the City may exact from each patron, or the patron may make, in lieu of such deposit, the payment of not more than 2 months rental in advance.

**TITLE 7
BUSINESS LICENSES**

7.12.050 Contents of Franchise.

Each such franchise shall provide that the names of all the members of the co-partnership or association to which any such franchise may be granted, shall be kept constantly on file in the Office of the Auditor of the City and at all times shall be accessible to any person having any interest in such information. Each such franchise shall also contain a provision setting forth and requiring the minimum service to be rendered the public by the grantee of such franchise and each such franchise shall also include such terms, provisions, and conditions as the Council of the City may determine in addition to those required by the Charter and ordinances of the City.

7.12.060 Payment of Privilege Tax Required.

(Substituted by Ordinance No. 164761, effective Oct. 23, 1991.)

- A.** For the purposes of Section 7.12.060 through Section 7.12.120, “utility” shall mean any electric cooperative, people’s utility district, privately-owned public utility, or heating company.
- B.** Any utility using or occupying a street, alley, or highway within the corporate limits of the City without a franchise shall pay a privilege tax for the use and occupancy of any street, alley or highway.
 - 1.** The privilege tax imposed under this Subsection shall be in an amount of 5 percent of the utility’s gross revenues earned within the corporate limits of the City for each consecutive 3 month period. the privilege tax shall be computed as of the commencement of business or upon the expiration of any franchise under which the utility formerly operated. The privilege tax shall be due and payable so long as the utility operates with the City and uses or occupies the streets, alleys or highways.
- C.** Any telecommunications utility using or occupying a street, alley or highway within the corporate limits of the City shall pay a privilege tax for the use and occupancy of any street, alley or highway.
 - 1.** The privilege tax imposed under this Subsection shall be in any amount of 7 percent of the telecommunications utility’s gross revenues earned within the corporate limits of the City for each consecutive 3 month period. For the purposes of this paragraph, “gross revenues” shall mean all revenues derived from exchange access services, as defined in ORS 401.710, less uncollectibles from such revenues. The privilege tax shall be computed as of the commencement of business or upon the expiration of any franchise under which the telecommunications utility formerly operated. The privilege tax shall be due and payable so long as the telecommunications utility operates within the City and uses or occupies the streets, alleys or highways.

- D.** In the event a franchise is granted to any utility subject to the privilege tax herein required and the franchise becomes effective, then the privilege tax shall cease to apply from the effective date of the franchise. The franchise holder shall pay the proportionate earned amount of the privilege tax for the current quarterly period. The privilege tax shall in all such cases become immediately due and payable, and if not paid, collectible as provided in Section 7.12.080.

7.12.070 Privilege Tax Applicable to Other Cases.

(Substituted by Ordinance No. 164761, effective Oct. 23, 1991.) The terms of Section 7.12.060 through Section 7.12.120 shall immediately apply to any utility using or occupying a street, alley or highway within the corporate limits of the City upon the expiration of the utility's franchise.

7.12.080 Report of Earnings.

(Replaced by Ordinance No. 164761; amended by Ordinance No. 184882, effective September 21, 2011.)

- A.** Each utility and telecommunications utility subject to the privilege tax as provided in Section 7.12.060 shall file with the Office for Community Technology an audited statement of the revenues earned within the corporate limits of the City for each consecutive 3 month period.
- 1.** The first quarterly report shall be filed on or before the first payment date of privilege tax. Subsequent quarterly reports shall be filed on or before July 15, October 15, January 15, and April 15 of each year.
 - 2.** If a franchise is granted to a utility which is otherwise subject to the provisions of Section 7.12.060 the utility shall file a report with the Office for Community Technology within 10 days after the franchise becomes effective showing the gross revenues earned for the proportionate period of the quarter prior to the franchise being granted.

7.12.090 Time Payment of the Privilege Tax.

(Substituted by Ordinance No. 164761, effective Oct. 3, 1991.)

- A.** Payment under Section 7.12.060 shall be made quarterly on or before July 20, October 20, January 20, and April 20 of each year.
- B.** If a utility or telecommunication utility fails to pay the privilege tax as required in Section 7.12.060 through Section 7.12.120, the City Attorney is authorized to institute an action in the Circuit Court of the State of Oregon for Multnomah County to recover the amount of the privilege tax due the City.

**TITLE 7
BUSINESS LICENSES**

7.12.100 No Waiver or Estoppel.

(Substituted by Ordinance No. 164761, effective Oct. 23, 1991.) Nothing in Section 7.12.060 through 7.12.120, or in any ordinance granting a franchise or right to any utility or telecommunications utility, nor anything done or performed or monies expended under ordinance, shall estop or prevent the City from requiring the utility or telecommunications utility to cease using or occupying the streets, alleys or highways within the corporate limits of the City upon the expiration or other termination of such franchise or right to use or occupy the streets, alleys or highways.

7.12.110 Credits Allowable.

(Substituted by Ordinance No. 164761, effective Oct. 23, 1991.) Any amount which any utility or telecommunications utility may have paid to the City under the terms of any revocable permit or other authority for using the streets shall be credited against the amount or amounts which have accrued or shall have accrued under Section 7.12.060.

7.12.120 Restricted to City Business.

(Substituted by Ordinance No. 164761, effective Oct. 23, 1991.) The privilege tax levied by Section 7.12.060 shall not be applicable to earnings from interstate business or to earnings from business outside the corporate limits of the City.

7.12.130 Permits for Intracity Passenger Business.

(Repealed by Ordinance No. 167242, effective Jan. 29, 1994.)

7.12.140 Application for Permit or Franchise.

(Repealed by Ordinance No. 167242, effective Jan. 29, 1994.)

7.12.150 Conditions of Permit or Franchise.

(Repealed by Ordinance No. 167242, effective Jan. 29, 1994.)

7.12.160 Regulations to be in Permit or Franchise.

(Repealed by Ordinance No. 167242, effective Jan. 29, 1994.)

7.12.170 Fees.

(Repealed by Ordinance No. 167242, effective Jan. 29, 1994.)

7.12.180 Statement of Finances to be Filed.

(Repealed by Ordinance No. 167242, effective Jan. 29, 1994.)

7.12.190 No Effect on Certain Vehicles.

(Repealed by Ordinance No. 167242, effective Jan. 29, 1994.)

7.12.200 Penalty Applicable.

**TITLE 7
BUSINESS LICENSES**

Any person subject to this Chapter or any officer or agent of any association or corporation subject to the provisions of this Chapter who, for a period of 30 days after the statement is required to be filed with the Auditor, fails, neglects, or refuses to file with the Auditor the quarterly statement of gross earning revenue of such person, association or corporation shall be subject to the penalties, including the criminal penalties, provided in Chapter 7.10 with respect to penalties for violation of the Business License Law.

7.12.210 Additional Annual Report.

Each person, firm or co-partnership operating a public utility in the City or, if such utility be an association or corporation, then the president and/or secretary and/or general manager or other officer or agent of such association or corporation having general control, management, or supervision of its business in the City, shall file with the Auditor a statement verified under oath containing the following information:

- A. Type of corporation, if any;
- B. List of officers and directors, and corporation control, including list of security holders and voting powers;
- C. A balance sheet, supported by schedules showing in detail physical equipment or property, and adjustments, advances and investments, special funds, securities acquired or disposed of, itemized assets, losses and expenses, capital stock, notes and accounts payable, taxes, interest, reserves, capital surplus, income of various types, salary schedules, and information on important changes of organization;
- D. As to plant or operating equipment, schedules showing its classification and changes therein, construction or acquisition, and progress report on property being constructed or acquired, depreciation and amortization and information to support the base therefor;
- E. Revenues received from operation, including sources;
- F. Operating expenses;
- G. Rate base; and
- H. Method by which it is determined.

This report shall cover the year ending the preceding December 31st and shall be filed on or before September 1, 1945, and June 1st thereafter, except as the Commissioner In Charge may extend the time for filing. This report shall be in addition to any and all other reports required by the Charter and ordinances of the City, including franchises and permits. It shall be sufficient hereunder if a copy of the report filed with the Commissioner of Public Utilities of Oregon, with the

TITLE 7
BUSINESS LICENSES

Interstate Commerce Commission, or with the Federal Communications Commission is filed with the Auditor.

7.12.220 Depreciation Accounts of Public Utilities.

Every grantee or holder of a franchise or permit from the City for public utility operation, or operating within the City a public utility, shall carry on its books a proper and adequate depreciation account in accordance with the requirements set forth by the State Public Utilities Commissioner, if the Commissioner has made a determination that such depreciation account can be reasonably required in the general operations of the public utility within the State. In the event that the State Commissioner has not ascertained and determined the proper and adequate rates of depreciation of the several classes of property of such public utility, or has not determined whether a depreciation account shall be required or not, such public utility shall request such a determination by the City Council. Such rates of depreciation shall be such as will provide the amounts required over and above the expenses of maintenance to keep such property in a state of efficiency corresponding to the progress of the industry. After such determination, such public utility shall conform its depreciation account to the rate so ascertained and determined by City Council. Any such determination shall be subject to review and change from time to time as the Council may find necessary or appropriate. All monies provided for depreciation shall be set aside out of the earnings and carried in a depreciation fund. The monies in this fund may be expended in replacements, new construction, extensions, or additions to the property of such public utility, or invested. If invested, the income from the investments and proceeds upon sale of such investments, shall also be carried in the depreciation fund. This fund and the proceeds thereof shall be used for no other purpose than as provided in this Section and for depreciation. No transfer shall be made from the depreciation fund or depreciation reserve account for any other purpose than set forth in this Section, without first and before such transfer, obtaining the approval of the City Council.

Chapter 7.14

UTILITY LICENSE LAW

(Replaced by Ordinance No. 182432,
Effective January 15, 2009.)

Sections:

- 7.14.005 Short Title.
- 7.14.010 Fees for Revenue.
- 7.14.020 License Required.
- 7.14.030 Administration.
- 7.14.040 Definitions.
- 7.14.050 Application and Issuance.
- 7.14.060 Fees and Payment.
- 7.14.065 Limitations.
- 7.14.070 Deductions.
- 7.14.080 Reports and Review of Records.
- 7.14.085 Refunds by City to Licensee.
- 7.14.090 Appeals.
- 7.14.100 Interest.
- 7.14.110 Civil Penalties.
- 7.14.120 Collection of Delinquencies.
- 7.14.130 Confidential Financial Information.

7.14.005 Short Title.

Chapter 7.14 of the Portland City Code shall be known as the Utility License Law.

7.14.010 Fees for Revenue.

The term “license” as used in the Utility License Law shall not be construed to mean a regulatory permit. The fees prescribed in the Utility License Law are for general revenue purposes and are not regulatory permit fees.

7.14.020 License Required.

Any person, including any bureau of the City, operating a utility within the City shall obtain a license for such business covering the period of the calendar year, from January 1 through December 31, or if application is made after January 1 of any year, then for the balance of the same calendar year.

**TITLE 7
BUSINESS LICENSES**

7.14.030 Administration.

- A.** The Utility License Law shall be administered by the Director. The Director may adopt procedures, forms, and written policies for administering the Utility License Law.
- B.** Authority granted to the Director may be delegated, in writing, to employees or agents of the Bureau.
- C.** The Director may, upon request, issue written interpretations of how the Utility License Law applies in general or to specific circumstances.
- D.** Nothing in the Utility License Law precludes the informal disposition of controversy by the Director in writing, whether by stipulation or agreed settlement.
- E.** The Director may implement procedures, forms, and written policies for administering the provisions of the Utility License Law.
- F.** The Director may adopt rules relating to matters within the scope of this Chapter to administer compliance with Utility License Law.
 - 1.** Before adopting a new rule, the Director must hold a public hearing. Prior to the hearing, the Director will notify Licensees. Such notice, which may be provided by mail or electronic means, must be distributed to Licensees not less than ten nor more than thirty days before the hearing. The notice must include the place, time and purpose of the public hearing, a brief description of the subjects covered by the proposed rule, and the location where copies of the full text of the proposed rule may be obtained.
 - 2.** At the public hearing, the Director will receive oral and written testimony concerning the proposed rule. The Director will either adopt the proposed rule, modify, it or reject it, taking into consideration the testimony received during the public hearing. If a substantial modification is made, additional public review will be conducted, but no additional public notice is required if an announcement is made at the hearing of a future hearing for a date, time and place certain at which the modification will be discussed. Unless otherwise stated, all rules are effective upon adoption by the Director. All rules adopted by the Director will be filed in the Bureau's office. Copies of all current rules will be posted on the Bureau's website and made available to the public upon request.
 - 3.** Notwithstanding Subsections 1 and 2, the Director may adopt an interim rule without prior public notice upon a finding that failure to act promptly

will result in serious prejudice to the public interest or the interest of the affected parties, stating the specific reasons for such prejudice. An interim rule adopted pursuant to this Subsection is effective for a period of not longer than 180 days.

7.14.040 Definitions.

(Amended by Ordinance Nos. 182527, 184882 and 185756, effective January 1, 2013.)

- A. “Bureau”** means the Revenue Bureau of the City of Portland, Oregon, along with its employees and agents, or such other bureau as the City Council may designate.
- B. “Cable Communications Utility”** means a business that provides cable service or telephone service to subscribers, including voice services delivered through the use of Internet protocol, through its own cable system or a cable system owned by another person.
- C. “Director”** means the Bureau Director.
- D. “Gross revenue”** means any revenue earned within the City, after adjustment for the net write-off of uncollectible accounts, from the sale of electrical energy, gas, district heating or cooling, or water, or sewage disposal and treatment service, and for use, rental, or lease of operating facilities of the utility engaged in such business, from the furnishing or sale of communications or associated services by or from a telecommunications or cable communications business.
Gross revenues do not include proceeds from:
 - 1.** The sale of bonds, mortgages, or other evidence of indebtedness, securities, or stocks, or sales at wholesale by one utility to another of electrical energy when the utility purchasing such electrical energy is not the ultimate consumer; or
 - 2.** Public purpose charges collected by a utility selling electrical energy or gas. For purposes of this Subsection, “public purpose charges” means a charge or surcharge to a utility customer that the utility is required or authorized to collect by federal or state statute, administrative rule, or by tariff approved by the Oregon Public Utility Commission, that raises revenue for a public purpose and not as compensation for either the provision of utility services or for the use, rental, or lease of the utility’s facilities within the City. “Public purpose” includes energy efficiency programs, market transformation programs, low-income energy efficiency programs, carbon offset programs and other types of programs designed to benefit utility customers within Oregon and the City.

**TITLE 7
BUSINESS LICENSES**

3. Revenues associated with Universal Service funding requirements under 47 U.S.C. § 254 (2012) or revenues associated with taxes for emergency communications under ORS Chapter 403 (2011).
- E. “Internet Service”** means a service that includes computer processing applications, provides the user with additional or restructured information, or permits the user to interact with stored information through the internet or a proprietary subscriber network. "Internet service" includes provision of internet electronic mail, access to the internet for information retrieval, and hosting of information for retrieval over the internet or the graphical subnetwork called the world wide web. "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web.
- F. “Licensee”** means any person or entity coming within the provisions of the Utility License Law, whether or not application has been made or a utility license has been issued.
- G. “Public Safety Radio System”** means a radio system whose licensing and use of radio transmitters by state and local government and non-governmental entities is regulated by the Federal Communications Commission as engaged in public safety activities.
- H. “Telecommunications”** means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming or any other information between or among points by wire, cable, fiber optics, laser, microwave, radio, or similar facilities, with or without benefit of any closed transmission medium , but does not include:
1. cable television services;
 2. private telecommunications network services;
 3. over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto;
 4. direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act of 1996;
 5. services provided solely for the purpose of providing internet service to the consumer;
 6. public safety radio systems;

**TITLE 7
BUSINESS LICENSES**

- 7. mobile service within the meaning of 47 U.S.C. § 153(33) (2012) and
 - 8. services to devices exclusively utilizing electromagnetic spectrum unlicensed by the Federal Communications Commission.
- I.** “Utility” means the business of supplying electrical energy, gas, district heating or cooling, water, sewage disposal and treatment, cable, telecommunications, or other services through or associated with telephone or coaxial cable, and other operations for public service but does not include transportation service, railroad operations, or services otherwise licensed under this Title.

7.14.050 Application and Issuance.

- A.** Any person, including any bureaus of the City, operating a utility coming within the provisions of the Utility License Law shall file an application for a utility license on forms supplied by the Bureau.
- B.** A person is not required to apply for or obtain a utility license if all its revenues earned from operations as a utility otherwise meet the criteria for deduction under Section 7.14.070. The Director may exercise the authority under Section 7.14.080 to require reports and review records to determine whether revenues are qualified for deduction under Section 7.14.070.
- C.** Applications for utility licenses shall be filed with the Bureau on or before December 31 for each subsequent calendar year. In the case of any person operating a utility coming within the provisions of the Utility License Law which commences operations within the City after January 15, 2009, the person operating such utility shall apply for a utility license on or before the date of commencing such operations. The application shall include such information as the Director may require in order to determine whether the utility has paid the license fee owed.
- D.** Upon receiving a completed application, together with any payment due, the Director shall issue a utility license to the applicant. A utility license shall be valid for no longer than one year. Each utility license shall expire on December 31 of the year of issuance.
- E.** The Director shall prepare application forms and make them publicly available. Failure to receive or secure a form shall not relieve any person from the obligation to obtain a license and pay a license fee under the Utility License Law.

**TITLE 7
BUSINESS LICENSES**

7.14.060 Fees and Payment.

(Amended by Ordinance No. 185756, effective January 1, 2013.)

- A.** Except as provided in Sections 7.14.065 and 7.14.070, the fee for a utility license shall be measured by a percentage of the gross revenues earned by the utility for each quarter year period of licensed operation. The percentage for each type of utility shall be as follows:

| | |
|-------------------------------------|-------------|
| Electrical Utility | 5.0 percent |
| Gas Utility | 5.0 percent |
| Sewer Utility | 7.5 percent |
| District Heating or Cooling Utility | 5.0 percent |
| Water Utility | 7.5 percent |
| Telecommunications Utility | 5.0 percent |
| Cable Communications Utility | 5.0 percent |

The licensee shall compute the license fee by multiplying the percentage applicable to the type of operation in which such utility engages, by the gross revenues received during the quarter.

- B.** The licensee shall pay the utility license fee to the Bureau on the following basis: on or before May 15 the fee for the period extending from January 1 through March 31, inclusive, of the same calendar year; on or before August 15 the fee for the period extending from April 1 through June 30, inclusive, of the same calendar year; on or before November 15 the fee for the period extending from July 1 through September 30, inclusive, of the same calendar year; on or before February 15 the fee for the period extending from October 1 through December 31, inclusive, of the preceding calendar year. All such payments shall be subject to the deductions set forth in Section 7.14.070.
- C.** A licensee commencing operations as provided in Subsection 7.14.050 C. shall make the initial payment to the Bureau on or before the payment date following the first quarter year period after commencing operations. In the event a licensee terminates operations which come within the provisions of the Utility License Law, the final payment shall be made on or before the 45th day following the date of such termination.

7.14.065 Limitations.

In any single year, the license fees paid by City of Portland water and sewer utilities shall not exceed \$12,809,321 from the City's sewer utilities, and \$4,184,153 from the City water utility until those fee payments equal 5 percent of gross revenues at which point they will increase to equal 5 percent of gross revenues those fees. The directors of the Bureau of Environmental Services and Portland Water Bureau are authorized to adopt administrative rules establishing mechanisms to implement this limitation.

7.14.070 Deductions.

- A.** A licensee may deduct from the utility license fee required in the Utility License Law the amount of any payments made or accrued to the City for the period upon which the utility license fee is computed, under any provision of franchise, permit, or ordinance in lieu of franchise granted by the City Council. A licensee may not deduct amounts paid to the City for interest charges or penalties. This Subsection shall not relieve any licensee from paying in accordance with the provisions of a franchise, temporary revocable permit, Charter provision or ordinance when the amount to be paid thereunder exceeds the amount of the utility license fee required under the Utility License Law.
- B.** A licensee may not deduct from the utility license fee the value of any right given to City to use poles, conduits, or ducts to other facilities in common with the licensee. A licensee may not deduct from the utility license fee any permit or inspection fee imposed under any Code provision or ordinance of the City.

7.14.080 Reports and Review of Records.

- A.** Each person paying a utility license fee shall simultaneously file a report to the Bureau in a form satisfactory to the Director. The report shall show the licensee's calculations of the license fee, the licensee's gross revenues earned within the corporate limits of the City, and any deductions against the licensee's gross revenues or the amount of the utility license fee. Such reports shall be verified by the licensee or an authorized agent to the effect that all statements made therein are true.
- B.** If a person asserts that any provision of federal, state or local law imposes a limit upon the amount of utility license fees which the City may impose or require from a licensee, the licensee claiming to be within such limitation shall identify in its utility license fee report the specific federal, state or local law, and the service it provides that it claims is subject to the exception.
- C.** Every person required to be licensed under the Utility License Law shall keep and preserve for not less than three (3) years such documents and records, including state and federal income or excise tax returns, accurately supporting the information required to be reported on the licensee's application and calculation of utility license fee for each license year.
- D.** The Director shall have authority to arrange for and conduct reviews of all financial records relevant to the calculation of a licensee's payments to the City under the Utility License Law. The Director shall make all requests for review in writing. The Director may determine the scope of review in each instance.

**TITLE 7
BUSINESS LICENSES**

1. The Director may examine any books, papers, records, invoices, and other data needed to determine the accuracy of any license fee due. Such records and documentation shall be open for inspection or examination by the Director or a duly authorized agent. The Director shall have the authority, after notice, to:
 - a. Require the attendance of any person required to be licensed under the Utility License Law, or officers, agents, or other persons with knowledge of the person's business operations, at any reasonable time and place the Director may designate;
 - b. Take testimony, with or without the power to administer oaths to any person required to be in attendance. The Director may designate employees who shall have the power to administer oaths. Such employees shall be notaries public of the State of Oregon; and,
 - c. Require proof for the information sought, necessary to carry out the provisions of the Utility License Law.
2. If a licensee has not provided copies of all information reasonably within the scope of the review to the Director within 30 days from the date of the written request, the licensee shall provide the Director with access to the requested records within the Portland metropolitan region, during normal business hours, upon 48 hours prior written notice.
3. If the Director requests in writing that the licensee provide, or cause to be provided, copies of any information reasonably within the scope of the review, and the licensee fails, refuses or neglects to provide copies within 30 days of receipt of the Director's written request, then the three (3) year periods under Subsections 7.14.080 C. and 7.14.120 A. shall be extended by one day for each day or part thereof beyond 30 days that the licensee fails to provide, or fails to cause to be provided, such requested information.
4. If any licensee fails, refuses or neglects to provide or make records available to the Director for determining the amount of utility license fees due or payable, the Director may determine the amount of the utility license fees due or payable based upon readily-available facts and information. The Director shall notify the licensee in writing of the amount of such fee so determined, together with any penalty or interest due. The total of such amounts shall thereupon become immediately due and payable. The licensee may seek to establish the correct amount by

appeal to the Code Hearings Officer under Section 7.14.090. In such an appeal, the licensee shall have the burden of establishing that the Director's determination is incorrect, either in whole or in part.

7.14.085 Refunds by City to Licensee.

Whenever the amount of any utility license fee, penalty, or interest has been erroneously collected or paid to the Bureau under the Utility License Law, it may be refunded, provided the licensee files with the Bureau a verified claim in writing therefor, stating the specific reason upon which the claim is founded, within 3 years from the date of payment. The claim shall be made on forms provided by the Bureau. If the claim is approved by the Bureau, the excess amount collected or paid may be credited against any amounts due and payable under the Utility License Law from the licensee from whom the overpayment was collected or by whom it was paid, until the licensee is repaid.

7.14.090 Appeals.

- A.** Any person who has received a written determination from the Director applying the provisions of the Utility License Law may appeal such determination of the Director to the Code Hearings Officer of the City as provided in Chapter 22.10 of this Code.
- B.** The filing of any notice of appeal shall not stay the effectiveness of the Director's determination unless the Code Hearings Officer so directs.

7.14.100 Interest.

- A.** If a person fails to pay to the City all or any part of the utility license fee on or before the date on which the fee is due, interest shall be due on the entire unpaid amount, assessed at the rate of .833 percent simple interest per month or fraction thereof (10 percent per annum), computed from the original due date of the fee to the 15th day of the month following the date of payment. Payment of interest charges shall be due at the same time as the unpaid utility license fee is due.
- B.** For purposes of calculating interest under Subsection 7.14.100 A., the amount of the utility license fee due shall be reduced by the amount of any fee payments received by the Bureau on or before the due dates for fee payment established in the Utility License Law.
- C.** Interest amounts properly assessed in accordance with this Section may not be waived or reduced by the Director.

**TITLE 7
BUSINESS LICENSES**

7.14.110 Civil Penalties.

- A.** The Director may assess civil penalties for any of the following violations of the Utility License Law:
1. Any failure to file a license application at the time required under the Utility License Law;
 2. Any failure to pay the utility license fee when due;
 3. Any failure to file a utility license fee report when due;
 4. Any failure to provide or make available all books, financial records, papers, invoices, documents, data and related information when required by the Director; or,
 5. For any person to make any false statement on any license application or utility license fee report or to provide false information in any investigation or audit conducted pursuant to the Utility License Law.
- B.** The Director may assess civil penalties for any violation under Subsection 7.14.110 A. of up to two percent (2%) of the utility's gross revenues subject to the Utility License Law for the period during which the violation occurred.
- C.** In assessing civil penalties under this Section, the Director shall produce a written decision, identifying the violation, the amount of the penalty, and the basis for the decision. In making such determination, the Director shall consider the following criteria:
1. The extent and nature of the violation;
 2. Any benefits to the licensee and any impacts to the City or the general public, financial or otherwise, resulting from the violation;
 3. Whether the violation was repeated and continuous, or isolated and temporary;
 4. Whether the violation appeared willful (characterized primarily by substantial acts of commission) or negligent (characterized primarily by substantial acts of omission);
 5. The magnitude and seriousness of the violation;

- 6. The City's costs of investigating the violation and correcting or attempting to correct the violation; and,
 - 7. Any other factors the Director deems relevant in the particular case.
- D.** The Director may waive or reduce any civil penalty for good cause, according to and consistent with written policies.

7.14.120 Collection of Delinquencies.

- A.** Upon written approval of the Commissioner in Charge, the Director may have the City Attorney institute legal proceedings in the name of the City to collect any utility license fee or any amount of fee, interest or civil penalties. Any collection action must be filed within three years after the amount required to be collected becomes due and payable to the City, or within three years after any written determination by the Director becomes final, that is otherwise subject to appeal under Section 7.14.090.
- B.** In addition to other enforcement authority, upon written approval of the Commissioner in Charge, the Director may have the City Attorney institute legal proceedings to enforce the Utility License Law or any determinations made by the Director under the Utility License Law.

7.14.130 Confidential Financial Information.

Except as otherwise required by law, the Bureau, the Auditor, or any officer, employee, or agent of the City, shall not divulge, release, or make known in any manner any financial information submitted or disclosed to the Bureau under the Utility License Law. Nothing in this section shall be construed to prohibit:

- A.** The disclosure to, or the examination of, financial records by City officials, employees or agents for the purpose of administering or enforcing the terms of the Utility License Law, or collecting utility license fees imposed under the terms of the Utility License Law, or collecting City business license fees;
- B.** The disclosure to the utility licensee or its authorized representative of its financial information, including amounts of utility license fees, penalties, or interest, after filing of a written request by the utility licensee or its authorized representative and approval of the request by the Director;
- C.** The disclosure of the names and addresses of any persons to whom utility licenses have been issued;

**TITLE 7
BUSINESS LICENSES**

- D.** The disclosure of general statistics in a form which would prevent the identification of financial information regarding any particular utility licensee quarterly reports;
- E.** The disclosure of financial information to the City Attorney or other legal representatives of the City, to the extent the Director deems disclosure or access necessary for the performance of the duties of advising or representing the Bureau; or,
- F.** The release of such information in the filing of any legal action by or on behalf of the Bureau to obtain payment on unpaid license fees, interest and penalties, or to enforce any determination by the Director.

Chapter 7.16

CHARITABLE SOLICITATIONS

(Repealed by Ordinance
No. 157640, effective
July 25, 1985.)

Chapter 7.18

**LIQUOR LICENSE
RECOMMENDATIONS**

(Repealed by Ordinance No. 174900,
effective September 13, 2000.)

Chapter 7.22

**STREET AND SIDEWALK
USE PERMITS**

(New Chapter added by Ordinance No.
176022, effective November 16, 2001.)

Sections:

- 7.22.010 Purpose.
- 7.22.020 Authorization.
- 7.22.030 Permit Required.
- 7.22.040 Revocation of Permit.
- 7.22.050 Permit Subject to Ordinances and Regulations.
- 7.22.060 Diversion of Traffic.
- 7.22.070 Interference Prohibited.

7.22.010 Purpose.

The purpose of this Chapter is to regulate walks, marches, parades, athletic events or other processions in streets or on sidewalks held by sponsors that require use of City resources. This Chapter and the administrative regulations that implement it are necessary to maximize the safety of participants and others and to minimize inconvenience to the general public and disruption of public services while providing the public with the opportunity to exercise constitutionally protected rights of assembly and expression.

7.22.020 Authorization.

- A.** The Street and Sidewalk Use Coordinator of the Bureau of Licenses is authorized to issue street and sidewalk use permits.
- B.** Adoption of Administrative Regulations. The Director of the Bureau of Licenses is authorized to adopt or amend administrative regulations pertaining to use of sidewalks and streets. All administrative regulations shall be in writing.
 - 1.** Prior to the adoption of any administrative regulations the Director of the Bureau of Licenses shall submit the proposed administrative regulations to the Street and Sidewalk Use Review Committee. After consultation with the Street and Sidewalk Use Review Committee, the Director of the Bureau of Licenses shall publish a notice regarding the proposed administrative regulations, and shall make them available for public review and written comments.

**TITLE 7
BUSINESS LICENSES**

2. No sooner than thirty days from the publication of the notice, the Director of the Bureau of Licenses may adopt the proposed administrative regulations. All administrative regulations adopted by the Bureau Director shall be filed in the office of the Bureau of Licenses. Copies of all current administrative regulations shall be made available to the public upon request.
3. Notwithstanding subsections 1. and 2. of this section, the Director of the Bureau of Licenses may adopt interim administrative regulations without prior public notice upon the Director's finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties, including the specific reasons for prejudice. Any administrative regulation adopted pursuant to this subsection shall be effective for a period of not longer than 180 days.

7.22.030 Permit Required.

A permit issued by the Street and Sidewalk Use Coordinator is required for use of streets or sidewalks for the purposes of, and as provided in, this Chapter and the Street and Sidewalk Use Administrative Regulations.

7.22.040 Revocation of a Permit.

A street or sidewalk use permit may be revoked or modified by the Street and Sidewalk Use Coordinator, or the police supervisor assigned to the street or sidewalk use permit, if the sponsor fails to comply with any of the requirements of this Chapter, of the Street and Sidewalk Use Administrative Regulations, or the conditions set forth in the application or permit. If a street and sidewalk use permit is subject to revocation pursuant to this section, on the day of the street and sidewalk use to which the permit pertains, the Street and Sidewalk Use Coordinator or the police supervisor assigned to the street and sidewalk use permit shall attempt to contact or notify the sponsor, the organizer or the day of use coordinator, if any, as provided on the permit application, and attempt to resolve any problems before revoking the permit. If resolution is not possible the permit may be revoked.

7.22.050 Permit Subject to Ordinances and Regulations.

The sponsor and participants shall comply with all applicable federal, state, and local laws and regulations in connection with their use of streets or sidewalks.

7.22.060 Diversion of Traffic.

Whenever any street or sidewalk use is in progress, the Bureau of Police shall have the authority to clear the streets or other public places and prohibit motor vehicles, buses, light rail, bicycles, and pedestrians from crossing, parking, stopping, and standing on the streets.

7.22.070 Interference Prohibited.

It is unlawful for any person to interfere with street or sidewalk use permitted under this Chapter. The following acts, among others, are prohibited by this section, when done with the intent to cause interference:

- A.** Blocking, obstructing, or impeding the passage of participants, vehicles, or animals along the route.
- B.** Walking, running, driving a vehicle, riding a bicycle or skateboard through, between, with, or among participants, vehicles, or animals.
- C.** Dropping, throwing, rolling, or flying any object toward, among, or between participants, vehicles, or animals.
- D.** Throwing, squirting, dumping, or dropping any liquid, solid or gaseous substance on, toward, among, or between participants, vehicles, or animals.
- E.** Grabbing at, taking hold of, hitting, pulling, or pushing any participant, vehicle, or animal or anything in the possession of any participant.
- F.** Vending or offering for sale any food or merchandise during the hours and on the route of a street and sidewalk use permit without first having obtained the written permission of the sponsor, in addition to any permits and/or licenses otherwise required for such activity.

**TITLE 7
BUSINESS LICENSES**

Chapter 7.24

PRIVATE PROPERTY IMPOUND TOWING

(Chapter replaced by Ordinance No. 185835,
effective January 18, 2013.)

Sections:

- 7.24.010 Towing of Vehicles from Private Property.
- 7.24.020 Administrative Authority.
- 7.24.030 Definitions.
- 7.24.040 Private Property Impound (PPI) Tower Registration.
- 7.24.050 Towing Regulations.
- 7.24.060 Towing and Storage Rates.
- 7.24.070 Conditions.
- 7.24.080 Prohibitions.
- 7.24.090 Remedies.
- 7.24.100 Appeals.

7.24.010 Towing of Vehicles from Private Property.

- A. Short Title.** Sections 7.24.010 through 7.24.100 will be known as the PPI (Private Property Impound) Code.
- B. Purpose.** The purpose of the PPI Code is to require that towing from private parking facilities be performed safely and at a reasonable price. Because towing from private parking facilities affects city residents and visitors, regulation is necessary to ensure that the public safety and convenience are protected.
- C. Conformity to State Laws.** The PPI Code should be construed in conformity with the laws and regulations of the State of Oregon Motor Vehicle Code regarding towing from private property. The Director shall have authority to adopt administrative rules in accordance with the State of Oregon Motor Vehicle Code.
- D. Savings Clause.** If any provision of the PPI Code is found by a court of competent jurisdiction to be invalid, illegal or unenforceable, such holding shall not affect the validity, legality and enforceability of any other provision of the PPI Code.

7.24.020 Administrative Authority.

- A.** The Director is authorized and directed to enforce all provisions of the PPI Code. The Director shall have the power to investigate any and all complaints regarding alleged violations of the PPI Code. The Director may delegate any or all authority granted under this Section to the Towing Coordinator or any Revenue Bureau officer, employee or agent.
- B.** The Director is authorized to adopt and enforce administrative rules interpreting and applying the PPI Code. The Director or designee shall make written findings of fact and conclusions of law to support all decisions.
- C.** Prior to the adoption of a new administrative rule, the Director shall give notice to all interested parties of the terms of the proposed rule, and shall conduct a public hearing to consider public comment. Public notice shall be given when administrative rules have been adopted.

 - 1.** At the public hearing, the Director or designee shall hear oral and written testimony concerning the proposed rule. The Director shall have the power to establish and limit the matters to be considered at the hearing, to establish procedures for the conduct of the hearings, to hear evidence, and to preserve order.
 - 2.** The Director shall adopt, modify or reject the proposed rule after considering testimony received during the public hearing.
 - 3.** Unless otherwise stated, all rules are effective upon adoption by the Director. All rules adopted by the Director will be filed in the Revenue Bureau and the Office of the City Auditor in compliance with Section 1.07.030. Copies of all current rules are available to the public upon request.
 - 4.** Notwithstanding Subsections 7.24.020 C. 1. and 2., the Director may adopt an interim rule without prior public notice upon a finding that failure to act promptly may result in serious prejudice to the public interest or the interest of the affected parties. Such interim rules will detail the specific reasons for such prejudice. Any interim rule adopted pursuant to this paragraph will be effective for a period not to exceed 180 days.
- D.** Rates. The Director is authorized to establish a schedule of maximum rates permissible for all PPI tows from properties located within the city limits of Portland. The jurisdiction of this code section may be expanded by intergovernmental agreement with other agencies.

**TITLE 7
BUSINESS LICENSES**

- E. Inspection of Records. The City of Portland reserves the right to review and/or copy the records of any PPI tow for purposes of auditing or complaint resolution. Such records will be made available for inspection during normal business hours within 24 hours of written notice by the Director.

7.24.030 Definitions.

For the purposes of the PPI Code and administrative rules adopted by the Director pursuant to the PPI Code, certain terms, phrases, words, abbreviations and their derivations are construed as specified in this Section. Words used in the singular include the plural and the plural the singular. Terms, phrases, words, abbreviations and their derivatives used, but not specifically defined in this Section, either have the meanings defined in the State of Oregon Motor Vehicle Code, or if not therein defined, have the meanings commonly accepted in the community.

- A. **"Director"** means the Director of the Revenue Bureau.
- B. **"Dispatching facilities"** means the PPI tower's facilities used for communication with Tow Desk and maintaining radio contact with tow vehicles.
- C. **"Oversized tow vehicle"** means a tow truck equipped to perform towing of automobiles or other vehicles, and which has a maximum gross vehicle weight rating (GVWR) of over 10,000 pounds. Vehicles with maximum GVWR of at least 19,000 pounds are designated as "Class B." Vehicles with maximum GVWR of at least 44,000 pounds are designated as "Class C."
- D. **"Owners agent"** means a person bearing documentation from the registered owner officially authorizing them to possess or operate the vehicle.
- E. **"PPI permit"** means the permit issued to a private towing company signifying that the permit holder has met the requirements of this Chapter and the administrative rules and is allowed to tow vehicles from private property within the City of Portland at the request of the private property facility owner/operator without prior consent of the vehicle owner.
- F. **"PPI Police tow"** means any PPI tow that, upon notification to the local police agency, is found to have been reported stolen, or for any other reason becomes a police tow as defined in the Contract for Vehicle Towing and Storage of the City of Portland, or requires a police release.
- G. **"PPI tower"** means any towing firm duly registered and permitted to perform Private Property Impound tows within the City of Portland.

**TITLE 7
BUSINESS LICENSES**

- H. "Private parking facility"** means any property used for motor vehicle parking at which the property owner or manager restricts or reserves parking. Private parking facility does not include "proscribed property."
- I. "Private parking facility owner"** means the owner, operator, lessee, manager or person in lawful possession of a private parking facility, or any designated agent of the private parking facility owner authorized to enter into a PPI towing agreement with the tower.
- J. "Private Property Impound" (PPI)** means the impoundment of a vehicle from a private parking facility at the request of the property owner, operator, lessee, manager or person in lawful possession of the private property facility, without the prior consent of the vehicle's registered owner.
- K. "Proscribed property"** means any part of private property:
1. Where a reasonable person would conclude that parking is not normally permitted at all or where land use regulation prohibits parking; or,
 2. That is used primarily for parking at a dwelling unit. As used in this paragraph, "dwelling unit" means a single-family residential dwelling, or a duplex, or
 3. Designated as railroad right-of-way.
- L. "Release at Scene" (RAS)** means the fee allowed to be charged when a vehicle owner/owner's agent returns before the PPI tower has departed in tow. Not applicable until the hookup is complete and tow truck is in motion.
- M. "Storage facility"** means a secure area, meeting all requirements of PPI administrative rules, used by PPI tower for storing towed vehicles.
- N. "Storing"** means holding a towed vehicle in an approved secure storage facility until it is redeemed by the registered owner/owner's agent or until a possessory lien is foreclosed.
- O. "Tow Desk"** means the private tow dispatching company contracted with the City of Portland for municipal tow dispatching and data management or any government agency serving this function.
- P. "Towing"** means to draw or pull along a vehicle by means of a tow truck or car carrier.

**TITLE 7
BUSINESS LICENSES**

- Q.** **"Towing Agreement"** means an agreement between a PPI tower and a private property owner/operator authorizing the PPI tower to tow vehicles from their private property. Such agreement must contain all information specified in PPI administrative rules.
- R.** **"Towing Coordinator"** means the person designated by the Director to provide direct enforcement and administration of all provisions of this Section and PPI administrative rules.
- S.** **"Towing firm"** or **"PPI Tower"** means any entity whose business includes the towing of motor vehicles from private parking facilities and the subsequent storage of such towed vehicles.
- T.** **"Tow vehicle"** means a tow truck equipped as specified in PPI administrative rules to perform towing of automobiles, motorcycles, or other motor vehicles, and which has a minimum Gross Vehicle Weight Rating (GVWR) of 10,000 lbs.
- U.** **"Vehicle owner"** means the person registered with the Department of Motor Vehicles as the owner of the vehicle, or a person in lawful possession of the vehicle.

7.24.040 Private Property Impound (PPI) Tower Registration.

- A.** Initial registration. No PPI tower will tow or store vehicles towed from private parking facilities located inside the City of Portland unless the PPI tower has registered with the Revenue Bureau, and complied with all provisions of the PPI Code.
 - 1.** Pay and Park and Non-Pay Private Parking facilities. All towing from any property registered as a Pay and Park or Non-Pay facility, must meet the conditions for towing established in Chapter 7.25 Pay and Park and Non-Pay Private Parking Facilities, at all times.
 - 2.** If all conditions specified by Chapter 7.25 for towing from a Pay and Park facility have been met, performance of the subsequent tow is subject to requirements of this PPI Code with regard to PPI permits, fees established by the Director and notices to Tow Desk, including initiation of the tow, completion of the tow and release of towed vehicles.
- B.** Applications. The PPI tower will submit to the Director an application form containing all information specified in PPI administrative rules.
 - 1.** Except for single family or duplex dwellings, PPI towers must register for approval all properties that they wish to designate as "proscribed" in order

**TITLE 7
BUSINESS LICENSES**

to exempt them from this Code. The City will provide a form for registration of “proscribed” properties.

2. A determination will be made within 3 business days of receipt of registration of a proscribed property.
- C. After December 31, 2012, only those towing companies with a vehicle release office and vehicle storage facility located within the city limits of Portland are eligible to obtain a Portland PPI permit. Such office and storage facility must be staffed during regular business hours and comply with all City PPI standards.
 - D. Reporting Changes. Changes in information contained in the PPI tower's application, including office and/or storage locations, insurance provider, employees or additional trucks will be filed with the Director within 3 business days of implementation of such changes.
 - E. Inspection. The PPI tower's towing equipment, dispatching and storage facilities will be inspected prior to issuance of a new PPI permit. If an applicant is currently in good standing as a Tow Contractor with the City of Portland and the storage facility and tow vehicles to be inspected are currently approved for use under the City Tow Contract, the qualifying PPI inspection may be waived by the Director.
 - F. Registration/expiration dates. PPI permits are valid for no more than 1 year, and expire annually on December 31st.
 - G. Renewal. Renewal notices will be sent to all registered PPI towers not less than one month prior to the annual expiration date. A renewal form requesting any changes in the registered information will be provided. Re-inspections are not required for renewal. Any permit not renewed within 30 days after the expiration date is invalid and a new application must be submitted and approved before PPI towing resumes.
 - H. Non-assignability. A registration issued or renewed pursuant to the provisions of this Section is not assignable or otherwise transferable.
 - I. Indemnification and Insurance. PPI towers subject to the PPI Code agree to hold harmless, defend and indemnify the City of Portland, and its officers, agents and employees for all claims, demands, actions and suits, including all attorney fees and costs, for damage to property or injury to person arising from any activities, work and/or services furnished or carried on under the terms of a PPI permit.
 1. PPI tower will maintain such public liability and property damage insurance as will protect the PPI tower from all claims for damage to property or personal injury, including death, which may arise from

TITLE 7
BUSINESS LICENSES

operations pursuant to the PPI Code. Such insurance must include a single limit liability policy with coverage of not less than \$1,000,000. PPI tower will also maintain fire and theft insurance (garage keepers insurance) to protect stored vehicles in a minimum amount of \$100,000 and maintain cargo insurance in the minimum amount of \$50,000.

2. PPI tower will maintain insurance in the limits provided by this Section to cover liability for transportation required by Subsection 7.24.070 H. In no case shall the policy deductible for garage keepers and cargo insurance exceed \$2,500 per event.
3. The limits of the insurance shall be subject to statutory changes to maximum limits of liability imposed on municipalities of the State of Oregon during the term of the permit. The insurance must be without prejudice to coverage otherwise existing.
4. The insurance shall name as additional insureds the City and its officers, agents and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts which the insurer would have been liable if only one person or interest had been named as insured. The coverage shall apply as to claims between insureds on the policy.
5. The insurance shall provide that the insurance shall not terminate or be canceled without thirty days written notice first being given to the Towing Coordinator.
6. The adequacy of the insurance shall be subject to the approval of the City Attorney.
7. Failure to maintain liability insurance shall be cause for immediate revocation of the registration by the Director.

7.24.050 Towing Regulations.

A PPI tower may lawfully tow a vehicle without the registered owner's permission from private property in the City of Portland only if:

- A. The PPI tower has express written authorization from the private parking facility owner, or person in lawful possession of the property, in compliance with Chapters 98.812, 98.830 and 98.854 of the Oregon Revised Statutes; and,

- B.** The private parking facility fully complies with this Chapter and the PPI administrative rules; and,
- C.** The vehicle is towed directly to the PPI tower's storage facility within the Portland city limits; and,
- D.** The vehicle is not occupied by any person or persons.

7.24.060 Towing and Storage Rates.

- A.** The Director will issue a schedule of approved maximum fees for PPI towing and storage at the beginning of each permit period. Such schedule will be published annually and supplied to all applicants with the application materials for new permits and renewals. PPI towers may submit a request for an increase in the approved maximum fees not later than two months before the end of any permit period. The Director will consider such requests and decide whether such an increase is in the public interest. If changes are made, a public hearing will be held for the purpose of determining fair and reasonable prices prior to making any changes in the PPI rate schedule.
- B.** PPI towers may charge less than the maximum rates allowed. However, PPI towers may not waive the data service fee or City PPI service fee without authorization by the Towing Coordinator.

7.24.070 Conditions.

PPI towers registered under this Section will:

- A.** Perform all PPI tows in a safe manner, taking care not to cause damage to the person or property of others while towing or storing a vehicle; and,
- B.** Practice courtesy and professionalism when dealing with police, Tow Desk, agency personnel, and persons redeeming or seeking to redeem a towed vehicle; and,
- C.** Cooperate fully with any police agency to facilitate processing of any PPI towed vehicle identified as a possible stolen vehicle; and,
- D.** Issue to the person redeeming a PPI towed vehicle a clearly legible receipt complete with all required information and with all fees and considerations itemized; and,
- E.** Prominently display at the vehicle release location a placard, provided by the City of Portland, containing the current list of approved PPI rates; and,

**TITLE 7
BUSINESS LICENSES**

- F.** Prominently display at the vehicle release location a placard, provided by the City of Portland, containing a statement of the rights of the vehicle owner; and,
- G.** Be considered in possession of any vehicle towed under this Section, and therefore entitled to charge a Release at the Scene fee, when the hookup is complete and the tow truck has begun towing the motor vehicle by engaging the tow truck's transmission and moving forward. Until these conditions are met, the PPI tower is not entitled to charge any fee; and,
- H.** Offer to call for or provide transportation to the vehicle owner/operator at a reasonable cost, from within the immediate vicinity of the tow scene to the location of the towed vehicle storage; and,
- I.** Photograph vehicle to be towed and signs posted prior to hookup in order to demonstrate compliance with all PPI regulations and illustrate conditions, such as absence of a parking permit, warranting the tow; and,
- J.** Have staff or dispatch service available at all times to provide information about the location of a towed vehicle and/or instructions for release of a towed vehicle; and
- K.** Staff the storage facility with an attendant between 10 a.m. and 6 p.m., Monday through Friday, excluding official City holidays, and at all other hours have personnel available at the storage facility to release a vehicle within 30 minutes after an appointment time agreed on by the vehicle owner. Gate fees are not applicable between 8 a.m. and 10 a.m., Monday through Friday; and
- L.** Accept at least the following methods of payment for any fees assessed:
 - 1.** Cash. Adequate cash must be available at all times at the storage facility for the purpose of making change. After hours and on holidays, PPI tower will provide exact change, in person or by mail, not later than the end of the business day following receipt of payment; and,
 - 2.** By any valid credit card or debit card bearing the VISA emblem and issued in the name of the registered owner/owner's agent. PPI tower may also accept credit or debit cards from other issuers.
 - 3.** If for any reason, a PPI tower becomes unable to process payments by credit or debit card, the tower must notify the Towing Coordinator within 24 hours and provide an estimate of when service will resume. During any period when the PPI tower is unable to process credit or debit card payments, the PPI tower must accept personal checks; and,

**TITLE 7
BUSINESS LICENSES**

- M.** At no extra charge, make the vehicle available to the owner/owner's agent for retrieval within 30 minutes of the time of payment, or other time mutually agreed upon; and,
- N.** Notify Portland Police of the intent to tow by a telephone call by the tow driver to the Tow Desk prior to attaching any equipment to a vehicle at a private parking facility; and,
- O.** Notify Portland Police of the location of the vehicle by facsimile transmission to the Tow Desk within one hour after the vehicle is placed in storage; and,
- P.** Provide to Tow Desk all information required for completion of the tow record by facsimile transmission within 60 minutes after the vehicle is placed in storage; and,
- Q.** Notify the local police agency of the release of a vehicle to the registered owner/owner's agent, acceptance of a vehicle title in lieu of payment, or foreclosure of a possessory lien by facsimile transmission to the Tow Desk within 8 hours after the release; and,
- R.** Review the daily Tow Desk report of PPI tows and releases, and report errors to Tow Desk or the Towing Coordinator within 24 hours of discovery; and,
- S.** Provide verification, or additional information, about a towed vehicle as requested by a police agency within 30 minutes of receiving the request; and,
- T.** Pay a data service fee, in an amount established by the Director, for each vehicle released to the registered owner or owner's agent. Such data service fees are payable to the Tow Desk by the 20th day of each month; and,
- U.** Pay a service fee, in an amount established by the Director, for each vehicle released to the registered owner or owner's agent. Such service fees are payable to the City of Portland by the 20th day of each month; and,
- V.** Accept as proof of ownership vehicle title or registration in addition to valid photo-identification of the person seeking the release. If the registered owner is not available to redeem the towed vehicle, the PPI tower will assist the owner's agent in finding an acceptable alternate proof of ownership, as detailed in PPI administrative rules; and,
- W.** Exercise reasonable care for the welfare of any animal found to be in a PPI towed vehicle, as detailed in PPI administrative rules.

TITLE 7
BUSINESS LICENSES

7.24.080 Prohibitions.

PPI towers will not:

- A.** Perform any PPI tows within the city limits of Portland, or from City-owned/operated property, unless the tower is registered with the City of Portland and in compliance with all provisions of this Chapter and administrative rules.
- B.** Charge any fee not listed in, or in excess of, those included in the fee schedule established by the Director.
- C.** Require any vehicle owner/owner's agent to make any statement or sign any document promising not to dispute validity of the tow or fees assessed or relieving the PPI tower from responsibility for the condition of the vehicle or its contents.
- D.** Require any vehicle owner/owner's agent to pay any fee, except a gate fee if after hours, as a condition of allowing them to inspect their vehicle or remove an animal or personal belongings of an emergency nature, within 15 days of the tow.
- E.** Solicit PPI towing business by means of payment of a gratuity, commission or any other consideration, except as provided in this PPI Code, to the private property owner, operator, manager or employee. This violation may result in revocation of the tower's PPI permit, at the Director's discretion.
- F.** Remove a vehicle from a private parking facility unless the hookup has been completed and all safety equipment has been attached.
- G.** Use predatory practices, as defined in PPI administrative rules, to secure PPI tows.
- H.** Release a vehicle designated as a PPI Police tow without a release or other authorization from the appropriate police agency.
- I.** Assess or collect a penalty or surcharge fee, in lieu of towing, unless the parking lot is registered as a pay and park facility in compliance with Chapter 7.25 "Pay and Park and Non-Pay Private Parking Facilities."
- J.** Make any false statements of material fact, misrepresent information in any document or omit disclosure of material fact in performance of activities regulated by this Code.
- K.** Pursuant to ORS 90.485, PPI towers shall not remove a legally parked vehicle because the vehicle's registration has expired or is otherwise invalid.

**TITLE 7
BUSINESS LICENSES**

- L.** Property owners or operators are prohibited from knowingly allowing an unpermitted PPI tower to impound vehicles from any property within the Portland city limits.
- M.** Property owners or operators may not require, solicit or accept payment from any PPI tower, nor from any person acting on behalf of a PPI tower, in exchange for authorization to tow from a property.
- N.** Pursuant to ORS 87.186, possessory liens by PPI towers may be foreclosed only by public auction held within the county in which the vehicle was towed.
- O.** No person shall attach a mechanical boot or any other immobilization device to any vehicle parked on private property or public right-of-way without consent of the vehicle owner.

7.24.090 Remedies.

Failure to comply with any part of the PPI Code or the administrative rules may be punishable by any or all of the following:

- A.** Suspension. The Director or designee may suspend a PPI tower's permit if investigation reveals any substantial violation of the PPI Code or the PPI administrative rules. A substantial violation is a violation having an impact on the public that informal compliance methods have failed to resolve. Suspension may be for a period of up to 14 calendar days. The suspension will be effective from the date of written notice of a suspension. If the violation is not corrected within the 14 day period, the Director may revoke the permit.
- B.** Revocation. The Director may revoke a permit for any substantial violation of the PPI Code or the administrative rules. A substantial violation is a violation having an impact on the public that informal compliance methods fail to resolve. The revocation will be effective immediately upon issuance of written notice by the City of Portland to the PPI tower. No new application will be accepted from any PPI tower with outstanding penalties or who has been revoked within the current term for the remainder of the current permit period. Prior revocation may be grounds for denial of a permit application.
- C.** A private property owner or operator in the City of Portland is subject to civil penalties up to \$700 per tow from their property for violations including, but not limited to:
 - 1.** Knowingly authorizing non-compliant PPI towing to be performed on property they own or operate;

TITLE 7
BUSINESS LICENSES

2. Requiring, soliciting or accepting payment from any PPI tower, or from any person acting on behalf of a PPI tower, in exchange for authorization to tow from a property.
- D.** Civil penalty. The Director may impose a civil penalty of up to \$1,000 for any substantial violation of the PPI Code or the administrative rules, including:
1. Towing any vehicle from private property inside the City of Portland or from City owned or operated property without a PPI permit.
 2. Towing from a property without authorization in the form of a current agreement or owner/operator's signature on the tow invoice.
 3. Late payment of data service fees to Tow Desk. The penalty will be \$100 for each incident.
 4. Late payment of service fees to the City of Portland. The penalty will be \$100 for each incident.
 5. Failure to initiate a tow, as required by administrative rule. The penalty will be refund of all fees assessed to the citizen, plus \$300 penalty for each incident.
 6. Failure to notify Tow Desk of the completion of a tow within one hour of its arrival at the storage facility. The penalty will be \$150 for each incident.
 7. Late report or failure to report a release. The penalty will be \$100 for each incident.
 8. Failure to release a vehicle when contacted by the vehicle owner/owner's agent prior to completion of the hookup. The penalty is \$100 per 10 minute delay of release for each incident.
 9. Late response or failure to respond to a police agency's request for information. The penalty is \$150 for each incident.
 10. Late response to a complaint notice without approval of the Towing Coordinator. The penalty is \$100.
 11. Failure to respond to a request for information pertaining to a complaint. The penalty is \$500.

**TITLE 7
BUSINESS LICENSES**

12. Failure to provide a person redeeming a towed vehicle with an invoice, complete with all required information. The penalty is \$50 per missing item.
 13. Civil penalties are payable to the City of Portland.
- E. Refund to vehicle owner/owner's agent. Upon a finding of any violation by a PPI tower, the Director may direct release of a vehicle at no charge or a refund of all or part of fees paid by a vehicle owner/owner's agent for towing and storage, in lieu of, or in addition to, civil penalties.
- F. Civil remedies. Nothing in this Section is intended to prevent any person from pursuing legal remedies.

7.24.100 Appeals.

- A. Any towing firm whose application for initial PPI permit registration or renewal of PPI permit registration has been denied, or whose permit registration has been revoked or suspended, or who has been directed by the Director or director's designee to pay a civil penalty or refund, may appeal such action of the Director or director's designee by submitting a written request for a hearing before the Code Hearings Officer of the City of Portland, within 10 business days of receiving the Director's written findings, as set out in Chapter 22.10.
- B. PPI Board of Appeals. Pursuant to Portland City Charter Section 2-103, City Council hereby creates the PPI Board of Appeals. The PPI Board of Appeals will hear and resolve protests and appeals arising from adoption of administrative rules by the Director. The findings of the PPI Board of Appeals are final.
1. Composition of the PPI Board of Appeals. The PPI Board of Appeals shall consist of three members. A quorum shall consist of three members. The Commissioner in Charge of the Revenue Bureau shall appoint a representative member from a public agency and a representative member of the general public, and shall approve a representative member from the towing industry selected by the towing industry.
 2. Compensation. All members of the PPI Board of Appeals shall serve without pay, except that they may receive their regular salaries during the time spent on Board matters.
 3. Procedures and Rules. The Director shall establish rules and procedures for the Board and the Board shall follow those procedures in all matters heard by the Board.

TITLE 7
BUSINESS LICENSES

4. Staff. The Revenue Bureau shall provide staff and assistance to the Board.
5. Powers of the Board. The PPI Appeals Board shall hear protests of administrative rules adopted by the Director. Written notice of the protest must be received by the Towing Coordinator within 30 days after the notice of adoption of the administrative rule. The protest must state the name and address of the PPI tower and an explanation of the grounds for the protest. Requests not received within 30 days of the notice of adoption will not be heard.
6. Written notice of the findings of the Board will be provided to the appellant within 10 business days of the conclusion of the hearing.

CHAPTER 7.25

PAY AND PARK AND NON-PAY
PRIVATE PARKING FACILITIES

(Chapter added by Ordinance No. 185835,
effective January 18, 2013.)

Sections:

- 7.25.010 Purpose.
- 7.25.020 Savings Clause.
- 7.25.030 Definitions.
- 7.25.040 Authorization.
- 7.25.050 Registration as the Operator of a Facility.
- 7.25.060 Registration of a Facility.
- 7.25.070 Payment Device.
- 7.25.080 Signage Requirements.
- 7.25.090 Assessment of Penalties.
- 7.25.100 Parking Penalty Notice.
- 7.25.110 Penalty Payment Letters.
- 7.25.120 Unlawful to Tow Vehicles.
- 7.25.130 Complaint Handling Procedures.
- 7.25.140 Maintenance of Records.
- 7.25.150 Insurance Required.
- 7.25.160 Prohibitions.
- 7.25.170 Remedies.
- 7.25.180 Appeals.
- 7.25.190 Locking Parked Cars.

7.25.010 Purpose.

The purposes of this Section are to ensure that the regulation of parking at pay and park and non-pay private parking facilities is applied objectively with proper notice; and to protect fairness and convenience for the parking public.

7.25.020 Savings Clause.

If any provision of this Section is found by a court of competent jurisdiction to be invalid, illegal or unenforceable, such holding has no effect on the validity, legality and enforceability of any other provision of this Section.

7.25.030 Definitions.

Except where the context requires otherwise, the following words and phrases have the definitions given in this Section:

**TITLE 7
BUSINESS LICENSES**

- A.** “**Administrative Fee**” means a fee assessed by a department of motor vehicles for the purpose of determining the registered owner of a vehicle.
- B.** “**Boot**” means a mechanical device attached to a vehicle to prevent its movement.
- C.** “**Director**” means the Director of the Revenue Bureau or his or her designee.
- D.** “**Operator**” means any person or entity whose business includes assessing and collecting penalties at registered parking facilities.
- E.** “**Park**” means to leave a vehicle standing, while the driver has exited the registered parking facility, or for more than 5 minutes with no driver at the wheel.
- F.** “**Parker**” means any person in control of any vehicle that is parking at a registered parking facility.
- G.** “**Payment device**” means any device capable of accepting or receiving parking fee payments by cash or credit card and issuing sequentially numbered receipts or tickets.
- H.** “**Penalty**” means an amount assessed for failure to pay, or properly display proof of payment, for parking at a pay and park facility or for unauthorized or over-time parking at a non-pay private parking facility.
- I.** “**Penalty payment letter**” means the letter that must be sent by the operator to the registered owner if payment of the penalty is not received by the operator within 10 days of the date the penalty notice was affixed to a vehicle.
- J.** “**Penalty notice**” means the notice affixed to vehicles parked without payment, parked without properly displaying proof of payment or parked without authorization at a registered facility, and which is the initial demand for payment.
- K.** “**Registered Facility**” means a parking lot or structure that is accessible to the public that has been registered with the Revenue Bureau and is either:
 - 1.** A non-pay private parking facility at which the free parking or storage of vehicles is limited by time or authorization by the property owner/operator; or
 - 2.** A pay and park facility that is open for parking or storage of vehicles by the general public, at which a fee must be paid for parking, where payment of parking fees is enforced by issuance of penalty notices, and where

parkers receive a receipt or ticket at the time of payment that has the parking expiration time printed on it.

- L.** “Registered Facility” does not include property used for governmental purposes by any agency or special district.
- M.** “Second penalty payment letter” means the letter that must be sent by the operator to the registered owner if payment of the penalty is not received by the operator within 30 days of the mailing date of the first penalty demand for payment letter.

7.25.040 Authorization.

- A.** Enforcement. The Director is authorized to enforce all provisions of this Chapter.
 - 1.** Investigation. The Director has the power to investigate any and all complaints regarding alleged violations of this Chapter.
 - 2.** Inspection. The Director may inspect any operator records required to be maintained pursuant to this Section. Such records must be made available for inspection during normal business hours within 24 hours of notice by the Director.
 - 3.** Delegation. The Director may delegate the authority provided under this Section to any City employee or agent thereof.
- B.** Procedures and forms. The Director may adopt procedures and forms to implement the provisions of this Chapter.
- C.** Adoption of rules. The Director may adopt rules pertaining to matters within the scope of this Chapter.
 - 1.** Before the Director adopts a rule, a public hearing must be conducted. The Director must give notice of the public hearing in a reasonable manner not less than 10 nor more than 30 days before the hearing. The notice must include the place and time of the hearing; where copies of the full text of the proposed rules may be obtained; and a brief description of the proposed rules.
 - 2.** During the hearing the Director will consider oral and/or written testimony. The Director will adopt, modify or reject the proposed rule based on the testimony received. Unless otherwise stated, all rules are effective upon adoption by the Director and will be kept on file at the

**TITLE 7
BUSINESS LICENSES**

Bureau. Copies of all rules will be made available to the public upon request.

3. Notwithstanding Subsections 1. and 2. above, the Director may adopt an interim rule without prior public notice upon a finding by the Director that failure to act promptly would result in serious prejudice to the public interest. In so doing, the Director must include the specific reasons for such prejudice. Any rule adopted pursuant to this Subsection will be effective for a period of not longer than 180 days.

7.25.050 Registration as the Operator of a Facility.

No person may assess any penalty at any facility unless that person is in compliance with the provisions of this Chapter.

- A. Applications. An applicant for registration as an operator of a facility must submit to the Bureau:
 1. The name, address and telephone number of the applicant;
 2. Proof of valid insurance as described in this Chapter;
 3. A sample copy of the proposed penalty notice;
 4. A sample copy of the proposed penalty payment letters;
 5. The name, address and telephone number of any collection agency that may be employed by the operator for collection of delinquent payments;
 6. Such other information relating to the purposes of this Chapter as the Director may require.
- B. Penalty notices, penalty payment letters and any subsequent demands for payment must include:
 1. The name, address and telephone number of the operator;
 2. The vehicle's make, model, color and license plate number;
 3. The time and date the penalty notice was issued;
 4. The exact location of the facility;
 5. Any facility number that may be assigned by the operator;

6. The amount of the penalty demanded;
 7. Instructions describing deadlines and acceptable methods of payment;
 8. Warning that an Administrative Fee may be assessed if the payment of the penalty is not received within 10 days of issuance of a penalty notice;
 9. Any additional penalty that may be added if not paid within 30 days; and
 10. A statement that the vehicle owner may submit a written complaint to the Revenue Bureau if attempts to resolve the complaint with the operator have been unsuccessful anytime within 90 days of the date of the first penalty payment letter. The Bureau's mailing address must be included on penalty payment letters.
- C. The penalty notice must not represent to be a document issued by any government agency or government official, or otherwise simulate legal or judicial process. The penalty notice form is subject to review and approval by the City Attorney's Office.
- D. The Bureau must approve all notices and letters. If a proposed penalty notice or penalty payment letter is rejected by the Bureau, it will be returned to the applicant for amendment and resubmission without additional fees. If such documents have previously been approved by the City and if no changes to the Section have been made, it is not necessary to resubmit them with each new location application. Changes to penalty notices and letters proposed by the operator must be approved by the Bureau before they are implemented.
- E. The Director shall reject any incomplete application.

7.25.060 Registration of a Facility.

No operator shall assess any penalties at any facility unless it is registered with the Revenue Bureau.

- A. Application. To register a facility with the Bureau an operator must submit:
1. A written request from the registered operator that includes the facility's number (designated by the operator) and the facility's address;
 2. A drawing of the facility showing adjacent street names, facility entrances and exits, and location of payment devices;
 3. A nonrefundable registration fee for each facility in an amount as required by Administrative Rule.

**TITLE 7
BUSINESS LICENSES**

- B.** As a condition of registering a pay and park or non-pay private parking facility under this Chapter, the operator shall hold the City of Portland and its officers and employees free and harmless, and shall defend and indemnify the City for any claims for damage to property or injury to person that may be occasioned by any work and/or services furnished or carried on under the terms of registration.
- C.** The Director shall inspect an operator's facility following receipt of the written request for registration, the facility drawing, and the registration fee. If the Director determines that a facility complies with this Chapter's requirements, the Director will issue a registration certificate to the operator for the facility. If the Director determines that the facility does not comply with this Chapter's requirements, the application will be denied and notice will be sent to the operator that lists the requirements the facility failed to meet. If an application is denied, the operator may resubmit the application without payment of additional registration fees at any time within 60 days of the notice date if the deficiencies noted in the original denial have been corrected. Only one such reapplication without payment of registration fees may be made with respect to each facility. If upon such reapplication the registration is again denied, the operator must file a new facility application accompanied by the required registration fee.
- D.** Facility registrations are valid from the date of issuance until the last day of that same month the following year.
- E.** Reporting Changes. Operators must notify the Director of any changes to the operator's office location, contact information, and insurance provider prior to implementation of the change. Operators must also notify the Director of any changes to a facility that affect a parker's use of the facility including, but not limited to, location of entrances and exits and location of a payment machine. Changed facilities must be reinspected before any penalty notices are issued.
- F.** Renewal. The Bureau will send invoices for facility registration renewal to all operators at least 1 month prior to the expiration date. Registrations will be renewed upon payment of the nonrefundable fee for each facility as required by the Administrative Rules.
- G.** Non-assignability. A registration issued or renewed pursuant to the provisions of this Chapter is not assignable or otherwise transferable.

7.25.070 Payment Device.

Payment devices must be placed and maintained at pay and park facilities in locations convenient and accessible to all parkers.

7.25.080 Signage Requirements.

All signs required pursuant to this Section must be unobstructed, reflectorized and visible during all hours of operation. All signs required to be posted at a facility entrance must be no more than 10 feet from the entrance, must be located within 2 feet of the property line, and the center of such sign must be at least 4 feet from the ground.

A. Pay and Park Signage.

1. Pay and Park facilities must have a sign posted at each entrance (in letters at least 7 inches high) stating either "PAY TO PARK ALL HOURS," or "PAY TO PARK POSTED HOURS." For facilities with a "POSTED HOURS" sign, the sign must also state (in letters at least 3 inches high) the exact hours that the facility is operated as a pay and park facility.
2. At each facility containing a payment device, there must be a sign (in letters at least 9 inches high) visible from every vehicle entrance stating "PAY HERE," indicating the location of the payment device.
3. At each payment location there must be a sign(s) that states (in letters at least 2 inches high):
 - a. all applicable charges for parking including the posted hours at a "PAY TO PARK POSTED HOURS" facility;
 - b. that proof of payment must be displayed and clearly visible through the windshield;
 - c. the phone number for the release of vehicles if they are subject to being towed;
 - d. a warning that the facility may be monitored; and
 - e. that vehicles parked without valid proof of payment or permit are subject to a parking penalty.
4. In spaces reserved for parkers with a disabled person parking permit, the operator must attach a sticker or sign to the disabled parking sign at the front of each space that notifies the disabled parking customer that he/she is responsible for payment, regardless of having a disabled person parking permit.

B. Non-Pay Private Parking Signage.

1. Non-pay facilities must have a sign posted at each entrance stating:

**TITLE 7
BUSINESS LICENSES**

- a. that parking is prohibited, reserved or otherwise restricted;
 - b. who is authorized to park;
 - c. all limitations on parking;
 - d. the hours during which parking is restricted;
 - e. that the facility may be monitored; and
 - f. that parking in violation of posted restrictions may result in assessment of a penalty or towing and storage of a vehicle at the vehicle owner's expense.
2. If a private parking facility is shared by more than one business, the parking spaces must be marked (or signs posted) clearly indicating which spaces are reserved for each business.

7.25.090 Assessment of Penalties.

- A. Pay and park facilities. The operator of a pay and park facility may assess and collect a penalty from any parker found to have either parked without paying the required parking fees upon parking the vehicle, or parked without placing the proof of payment in the vehicle so that it is clearly visible through the windshield.
- B. Non-pay private parking facilities. The operator of a non-pay private parking facility may assess and collect a penalty from any parker found to have parked without authorization.
- C. The penalty amount assessed to vehicles described in Subsections A. and B. above must not exceed the following amounts:
 1. Not more than the overtime parking penalty set by Multnomah County Circuit Court if paid within 30 days of the mailing date of the penalty payment letter.
 2. Not more than double the overtime parking penalty set by Multnomah County Circuit Court if paid after 30 days from the mailing date of the penalty payment letter.

7.25.100 Parking Penalty Notice.

- A.** When a vehicle is parked in violation of a registered facility's requirements, the operator may affix to the vehicle, in a prominent location, a penalty notice.

- B.** The penalty notice must be processed as follows:
 - 1.** A copy must be affixed to the vehicle,

 - 2.** A record of the notice must be retained by the operator for not less than 1 year, and

 - 3.** All records of penalty notices must be available to the Director upon request.

7.25.110 Penalty Payment Letters.

- A.** If the operator does not receive payment within 10 days from the day the operator affixed the penalty notice to the vehicle, the operator may mail a penalty payment letter to the registered owner(s) and any other persons who reasonably appear to have any interest in the vehicle. The letter must be mailed no earlier than 10 days nor later than 30 days from the penalty notice issuance date. The letter must include:
 - 1.** The amount demanded;

 - 2.** Acceptable method(s) of payment;

 - 3.** The schedule of increases for continued non-payment as described in Section 7.24.020;

 - 4.** Space for the recipient to inform the operator that the person to whom the letter was sent is not the current registered owner of the vehicle;

 - 5.** A statement that the vehicle owner may submit a written complaint to the Bureau if attempts to resolve any disputes with the operator have been unsuccessful;

 - 6.** The mailing address of the Bureau, and

 - 7.** A statement to the effect that the Bureau will only investigate complaints by parkers regarding the issuance of a parking penalty notice filed within 90 days of the date of the first penalty payment letter.

**TITLE 7
BUSINESS LICENSES**

B. Administrative Fees.

1. If an operator incurs costs from the Department of Motor Vehicles (DMV) in its efforts to obtain the name and address of a vehicle's registered owner, the operator may add a one-time administrative fee in addition to the penalty amount, provided that:
 - a. 10 days have elapsed since the penalty notice issuance;
 - b. The operator indicates the amount assessed as a separate itemized amount on the penalty payment letter;
 - c. The amount assessed is no more than the amount charged to the operator by the DMV.
2. Operators may not demand payment for an administrative fee until they have been charged said fee by the DMV.
3. Although operators may only charge the administrative fee once, the fee may be a combination of more than one DMV charge if the first attempt to obtain registered owner information resulted in invalid information. In no event may an operator charge for more than two attempts.

7.25.120 Unlawful to Tow Vehicles.

It is unlawful for any person to tow any vehicle parked at any registered facility without the permission of the parker unless:

- A. The vehicle has been parked at the registered facility without the payment of the required parking fees or without authorization for a period in excess of 24 hours after the period for which parking fees have been paid or authorization has been given; or
- B. The vehicle is parked at the registered facility in such a manner as to clearly impede vehicular ingress or egress to and from designated parking stalls or the facility itself, or is parked in any area that is clearly and conspicuously designated by signs or other traffic control devices as areas in which parking is restricted or forbidden; or
- C. The vehicle is parked at any of the operator's registered parking facilities, and:
 1. Within the previous 2-year period, the vehicle was parked at any of the operator's registered facilities without payment of parking fees or authorization, three times or more; and

2. During that time the operator affixed and mailed the notices and payment letters as provided for in this Chapter; and
3. Three or more penalties remain unpaid; and
4. The operator has mailed a notice by certificate of mailing, and a reasonable amount of time has elapsed for service of the notice, advising the registered owner(s) and any other persons who reasonably appear to have any interest in the vehicle stating that the vehicle will be towed if the vehicle is again parked at a registered parking facility. The notice must also state the total amount due for outstanding penalties, the issue date and parking facility location for each outstanding penalty, the method(s) of payment accepted, the name, address and phone number of the operator, and that the vehicle owner may submit a written complaint to the Bureau if attempts to resolve the complaint with the operator are unsuccessful. The operator shall retain a copy of each notice for not less than 1 year and make such copies available upon request of the Director. The notice must be in a form approved by the City Attorney's Office; and,
5. Such towing is performed in compliance with Chapter 7.24 Private Property Impound Towing.

7.25.130 Complaint Handling Procedures.

- A. Operators responding to the complaints of parkers or registered owners of vehicles must follow these guidelines:
 1. The operator must be available by telephone, fax and e-mail to the public during normal business hours to accept and respond to public complaints. The operator must have voicemail and must respond to telephone messages by the end of the next business day.
 2. The operator must respond in writing to written complaints within 10 days from the date the operator received the complaint.
 3. The operator's written response must include the mailing address of the Revenue Bureau and a statement that the parker or registered owner of the vehicle may submit a written complaint to the Bureau if attempts to resolve the complaint with the operator are unsuccessful.
 4. All efforts to collect the penalty and related amounts must be suspended upon the filing of a complaint with the operator or the Director, pending final resolution.

**TITLE 7
BUSINESS LICENSES**

5. Penalties must not increase from the time a complaint is received by the operator or the Director, pending final resolution.
 6. The operator must void the penalty if the parker or registered owner provides evidence within 30 days of issuance of the penalty notice that the parking fee payment was made at the time the vehicle was parked at the facility or that the parker was authorized to park.
 7. The operator must notify appropriate credit agencies immediately upon voiding any penalty.
- B.** Upon receipt of a complaint the Director shall conduct an investigation.
1. Upon a finding by the Director or Bureau staff that a penalty is invalid, the operator must immediately cancel the penalty, cease all efforts to collect the penalty, and refund any payments that have been made.
 2. If the investigation determines that a violation of this Chapter has occurred, the Director will initiate remedies provided in this Chapter.
 3. The Director shall not investigate complaints by parkers regarding the issuance of a notice of demand for payment of penalties filed any time after 90 days from the date of the first mailed penalty payment letter.

7.25.140 Maintenance of Records.

The operator shall keep and maintain records of all penalties, any transactions relating to collection of past due accounts, written warnings, requests for vehicle towing, and any other transactions or written complaints relating to penalties or the impoundment of vehicles for a period of at least 1 year from the date the penalty notice was issued.

7.25.150 Insurance Required.

Operators must provide and maintain commercial general liability insurance covering any and all claims for damage to property or personal injury, including death and automobile damage that may arise from operations under the registration.

- A.** Such insurance must provide coverage of not less than \$1 million combined single limit per occurrence, with aggregate of \$1 million for bodily injury or property damage.
- B.** The limits of the insurance are subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of the registration.
- C.** The insurance must be without prejudice to coverage otherwise existing.

- D.** The insurance must name as additional insured the City and its officers, agents and employees. Notwithstanding the naming of additional insureds, the insurance must protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein will operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts which the insurer would have been liable if only one person or interest had been named as insured.
- E.** The coverage must apply as to claims between insureds on the policy.
- F.** The insurance policy must provide that it will not terminate or be canceled without 30 days written notice first being given to the Director.
- G.** The adequacy of the insurance is subject to the approval of the City Attorney.
- H.** Failure to maintain liability insurance is cause for immediate revocation of the registration of the operator by the City.

7.25.160 Prohibitions.

No operator shall:

- A.** Require any person to make any statement or sign any document promising not to dispute the validity of a penalty or relieving the operator from responsibility for the condition of the vehicle.
- B.** Solicit business by means of payment of a gratuity, commission or other consideration to the property owner, manager or employee of a facility.
- C.** Attach a mechanical boot or any other immobilization device to any vehicle parked on private property or public right-of-way for the purpose of collecting a fee for the release of the vehicle.

7.25.170 Remedies.

Upon a violation by the operator of any requirements of this Chapter, the Director may exercise the following authority and may apply one or more of the following remedies:

- A.** Suspension or revocation. The Director may suspend a registration of any facility if investigation reveals that the violation has an impact on the public that informal compliance methods have failed to resolve. Suspension of registration may be for a period of up to 14 calendar days. The suspension will be effective from the operator's receipt of written notice of suspension. If the violation is not corrected within the 14 calendar day period, then the Director may revoke the registration.

**TITLE 7
BUSINESS LICENSES**

The revocation will be effective upon the mailing of written notice by the Director.

- B.** Civil Penalty. The Director may impose a civil penalty of up to \$500 for each violation.

7.25.180 Appeals.

Any operator aggrieved by a determination of the Director may appeal such determination to the Code Hearings Officer of the City of Portland, as set out in Chapter 22.10.

7.25.190 Locking Parked Cars.

It is unlawful for the operator or an employee of a public parking lot to close and leave the lot without first removing the keys from any vehicle remaining upon the lot. It is unlawful for the operator or employee to close and leave the lot prior to the posted time of closing without locking any vehicle remaining on the lot. If no closing time is posted it shall be unlawful for the operator or an employee to close and leave the lot without locking any vehicle remaining on the lot. The operator of any lot where the operator or employee removes keys to any location other than the lot itself shall post and maintain a sign on the premises stating where and during what hours keys may be obtained when the lot is not attended. The sign shall be placed in a location meeting the requirements of signs giving notice of impoundment fees required by Section 7.25.080 of this Code.

CHAPTER 7.26

REGULATION OF PAYDAY LENDING

(New Chapter added by Ordinance No.
179948, effective February 22, 2006.)

Sections:

- 7.26.010 Purpose.
- 7.26.020 Definitions.
- 7.26.030 Permits.
- 7.26.040 Administrative Authority.
- 7.26.050 Payment of Principal Prior to Payday Loan Renewal.
- 7.26.060 Cancellation of Payday Loan.
- 7.26.070 Payment Plan for a Payday Loan.
- 7.26.080 Remedies.
- 7.26.090 Appeals.
- 7.26.100 Complaints.
- 7.26.110 Severability.

7.26.010 Purpose.

The City finds that, in order to minimize the detrimental effects that certain payday lending practices have on individuals and families, payday lenders should require payment of a portion of the original loan amount prior to the renewal of a payday loan, borrowers should be able to cancel a payday loan, and borrowers should be able to convert a payday loan into a payment plan. This Chapter shall be construed in conformity with the laws and regulations of the State of Oregon.

7.26.020 Definitions.

As used in this Chapter unless the context requires otherwise:

- A. “Borrower” means a natural person who receives a payday loan.
- B. “Cancel” means to annul the payday loan agreement and, with respect to the payday loan agreement returning the borrower and the payday lender to their financial condition prior to the origination date of the payday loan.
- C. “Director” means the Director of the Revenue Bureau.
- D. “Payday Lender” means a “lender” in the business of making payday loans as defined in ORS 725.600.

**TITLE 7
BUSINESS LICENSES**

- E.** “Payday Loan” means a payday loan as defined by state law.
- F.** “Principal” means the original loan proceeds advanced for the benefit of the borrower in a payday loan excluding any fee or interest charge.

7.26.030 Permits.

Within 60 days of the effective date of the ordinance enacting this Chapter, any Payday Lender operating in the City of Portland shall apply for and obtain a permit to operate as a Payday Lender. Permits shall be required for each location a lender operates in the City of Portland and shall be renewed annually. The application shall be in a form to be determined by the Director. The Director shall require the Payday Lender to report its fee schedule in the Payday Lenders permit application. No person shall operate a Payday lending business or loan any funds as a Payday Loan without a current permit to do business issued by the City of Portland. The annual cost for the permit shall be \$1,500.00, payable to the City of Portland; this permit is in addition to the City of Portland business license required by PCC 7.02.

7.26.040 Administrative Authority.

- A.** The Director is authorized and directed to enforce all provisions of this Chapter. The Director shall have the power to investigate any and all complaints regarding alleged violations of this Chapter. The Director may delegate any or all authority granted under this Section to any Revenue Bureau officer, employee or agent.
- B.** The Director is authorized to adopt and enforce administrative rules interpreting and applying this Chapter. The Director or designee shall make written findings of fact and conclusions of law to support all decisions.
- C.** Prior to adoption of a new administrative rule, the Director shall give notice to all interested parties of the terms of the proposed rule, and shall conduct a public hearing to consider public comment. Public notice shall be given when administrative rules have been adopted.
 - 1.** At the public hearing, the Director or designee shall hear oral and written testimony concerning the proposed rule. The Director shall have the power to establish and limit the matters to be considered at the hearing, to prescribe procedures for the conduct of the hearings, to hear evidence, and to preserve order.
 - 2.** The Director shall adopt, modify or reject the proposed rule after considering testimony received during the public hearing.
 - 3.** Unless otherwise stated, all rules shall be effective upon adoption by the Director. All rules adopted by the Director shall be filed in the Revenue

Bureau and the Office of the City Auditor in compliance with PCC 1.07.030. Copies of all current rules shall be available to the public upon request.

4. Notwithstanding subsections 1 and 2 of this Section, the Director may adopt an interim rule without prior public notice upon a finding that failure to act promptly may result in serious prejudice to the public interest or the interest of the affected parties. Such interim rules shall detail the specific reasons for such prejudice. Any interim rule adopted pursuant to this paragraph shall be effective for a period not to exceed 180 days.

- D. Inspection of Records. The City of Portland reserves the right to review and/or copy the records of any Payday Lender for purposes of auditing or complaint resolution. Such records shall be made available for inspection during normal business hours within 24 hours of written notice by the Director or its designee.

7.26.050 Payment of Principal Prior to Payday Loan Renewal.

A Payday Lender may not renew a Payday Loan unless the Borrower has paid an amount equal to at least twenty-five percent (25%) of the principal of the original Payday Loan, plus interest on the remaining balance of the Payday Loan. The Payday Lender shall disclose this requirement to the Borrower in a minimum of bold 12 point type.

7.26.060 Cancellation of Payday Loan.

- A. A Payday Lender shall cancel a Payday Loan without any charge to the Borrower if prior to the close of the business day following the day on which the Payday Loan originated, the Borrower:
 1. Informs the Payday Lender in writing that the Borrower wishes to cancel the Payday Loan and any future payment obligations; and
 2. Returns to the Payday Lender the uncashed check or proceeds given to the Borrower by the Payday Lender or cash in an amount equal to the principal amount of the Payday Loan.
- B. A Payday Lender shall disclose to each Borrower that the right to cancel a Payday Loan as described in this section is available to the Borrower. The Payday Lender shall disclose this requirement to the borrower in a minimum of bold 12 point type.

7.26.070 Payment Plan for a Payday Loan.

- A. A Payday Lender and a Borrower may agree to a payment plan for a Payday Loan at any time.

**TITLE 7
BUSINESS LICENSES**

- B.** A Payday Lender shall disclose to each Borrower that a payment plan described in this section is available to the Borrower after the maximum amount of renewals allowed by state law. The Payday Lender shall disclose this requirement to the Borrower in a minimum of bold 12 point type.
- C.** After a Payday Loan has been renewed to the maximum amount allowed by state law, and prior to default on the Payday Loan, a Payday Lender shall allow a Borrower to convert the Borrower's Payday Loan into a payment plan. Each payment plan shall be in writing and acknowledged by both the Payday Lender and the Borrower.
- D.** The Payday Lender shall not assess any fee, interest charge or other charge to the Borrower as a result of converting the Payday Loan into a payment plan.
- E.** The payment plan shall provide for the payment of the total of payments due on the Payday Loan over a period of no fewer than 60 days in three or more payments. The Borrower may pay the total of payments due on the payment plan at any time. The Payday Lender may not assess any penalty, fee or other charge to the Borrower for early payment on the payment plan.
- F.** A Payday Lender's violation of the terms of a payment plan entered into with a Borrower under this section constitutes a violation of this Chapter. If a Payday Lender enters into a payment plan with a Borrower through a third party that is representing the Borrower, the Payday Lender's failure to comply with the terms of that payment plan constitutes a violation of this Chapter.

7.26.080 Remedies.

- A.** Failure to comply with any part of this Chapter or the administrative rules may be punishable by civil penalties. The Director may impose a civil penalty of up to \$1,500.00 for a substantial violation of this Chapter or the administrative rules. A substantial violation is a violation having an impact on the public that informal compliance methods fail to resolve. Each substantial violation may be assessed a separate civil penalty.
- B.** Civil penalties shall be payable to the City of Portland.
- C.** Civil remedies. Nothing in this Section is intended to prevent any person from pursuing any available legal remedies.
- D.** No civil penalties shall be assessed within 60 days of the effective date of this ordinance.

7.26.090 Appeals.

Any person upon whom a civil penalty has been imposed, or who has been directed by the Director to resolve a complaint, may appeal to the Code Hearings Officer pursuant to the provisions of Chapter 22.10 of this Code.

7.26.100 Complaints.

The Director shall have the authority to investigate any and all complaints alleging violation of this Chapter or administrative rules.

- A.** The Director may receive complaints from Borrowers by telephone or in writing. Within a reasonable time, the Director shall forward the complaint by telephone or in writing to the Payday Lender it concerns for investigation.
- B.** The Payday Lender shall investigate the allegations of the complaint and report the results of the investigation and the proposed resolution of the complaint to the Director by telephone or in writing within two (2) business days from initial contact by the Director.
- C.** If the proposed resolution is satisfactory to the Director, the Payday Lender shall proceed to resolve the complaint directly with the Borrower according to the resolution proposed to the Director.
- D.** If the proposed resolution is not satisfactory to the Director, the Director shall conduct an independent investigation of the alleged complaint and propose an alternative resolution of the complaint. If the Payday Lender accepts the proposed alternative resolution and offers it to the Borrower, the complaint shall be final. If the Payday Lender refuses to accept and implement the proposed alternative resolution it shall be subject to remedies as provided by PCC 7.26.080. In the event of imposition of remedies, the Payday Lender may appeal as provided by PCC 7.26.090.

7.26.110 Severability.

If any provision of this Chapter, or its application to any person or circumstance is declared invalid or unenforceable the remainder of the Chapter and its application to other persons and circumstances, other than that which has been held invalid or unenforceable, shall not be affected, and the affected provision of the Chapter shall be severed.

TITLE 17
PUBLIC IMPROVEMENTS

| | |
|----------------------|---|
| Chapter 17.04 | DEFINITIONS |
| 17.04.010 | Person. |
| Chapter 17.06 | ADMINISTRATION OF PUBLIC WORKS PERMITTING |
| 17.06.010 | Purpose and Scope. |
| 17.06.015 | Protection of the Public Interest. |
| 17.06.020 | Definitions. |
| 17.06.030 | Organization and Rules. |
| 17.06.040 | Appeals Panel and Appeals Board. |
| 17.06.050 | Appeals. |
| Chapter 17.08 | LOCAL IMPROVEMENT PROCEDURE |
| 17.08.010 | Definitions and Scopes of Duties. |
| 17.08.020 | City Council Control. |
| 17.08.030 | Charter Provisions Applicable. |
| 17.08.040 | Initiation of Local Improvement Proceedings. |
| 17.08.050 | Petition for a Local Improvement District. |
| 17.08.060 | Resolution of Intent. |
| 17.08.070 | Local Improvement District Formation and Remonstrances. |
| 17.08.080 | Changes to Scope or Cost of Improvements and Notice to Proceed. |
| 17.08.090 | Abandonment of Local Improvement District. |
| 17.08.100 | Completion of Construction. |
| 17.08.110 | Total Cost of Local Improvement |
| 17.08.120 | Alternative Financing Methods. |
| 17.08.130 | Final Assessment and Objections. |
| Chapter 17.12 | ASSESSMENTS |
| 17.12.010 | Lien Docket and General Assessment Procedure. |
| 17.12.060 | Assessing Ordinance. |
| 17.12.070 | Notice of Assessment. |
| 17.12.080 | Payment of City's Share. |
| 17.12.100 | Surplus. |
| 17.12.120 | Correction of Mistake in Assessment - Refund or Overpayment. |
| 17.12.125 | Mid-County Sewer Financial Assistance Program. |
| 17.12.130 | Segregation of Assessments |
| 17.12.140 | Bonding. |
| 17.12.150 | Rebonding. |
| 17.12.170 | Collection. |

Chapter 17.13 PARKS AND RECREATION SYSTEM DEVELOPMENT CHARGE

- 17.13.010 Scope and Purposes
- 17.13.020 Definitions
- 17.13.030 Rules of Construction
- 17.13.040 Application
- 17.13.050 Application Requirements
- 17.13.060 Partial and Full Exemptions
- 17.13.070 SDC Credits and SDC Reimbursements
- 17.13.080 Alternative Calculation of SDC Rate, Credit or Exemption
- 17.13.090 Payment
- 17.13.100 Refunds
- 17.13.110 Dedicated Account and Appropriate Use of Account
- 17.13.120 Challenges and Appeals
- 17.13.130 City Review of SDC
- 17.13.140 Time Limit on Expenditure of SDCs
- 17.13.150 Implementing Regulations
- 17.13.160 Amendment of Parks and Recreation SDC-CIP List
- 17.13.170 Severability

Chapter 17.14 FINANCING SYSTEMS DEVELOPMENT CHARGES

- 17.14.010 Purpose.
- 17.14.020 Definitions.
- 17.14.030 Application, Consent to Assessment.
- 17.14.040 Terms and Conditions of Deferred Payment and Installment Payment Agreements.
- 17.14.050 Assessment.
- 17.14.060 Cancellation.

Chapter 17.15 TRANSPORTATION SYSTEM DEVELOPMENT CHARGE

- 17.15.010 Scope and Purposes.
- 17.15.020 Definitions.
- 17.15.030 Rules of Construction.
- 17.15.040 Application.
- 17.15.050 Partial and Full Exemptions.
- 17.15.060 SDC Credits, SDC Credit Transfers and SDC Reimbursements.
- 17.15.070 Alternative Calculation for SDC Rate, Credit or Exemption.
- 17.15.080 Payment.
- 17.15.090 Refunds.
- 17.15.100 Dedicated Account and Appropriate Use of Account.
- 17.15.110 Challenges and Appeals.
- 17.15.120 City Review of SDC.
- 17.15.130 Time Limit on Expenditure of SDCs.
- 17.15.140 Implementing Regulations; Amendments.

- 17.15.150 Amendment of SDC-CIP List.
- 17.15.160 Severability.

Chapter 17.16 GENERAL PROVISIONS

- 17.16.010 Specifications and Authority to Revise.
- 17.16.020 Interpretation of Specifications.
- 17.16.030 Progress Payments.
- 17.16.040 Interest on Progress Payment and Final Warrants.
- 17.16.050 Progress Payment not Deemed Final Acceptance.
- 17.16.060 Division of Warrants.
- 17.16.065 Purchase of Warrants by the City.
- 17.16.070 Claims against Contractors.
- 17.16.080 Statutory Provisions Relating to Labor and Wages.
- 17.16.090 Bonding City Property.
- 17.16.100 Facilities in Street Area Affected by Improvement.
- 17.16.110 Facilities in Street Area Damaged by Contractor.
- 17.16.120 Engineer's Standards.
- 17.16.130 Approvals by City Attorney.
- 17.16.140 Acceptance and Release of Property Interests.

Chapter 17.18 GENERAL OBLIGATION IMPROVEMENT WARRANTS

- 17.18.010 General Obligation Improvement Warrants Authorized.
- 17.18.020 Procedure for Issuance and Delivery.
- 17.18.030 Application of Proceeds.
- 17.18.040 Repayment.
- 17.18.050 Payment or Bonding Mandatory.
- 17.18.060 Provision in Budget.

Chapter 17.19 NORTHWEST TRANSPORTATION FUND

- 17.19.010 Purpose.
- 17.19.020 Applicability.
- 17.19.030 Payment.
- 17.19.040 Implementing Regulations.
- 17.19.050 Dedicated Account and Appropriate Use of Account.

Chapter 17.23 SPECIAL TRAFFIC CONTROL DISTRICT

- 17.23.010 Application.
- 17.23.020 Definitions.
- 17.23.030 Designated Boundary.
- 17.23.040 Special Jurisdiction.
- 17.23.050 Permits Required.
- 17.23.060 Traffic Standards.
- 17.23.070 Revocation.

Chapter 17.24 PERMITS

- 17.24.000 Purpose and Intent.
- 17.24.005 Jurisdiction and Management of Public Right-of-Way.
- 17.24.010 Permits Required.
- 17.24.012 Financial Guarantee Required.
- 17.24.013 Insurance and Indemnification.
- 17.24.014 Permits to Construct and Maintain Structures in the Street Area.
- 17.24.015 Obligation of Property Owner for Structures in the Street Area.
- 17.24.016 Permit Revocation.
- 17.24.017 Temporary Street Closure.
- 17.24.020 Fees and Charges.
- 17.24.025 Fees for Public Improvement Permits.
- 17.24.026 Fees for Review of Land Use Applications.
- 17.24.030 Application for a Public Improvement Permit to construct a Street or Transportation Facility.
- 17.24.035 Deposit Required.
- 17.24.040 Refusal of a Public Improvement Permit.
- 17.24.050 Contents of Permit.
- 17.24.055 Assurance of Performance.
- 17.24.060 Permit Conditions.
- 17.24.067 Hazardous Substances.
- 17.24.070 Engineering and Superintendence for Street and Transportation Facility Public Improvements.
- 17.24.080 Work Done Under Permit.
- 17.24.085 Original Documents Become the Property of the City.
- 17.24.090 Certificate by City Engineer.
- 17.24.100 Street Pavement Preservation.
- 17.24.105 Regulations Governing Excavations and Disturbance of Pavement on Transit Mall.
- 17.24.110 Record of Permits.
- 17.24.120 Removal of Improvement.
- 17.24.130 Preservation of Cobblestones.

| | |
|----------------------|--|
| Chapter 17.25 | SIDEWALK CAFES |
| 17.25.010 | Permit Required. |
| 17.25.020 | Definitions. |
| 17.25.030 | Application Fee and Permit Fee. |
| 17.25.040 | Permit Application. |
| 17.25.050 | Permit Requirements. |
| 17.25.060 | Location Rules and Review. |
| 17.25.070 | Liability and Insurance. |
| 17.25.080 | Forms and Conditions of Permit. |
| 17.25.090 | Denial, Revocation, or Suspension of Permit. |
| 17.25.100 | Appeal. |

| | |
|----------------------|--|
| Chapter 17.26 | SIDEWALK VENDORS |
| 17.26.010 | Conducting a Business on City Sidewalks Unlawful without Permit. |
| 17.26.020 | Definitions. |
| 17.26.030 | Item for Sale. |
| 17.26.040 | Permit Fee. |
| 17.26.050 | Application for Permit. |
| 17.26.060 | Location Selection. |
| 17.26.070 | Location Review. |
| 17.26.080 | Payment for Written Consent is Unlawful. |
| 17.26.090 | Design Review. |
| 17.26.100 | Fire Marshal Inspection. |
| 17.26.110 | Application Time Limit. |
| 17.26.120 | Form and Condition of Permit. |
| 17.26.125 | Renewal of Permits. |
| 17.26.130 | Restrictions. |
| 17.26.140 | Special Event Designation. |
| 17.26.150 | Denial, Suspension or Revocation of Permit. |
| 17.26.160 | Appeal. |
| 17.26.170 | Penalty for Violation. |
| 17.26.180 | Violation a Nuisance, Summary Abatement. |

| | |
|----------------------|---|
| Chapter 17.27 | STRUCTURAL DRIVEWAYS |
| 17.27.200 | Structural Driveway Defined. |
| 17.27.205 | Structural Driveways in Public Streets. |
| 17.27.210 | Permit Application. |
| 17.27.220 | Engineer's Review. |
| 17.27.230 | Design Standards. |
| 17.27.240 | Permit. |
| 17.27.250 | Revocation of Permit. |
| 17.27.260 | Removal of Structural Driveways. |

- 17.27.270 Fees.
- 17.27.280 Inspection of Construction Required.

Chapter 17.28 SIDEWALKS, CURBS AND DRIVEWAYS

- 17.28.010 Sidewalk Defined.
- 17.28.011 Planting Strip Defined.
- 17.28.015 Owner Defined.
- 17.28.020 Responsibility for Sidewalks and Curbs.
- 17.28.025 Property Owner Responsible for Snow and Ice on Sidewalks.
- 17.28.030 Notice for Construction of Sidewalks and Curbs.
- 17.28.035 Curb and Intersection Corner Ramps.
- 17.28.040 Construction Alternatives.
- 17.28.050 City Construction if Owner Fails to Construct.
- 17.28.060 Location, Size and Materials of Sidewalks and Curbs.
- 17.28.065 Bicycle Parking.
- 17.28.070 Owners to Repair Sidewalks and Curbs-Notice to Repair.
- 17.28.080 Permit for Sidewalk and Curb Repairs.
- 17.28.090 Repair by City of Portland.
- 17.28.100 Driveways Defined.
- 17.28.110 Driveways - Permits and Conditions.
- 17.28.120 After Construction Driveways Deemed Part of Sidewalk.
- 17.28.130 Reconstruction of Existing Driveways.
- 17.28.140 City Charges for Construction or Repair of Sidewalks, Curbs and Driveways.
- 17.28.150 Billing for Charges.
- 17.28.160 Assessment of Charges.

**CHAPTER 17.32 PUBLIC SEWER AND DRAINAGE SYSTEM
PERMITS, CONNECTIONS AND MAINTENANCE**

- 17.32.005 Purpose.
- 17.32.006 Definitions.
- 17.32.010 Permit Required.
- 17.32.015 Permit Fees.
- 17.32.020 Application for Connection Work Permit.
- 17.32.021 Connection from Properties Outside the City Limits.
- 17.32.022 Public Rights of Way for Public Sewer and Drainage Improvements.
- 17.32.050 Issuance of a Connection Work Permit.
- 17.32.055 Maintenance of Sewer Systems.
- 17.32.060 Failure to Restore and Maintain Street Area .
- 17.32.075 Enforcement.
- 17.32.080 Separation of Storm and Sanitary Sewer Lines on Private Property.
- 17.32.090 Use of Restricted Sewers.
- 17.32.095 Sewer Extension Assessments and Reimbursement.
- 17.32.100 Reimbursement for Installation of Sewer Backflow Devices in Existing

| | |
|-----------|--|
| | Buildings on Combination Sewer Lines . |
| 17.32.110 | Application for Permit to Construct a Public Sewer or Drainage Improvement. |
| 17.32.120 | Deposit Required. |
| 17.32.130 | Refusal of Public Sewer or Drainage Improvement Permit. |
| 17.32.140 | Contents of Permit. |
| 17.32.170 | Work Done Under Permit. |
| 17.32.180 | Original Documents Become the Property of the City. |
| 17.32.190 | Acceptance of Completed Improvement by the Chief Engineer of the Bureau of Environmental Services. |
| 17.32.200 | Permit-Related Records. |
| 17.32.210 | Removal of Public Sewer or Drainage Improvement. |

Chapter 17.33

REQUIRED PUBLIC SEWER CONNECTION

| | |
|-----------|--|
| 17.33.005 | Intent. |
| 17.33.020 | Definitions. |
| 17.33.030 | Sewer Connection Mandated. |
| 17.33.040 | Mandated Sewer System Connection Charges . |
| 17.33.050 | Converting Nonconforming Sanitary Sewer Connections. |
| 17.33.060 | Required Sanitary Sewer Conversion Charges. |
| 17.33.070 | Deferrals of Required Sewer Connections. |
| 17.33.075 | Financial Assistance for Required Sewer Connection. |
| 17.33.080 | Declaration of Nuisance. |
| 17.33.090 | Abatement by Owner. |
| 17.33.100 | Connection Enforcement. |
| 17.33.110 | Actions before the City Code Hearings Officer. |
| 17.33.130 | Notice Sufficiency. |
| 17.33.150 | Severability. |

Chapter 17.34

INDUSTRIAL WASTEWATER DISCHARGES

| | |
|-----------|---|
| 17.34.005 | Intent of Chapter. |
| 17.34.010 | Declaration of Policy. |
| 17.34.020 | Definitions. |
| 17.34.030 | General Discharge Prohibitions. |
| 17.34.040 | Discharge Limitations. |
| 17.34.050 | Pretreatment Facilities. |
| 17.34.060 | Accidental Spill Prevention and Control. |
| 17.34.070 | Industrial Wastewater Discharge Permits. |
| 17.34.075 | Other Sanitary Discharge Permits or Authorizations. |
| 17.34.080 | Inspection and Sampling. |
| 17.34.090 | Reporting Requirements. |
| 17.34.110 | Enforcement. |
| 17.34.115 | Requests for Reconsideration. |
| 17.34.120 | Records Retention. |

- 17.34.130 Conflict.
- 17.34.140 Severability.
- 17.34.150 Fees.

Chapter 17.35 SEPTAGE DISCHARGE

- 17.35.010 Definitions.
- 17.35.020 Permit Required.
- 17.35.030 Septage Discharge Limitations.
- 17.35.040 Reserved.
- 17.35.050 Reserved.
- 17.35.060 Performance Guaranty.
- 17.35.070 Fee Schedule.
- 17.35.080 Collection and Billing.
- 17.35.090 Revocation/Amendment of Permit.
- 17.35.110 Enforcement.

Chapter 17.36 SEWER USER CHARGES

- 17.36.010 Intent.
- 17.36.020 Definitions.
- 17.36.030 Annual Rate Ordinance.
- 17.36.040 Sewer System Connection Charges.
- 17.36.050 User Charges.
- 17.36.060 Special User Charges.
- 17.36.070 Service Outside the City.
- 17.36.080 Collection of Charges.
- 17.36.090 Adjustment of Bills.
- 17.36.100 Inspection and Enforcement.
- 17.36.110 Appeal.

Chapter 17.37 DOWNSPOUT DISCONNECTION

- 17.37.010 Purpose.
- 17.37.020 Definitions.
- 17.37.030 Establishment of Downspout Disconnection Program.
- 17.37.040 Disconnection Procedures.
- 17.37.050 Disconnection Reimbursement.
- 17.37.080 Program Enforcement.
- 17.37.110 Interference with Disconnection Activities Unlawful.
- 17.37.120 Liability.
- 17.37.130 Civil Remedies.
- 17.37.150 Bureau Actions.
- 17.37.140 Notice Sufficiency.
- 17.37.160 Severability.

Chapter 17.38 DRAINAGE AND WATER QUALITY

- 17.38.010 Authority.
- 17.38.015 Intent.
- 17.38.020 Definitions.
- 17.38.030 Protection of Drainageway Areas.
- 17.38.035 Drainage Management Policies and Standards.
- 17.38.040 Stormwater Management Facilities Required.
- 17.38.041 Parking Lot Stormwater Requirements.
- 17.38.040 Inspections.
- 17.38.045 Enforcement.
- 17.38.050 Erosion Control Required.
- 17.38.055 River Restoration Program.

Chapter 17.39 STORM SYSTEM DISCHARGES

- 17.39.010 Intent.
- 17.39.020 Definitions.
- 17.39.030 Allowable Discharges.
- 17.39.040 Prohibited Discharges.
- 17.39.050 Notification and Control of Illicit Connections and Discharges.
- 17.39.060 Discharge Permits and Other Authorizations.
- 17.39.070 Inspections.
- 17.39.080 Sampling.
- 17.39.090 Reporting Requirements.
- 17.39.100 Records Retention.
- 17.39.110 Enforcement.
- 17.39.120 Compliance Cases and Appeals.
- 17.39.130 Conflict.
- 17.39.140 Severability.

Chapter 17.40 PROTECTION OF PUBLIC RIGHT-OF-WAY

- 17.40.010 Injuries to Pavement.
- 17.40.020 Endangering Pavement.
- 17.40.030 Charges for City Patching of Roadway Areas.
- 17.40.040 Damages to Public Right-of-Way.
- 17.40.050 Disposition of Asphalt, Concrete, Rock and Dirt.
- 17.40.060 Disposition of Leaves.

Chapter 17.41 LANDSLIDE ABATEMENT

- 17.41.010 Purpose.
- 17.41.020 Definitions.
- 17.41.030 Applicability.
- 17.41.040 Landslide As a Nuisance; Costs.
- 17.41.050 Abatement.

| | |
|----------------------|---|
| 17.41.060 | Administrative Review. |
| Chapter 17.42 | PROPERTY OWNER RESPONSIBILITY FOR STREETS |
| 17.42.010 | Policy. |
| 17.42.020 | Maintenance and Construction Responsibility. |
| 17.42.025 | Maintenance Restrictions. |
| 17.42.030 | Liability. |
| 17.42.040 | Definition. |
| Chapter 17.44 | STREET OBSTRUCTIONS |
| 17.44.010 | Unlawful Acts Enumerated. |
| Chapter 17.45 | ADVERTISING ON BUS BENCHES |
| 17.45.030 | Advertising Bench Allowed. |
| 17.45.040 | Fee. |
| 17.45.050 | Revocation. |
| 17.45.060 | Authority. |
| Chapter 17.46 | NEWSRACKS |
| 17.46.010 | Definitions. |
| 17.46.020 | Newsracks On or Near Mass Transit Avenues. |
| 17.46.030 | Violations of Ordinance. |
| 17.46.040 | Appeals. |
| 17.46.050 | Director of the Bureau of Transportation Designated Representative. |
| 17.46.060 | Abandonment. |
| 17.46.070 | Penalty. |
| Chapter 17.48 | MOVING BUILDINGS |
| 17.48.010 | Permit Required. |
| 17.48.020 | Application and Fee Deposit. |
| 17.48.030 | Moving Permit. |
| 17.48.040 | Regulations. |
| 17.48.050 | Cutting Wires in Moving Operation. |
| Chapter 17.52 | TREES |
| 17.52.010 | Clearances. |
| 17.52.020 | Sidewalks to be Kept Cleaned of Leaves and Organic Matter. |
| 17.52.030 | Interference with Sewer by Tree Roots. |
| 17.52.040 | Curb or Sidewalk Damage from Ornamental Trees. |
| 17.52.050 | Tree Tubs. |
| 17.52.060 | Trimming For or By City. |

| | |
|----------------------|--|
| Chapter 17.56 | PUBLIC UTILITIES |
| 17.56.005 | Definitions. |
| 17.56.010 | General Bond. |
| 17.56.020 | Plans for Underground Construction by Franchise Holder. |
| 17.56.030 | Monthly Payments by Utility Companies. |
| 17.56.050 | Poles or Wires in Public Area. |
| 17.56.060 | Relocation and Discontinuation of Facilities. |
| 17.56.070 | Placement of Overhead Wires. |
| 17.56.080 | Service Shutoff Outside Premises. |
| 17.56.090 | Control of Electrical Currents. |
| | |
| Chapter 17.60 | UNDERGROUND WIRING DISTRICTS |
| 17.60.010 | Designated. |
| 17.60.020 | Overhead Wires Prohibited. |
| 17.60.030 | Application for Permit. |
| 17.60.040 | Designation of Space. |
| 17.60.050 | Filing Plans and Specifications. |
| 17.60.060 | Issuance of Permit. |
| 17.60.080 | Restoration of Streets and Public Use Easements. |
| 17.60.090 | Use of Sidewalk Space and Building Fronts. |
| 17.60.100 | Location Maps. |
| 17.60.110 | Exemptions. |
| 17.60.120 | Joint Use of Conduits. |
| | |
| Chapter 17.64 | PROTECTION OF CITY OWNED TELECOMMUNICATIONS LINE AND EQUIPMENT, STREET LIGHTING AND TRAFFIC SIGNAL SYSTEMS. |
| 17.64.010 | Interference With. |
| 17.64.020 | Permit for Interference. |
| 17.64.030 | Supervision and Expense of Work. |
| 17.64.040 | Use of City Poles or Posts. |
| | |
| Chapter 17.68 | STREET LIGHTS |
| 17.68.010 | Injuring or Destroying. |
| 17.68.020 | Private Street Lighting. |
| 17.68.030 | Design Requirements for Special Street Lighting Districts. |
| 17.68.040 | Requirements for Lights on New or Reconstructed Streets. |
| 17.68.050 | Street Light Removal and Relocation. |
| | |
| Chapter 17.76 | FUEL TANKS |
| 17.76.010 | Permit Issuance. |
| 17.76.020 | Conditions. |
| 17.76.030 | Form of Permit. |

| | |
|----------------------|---|
| Chapter 17.80 | PLATS AND DEDICATIONS |
| 17.80.010 | Approval by Director of the Bureau of Transportation. |
| 17.80.020 | Appeal. |
| Chapter 17.82 | LAND DIVISIONS |
| 17.82.010 | Administration. |
| 17.82.020 | Streets and Alleys. |
| 17.82.030 | Partial Width Streets. |
| 17.82.040 | Access Control Strips. |
| 17.82.045 | Driveway Access Plans. |
| 17.82.050 | Temporary Turnarounds. |
| 17.82.060 | Public Utility Easements. |
| 17.82.070 | Improvements in Land Divisions. |
| 17.82.080 | Improvement Procedures for Land Divisions. |
| 17.82.090 | Agreement for Construction of Public Improvements. |
| Chapter 17.84 | STREET VACATIONS |
| 17.84.010 | Plat Must Be Filed. |
| 17.84.020 | Fees. |
| 17.84.030 | Preliminary Consideration of Petition. |
| 17.84.040 | Bond or Cash Deposit. |
| 17.84.050 | Statutory Procedures Applicable. |
| 17.84.060 | Consent to Vacation for City as Owner. |
| 17.84.065 | Vacation on Council's Own Motion; Notification. |
| Chapter 17.88 | STREET ACCESS |
| 17.88.001 | Purpose. |
| 17.88.010 | Definitions. |
| 17.88.020 | For Building and Planning Actions. |
| 17.88.030 | Location of Multiple Dwellings. |
| 17.88.040 | Through Streets. |
| 17.88.050 | Transportation Impact Study. |
| 17.88.060 | Dedication Prior to Permit Approval. |
| 17.88.070 | Routes of Travel in Park Areas. |
| 17.88.080 | Special Requirements for East Corridor Plan District. |
| Chapter 17.92 | STREET DESIGNATION |
| 17.92.010 | Administration. |
| 17.92.020 | Prefixes for Street Designations in the City. |
| 17.92.030 | Designation of Streets, Avenues, Boulevards and Drives. |

| | |
|-----------------------|--|
| Chapter 17.93 | RENAMING CITY STREETS |
| 17.93.010 | Criteria for Renaming a City Street. |
| 17.93.020 | Selection of Street to be Renamed. |
| 17.93.030 | Application Procedures and Fees. |
| 17.93.040 | Review of Application and Public Hearings. |
| 17.93.050 | City-Initiated Action to Rename a City Street. |
| 17.93.060 | Implementation. |
| | |
| Chapter 17.96 | SURVEYS, ELEVATIONS AND MONUMENTS |
| 17.96.005 | Preservation of Record Monuments. |
| 17.96.050 | Datum Plane Established (City of Portland Vertical Datum). |
| 17.96.062 | City Benchmarks. |
| 17.96.065 | Preservation of City Benchmarks. |
| 17.96.070 | Grade Elevations To Be Referred to Datum Plane. |
| 17.96.080 | Prior Grades Not Affected. |
| | |
| Chapter 17.100 | REMEDIES & PENALTIES |
| 17.100.010 | Enforcement Independent of Other Officials. |
| 17.100.020 | Responsible Official and Responsible Engineer Designated Representative. |
| 17.100.030 | Liability. |
| 17.100.040 | Remedies. |
| 17.100.050 | Penalty for Violation. |
| | |
| Chapter 17.102 | SOLID WASTE & RECYCLING COLLECTION |
| 17.102.010 | Declaration of Policy. |
| 17.102.020 | Definitions. |
| 17.102.030 | Authority of Director to Adopt Rules. |
| 17.102.040 | General Requirements for Franchisees and Permittees. |
| 17.102.050 | Clean and Efficient Fleet Practices for Franchisees and Permittees. |
| 17.102.060 | Fees Credited to Solid Waste Management Fund. |
| 17.102.070 | Fees As a Debt, Enforcement and Collection. |
| 17.102.080 | Daytime Prohibition of Downtown Garbage Collection. |
| 17.102.090 | Assessments for Infractions. |
| 17.102.100 | Right of Appeal and Payment of Assessments. |
| 17.102.110 | Divulging Particulars of Reports Prohibited. |
| 17.102.120 | Franchise Administration. |
| 17.102.130 | Franchise Size Limitation. |
| 17.102.140 | Residential Collection Franchise Required. |
| 17.102.150 | Exceptions to Residential Franchise Requirement. |
| 17.102.160 | Forfeiture and Replacement. |
| 17.102.170 | Residential Recycling Services. |
| 17.102.180 | Franchise System Evaluation. |
| 17.102.190 | Residential Solid Waste and Recycling Rates and Charges. |

- 17.102.200 Large Size Container Service to Residential Customers.
- 17.102.210 Commercial Collection Permit Required.
- 17.102.220 Exceptions to Commercial Collection Permit Requirement.
- 17.102.230 Applications for Commercial Collection Permits, Issuance, Denial.
- 17.102.240 Revocation or Suspension of Commercial Collection Permits.
- 17.102.250 Commercial Tonnage Fee.
- 17.102.260 Registration Required for Independent Commercial Recyclers.
- 17.102.270 Businesses and Multifamily Complexes Required to Recycle.
- 17.102.280 Inspections to Determine Compliance with Business Recycling Requirements.
- 17.102.290 Storing solid waste, recycling or compostable containers on the right of way prohibited.
- 17.102.295 Separation of Recyclables, Compost and Solid Waste.
- 17.102.300 Definitions for Ban of Polystyrene Foam Food Containers (PSF).
- 17.102.310 Prohibition on Certain PSF Uses.
- 17.102.320 Exemptions for PSF Use.
- 17.102.330 Enforcement and Notice of Violations for PSF Ban.
- 17.102.340 Fines for PSF Ban.

Chapter 17.103 SINGLE-USE PLASTIC CHECKOUT BAGS

- 17.103.010 Purpose.
- 17.103.020 Definitions.
- 17.103.030 Authority of Director to Adopt Rules.
- 17.103.040 Checkout Bag Regulation.
- 17.103.050 Enforcement and Penalties.
- 17.103.060 Severability.

Chapter 17.34

SANITARY DISCHARGES

(Chapter added by Ordinance No. 153801;
amended by Ordinance Nos. 163816 and 180037, effective April 28, 2006.)

Sections:

- 17.34.005 Intent of Chapter.
- 17.34.010 Declaration of Policy.
- 17.34.020 Definitions.
- 17.34.030 General Discharge Prohibitions.
- 17.34.040 Discharge Limitations.
- 17.34.050 Pretreatment Facilities.
- 17.34.060 Accidental Spill Prevention and Control.
- 17.34.070 Industrial Wastewater Discharge Permits.
- 17.34.075 Other Sanitary Discharge Permits or Authorizations.
- 17.34.080 Inspection and Sampling.
- 17.34.090 Reporting Requirements.
- 17.34.110 Enforcement.
- 17.34.115 Requests for Reconsideration.
- 17.34.120 Records Retention.
- 17.34.130 Conflict.
- 17.34.140 Severability.
- 17.34.150 Fees.

17.34.005 Intent of Chapter.

(Added by Ordinance No. 180037, effective April 28, 2006.) It is the intent of the City to provide needed sewer service to all users while meeting the outlined objectives. This Chapter provides the structure under which the service will be provided for industrial wastewater dischargers so that the system is protected and can continue to provide efficiently for the wastewater treatment needs of the City. This chapter describes a group of regulations that applies to all sanitary discharges, including those regulated under BES Pre-treatment and City discharge authorization programs. This chapter applies to all separate sanitary and combined sewer systems, which are both considered sanitary sewers for the purposes of this chapter.

17.34.010 Declaration of Policy.

(Amended by Ordinance Nos. 172879, 180037 and 185397, effective July 6, 2012.) It is the policy of the Bureau of Environmental Services (BES) to provide the planning, engineering and administration necessary to develop and manage sewer facilities that are adequate for the conveyance, treatment and disposal of waste water from within the City

**TITLE 17
PUBLIC IMPROVEMENTS**

and to operate the sewer system in such a manner which protects public health and the environment. In carrying out this policy, the objectives of this Chapter are:

- A. to prevent pollutants from entering the sewer system which will interfere with its normal operation or contaminate the resulting sludge;
- B. to prevent the introduction of pollutants into the sewer system which will not be adequately treated and will pass through into the environment;
- C. to improve the opportunity for recycling and reclamation of wastewater and sludge;
- D. to insure protection of worker safety and health;
- E. to insure that all dischargers comply with applicable federal, state and local laws and regulations governing wastewater discharges and that sanctions for failure to comply are imposed.

17.34.020 Definitions.

(Replaced by Ordinance No. 185397; amended by Ordinance No. 185870, effective February 22, 2013.) As used in this Chapter and associated rules the following definitions apply:

- A. **“Branch Sewer”** means the public portion of the underground piping system that connects from the plumbing system of a building or buildings to a public sewer.
- B. **“Categorical Pretreatment Standards”** mean limitations on pollutant discharges to POTWs from specific types of new or existing industrial users. These standards are promulgated by the EPA in accordance with Sections 307 (b) and (c) of the Clean Water Act. This term includes prohibitive limitations established pursuant to 40 CFR 403.5
- C. **“Clean Water Act (CWA)”** means the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251 et seq.).
- D. **“Combined Sewer”** means a sewer designed to convey both sanitary sewage and stormwater.
- E. **“Director”** means the Director of The Bureau of Environmental Services or the Director’s designee.
- F. **“Discharge”** means any disposal, injection, dumping, spilling, pumping, emitting, emptying, leaching, leaking, or placing of any material so that such material

**TITLE 17
PUBLIC IMPROVEMENTS**

enters or is likely to enter a waterbody, groundwater, or a public sewer or drainage system.

- G. “Discharge Authorization”** means a written approval by the Director which prescribes certain requirements or restrictions for a discharge to the City sewer and drainage system.
- H. “Discharger”** means any person who causes or permits a direct or indirect discharge to the City’s sewer and drainage system.
- I. “Domestic Waste”** means any waste consistent with that generated from single or multiple residential dwellings including, but not limited to, wastes from bathrooms, laundries and kitchens.
- J. “Domestic Wastewater”** means any water that contains only domestic waste.
- K. “Hazardous Substance”** means any substances referenced in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S. Code §9601 et seq.), section 502(13) of the Clean Water Act or other substance at concentrations specified in those lists or, if no concentration is specified, at concentrations designated by the Director.
- L. “Industrial User”** means any person that discharges industrial wastewater to the City sewer system.
- M. “Industrial Wastewater”** means any discharge resulting from, or used in connection with, any process of industry, manufacturing, commercial food processing, business, agriculture, trade or research. Industrial wastewater includes, but is not limited to, the development, recovery or processing of natural resources and leachate from landfills or other disposal sites.
- N. “Industrial Wastewater Discharge Permit”** means a permit to discharge industrial wastewater into the City sewer system issued under Section 17.34.070 and which prescribes certain discharge requirements and limitations.
- O. “Interference”** means a discharge that alone or in conjunction with other discharges, inhibits or disrupts the normal operation of the City sewer system or contributes to a violation of any requirement of the POTW’s NPDES permit. This includes any increase in the magnitude or duration of a violation, any increase in cost due to damage to the system, additional treatment of sewage, sewage sludge use or disposal, or in compliance with local, state or federal regulations or permits related to sewage treatment and sludge disposal.

TITLE 17
PUBLIC IMPROVEMENTS

- P.** “**National Pollutant Discharge Elimination System (NPDES)**” means the Clean Water Act (40 CFR Part 122) regulations that require dischargers to control and reduce pollutants in discharges to waters of the United States
- Q.** “**Pollutant**” means an elemental or physical material that can be mobilized or dissolved by water or air and that could create a negative impact to human health, safety, or the environment. Pollutant discharges into the City sewer system may be prohibited or limited by this Chapter or administrative rules.
- R.** “**POTW**” means Publicly Owned Treatment Works, which includes any devices and systems, owned by a State or municipality, used in the collection, transportation, storage, treatment, recycling and reclamation of wastewater.
- S.** “**Pretreatment**” means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater in accordance with federal, state and local laws, regulations and permits prior to or in lieu of discharging or otherwise introducing such pollutants into the City sewer system.
- T.** “**Slugload**” means any discharge that is non-routine or episodic and that has a reasonable potential to cause interference, pass-through, or violation of applicable local, state or federal regulations, including City local limits or conditions of the City’s NPDES permit. Slugloads include but are not limited to accidental spills and non-customary batch discharges.
- U.** “**Toxic Substance**” means any chemical listed in Oregon’s water quality standards for toxic pollutant tables in OAR, Division 340-041-0033; the CWA effluent guidelines list of toxic pollutants at 40 CFR 401.15; or the toxic chemical release reporting specific toxic chemical listings at 40 CFR 372.65 at concentrations specified in those lists or, if no concentration is specified, at concentrations designated by the Director.

17.34.025 Authority of Director of Environmental Services to Adopt Rules.

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

17.34.030 General Discharge Prohibitions.

(Amended by Ordinance Nos. 172879, 180037 and 185397, effective July 6, 2012.)

- A.** It is unlawful to discharge industrial wastewater into the City sewer system except in compliance with this Chapter and rules adopted hereunder.
- B.** Prohibited discharges. It is unlawful to discharge, cause to discharge, or allow to discharge directly or indirectly into the City sewer system any substance, alone or in combination with others, that may inhibit, interfere with, injure, harm, damage,

TITLE 17
PUBLIC IMPROVEMENTS

create a hazard to or impair the performance of the City's conveyance, collection or treatment processes and systems. Prohibited discharges also include those that create or could create a nuisance or a threat to human health or the environment or that:

1. Contains substances that are not amenable to treatment or reduction by the sewage treatment process employed or are only partially amenable to treatment;
2. Contain liquids, solids, or gases which, either alone or by interaction, may cause a fire or an explosion or injure the sewer system or wastestreams;
3. Have a closed cup flashpoint of less than 140 degrees Fahrenheit (60 degrees Celsius) using test methods prescribed at 40 CFR 261.21 or could cause the atmosphere in any portion of the sewer system to reach a concentration of 10 percent or more of the Lower Explosive Limit (LEL);
4. Contain solids or viscous substances which may solidify or become discernibly viscous at temperatures above 0 degrees Celsius (32 degrees Fahrenheit) or are capable of obstructing the flow of wastewater or cause other interference with the operation of the sewer system;
5. Contain noxious, malodorous or toxic liquids, gases, vapors, fumes, or solids, in amounts that may violate the general prohibitions of Subsection 17.34.030 B.;
6. Contains hazardous or toxic substances, either alone or in combination with other substances may adversely affect receiving waters or in amounts that may violate the general prohibitions of Subsection 17.34.030 B.;
7. Have a pH of less than 5.0 or more than 11.5 without prior approval by the Director;
8. Are hotter than 65 degrees Celsius (149 degrees Fahrenheit) or are hot enough to inhibit biological activity or cause the temperature of the treatment plant influent to exceed 27 degrees Celsius (80 degrees Fahrenheit);
9. Contain material trucked or hauled from a cesspool, holding or septic tank or any other nondomestic source, except such material received at designated locations under City contract or permit;
10. Contain any material other than domestic waste larger than 0.65 centimeters (1/4 inch) in any dimension;

TITLE 17
PUBLIC IMPROVEMENTS

11. Contain dissolved solids may violate the general prohibition of Subsection 17.34.030 B.;
 12. Contain excessive color which is not removed in the treatment process;
 13. Contain radioactive material, except in compliance with a current permit issued by the Oregon State Health Division or other state or federal agency having jurisdiction;
 14. Contain petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that may cause interference or pass through;
 15. Contain non-contact cooling water without prior approval by the Director;
 16. May cause sewer system effluent or treatment residues, sludges, or scums to be unsuitable for reclamation and reuse;
 17. Constitute a slugload per administrative rule;
 18. Constitute a batch discharges without written permission from the Director;
 19. Exceeds discharge limits adopted in permits or administrative rules;
 20. May cause the City to violate the terms of its NPDES permit; or
 21. May cause the City to violate sludge use or disposal criteria, treatment guidelines, or other applicable regulations developed under the Clean Water Act (33 USC 1251-1387), the Solid Waste Disposal Act (42 USC 6901-6992k), the Clean Air Act (42 USC 7401 -7671q), the Toxic Substances Control Act (15 USC 2601-2692), or any other federal or state statutes.
- C. A discharge or flow resulting from and emergency situation such as a water line break or fire fighting by the Fire Department shall not be prohibited from discharging to the sewer during the period of the emergency. Any repairs made after the period of emergency has ceased will comply with all regulations of this Code.

17.34.040 Discharge Limitations.

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

- A.** It is unlawful for a discharger to discharge wastes or wastewater to the City sewer system in excess of limitations established in an industrial wastewater discharge permit or in violation of the prohibited discharges in Section 17.34.030. The Director of Environmental Services shall establish specific discharge limitations under separate rules to meet the objectives of this Chapter.
- B.** It is unlawful for a discharger to use dilution as a partial or complete substitute for adequate treatment to achieve compliance with the standards and limitations set forth in this Chapter, administrative rules, or in an industrial wastewater discharge permit issued pursuant to the Chapter. The Director may impose mass limitations on dischargers who are using dilution to meet the applicable pretreatment standards or requirements of this Chapter, administrative rules or in other cases where the Director determines that the imposition of mass limitations is appropriate.
- C.** The Director may authorize the use of equivalent concentration limits in lieu of mass limits for certain industrial categories, and allow the conditional use of equivalent mass limit in lieu of concentration-based limits where appropriate.
- D.** Termination or limitation. Notwithstanding prior acceptance into the City sewer system of industrial wastewater, if the Director finds that industrial wastewater from a particular commercial or industrial occupancy or a class of similar occupancies cause or may cause damage, interference, hazard or nuisance to the City sewer system, City personnel or the receiving waters, the Director may limit the characteristics or volume of the industrial wastewater accepted or may terminate acceptance. Notice of the limitation or termination shall be given in writing to the occupant of the property or posted on the property involved, and shall specify the date when the limitation or termination is to be effective. It is unlawful for any person to discharge or permit the discharge of industrial wastewater in violation of this notice.

17.34.050 Pretreatment Facilities.

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

- A.** If, as determined by the Director, treatment facilities, operation changes or process modifications at an industrial user's facility are needed to comply with any requirements under this Chapter or are necessary to meet any applicable state or federal requirements, the Director may require that such facilities be constructed or that modifications be made to the pretreatment facilities within the shortest reasonable time. Compliance deadlines will be based on construction time, impact of the untreated industrial wastewater on the City sewer system,

TITLE 17
PUBLIC IMPROVEMENTS

impact of the industrial wastewater on the marketability of the City treatment plant sludge or sludge products, and any other appropriate factor.

- B.** Any requirement of this Chapter may be incorporated as a part of an industrial wastewater discharge permit issued under Section 17.34.070 or any other enforcement document and made a condition of issuance of such permit or discharge authorization for the industrial wastewater from such facility.
- C.** Plans, specifications and other information relating to the construction or installation of required pretreatment facilities shall be submitted to the Director. No construction or installation shall commence until written approval of plans and specifications by the Director is obtained. No person, by virtue of such approval, shall be relieved of compliance with other local, State or federal laws relating to construction and permits. Every facility must be constructed in accordance with the approved plans and specifications and installed and maintained at the expense of the discharger.
- D.** Any person constructing a pretreatment facility shall also install and maintain at their own expense a sampling manhole or other suitable monitoring access for investigating the discharge from the pretreatment facility to the public sewer. The sampling manhole or monitoring access shall be placed in a location designated by the Director and in accordance with specifications approved by the Director.

17.34.060 Accidental Spill Prevention and Control.

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

- A.** Notification. Any person becoming aware of spills or uncontrolled discharges of hazardous or toxic substances or of substances prohibited under Section 17.34.030 directly or indirectly into the City sewer system must immediately report such discharge by telephone to the Director and to any other authorities required under other local, state, or federal laws or regulations.
- B.** Written notice. Within 5 days following an accidental discharge as described in Subsection A. above, the discharger shall submit to the Director a detailed written report describing the cause of the discharge and the measures to be taken to prevent similar future occurrences. Such notification will not relieve the discharger from any fines, civil penalties, or other liability which may be imposed under the authority of this Chapter or rules adopted hereunder or other applicable law.
- C.** Posted notice. A notice informing employees of an industrial wastewater discharger of the notification requirement above which contains information regarding reporting in the event of such a discharge shall be posted in a

conspicuous place and shall be visible to all employees who may reasonably be expected to observe such a discharge.

- D.** Preventive measures. Direct or indirect connections or entry points which could allow spills or uncontrolled discharges of hazardous or toxic substances or of substances prohibited under Section 17.34.030 to enter the City sewer system must be eliminated or labeled and controlled so as to prevent the entry of wastes in violation of this Chapter. The Director may require the discharger to install or modify equipment or make other changes necessary to prevent such discharges as a condition of issuance of an industrial wastewater discharge permit or as a condition of discharge authorization to the City sewer system. A schedule of compliance shall be established by the Director for completion of required actions within the shortest reasonable period of time. Inability to comply with this schedule without an extension of time by the Director is a violation of this Chapter.

- E.** Accidental Spill Prevention Plans.
 - 1.** Dischargers that handle, store or use hazardous or toxic substances or substances prohibited under Section 17.34.030 on their sites shall prepare and submit to the Director an Accidental Spill Prevention Plan, according to the requirements set out in administrative rule, within 60 days after notification by the Director or as required by an industrial wastewater discharge permit.

17.34.070 Industrial Wastewater Discharge Permits.

(Amended by Ordinance Nos. 165068, 172879 and 185397, effective July 6, 2012.)

- A.** Requirement for a permit. Except as provided in Subsection 17.34.070 B. an industrial wastewater discharger must have an industrial wastewater discharge permit prior to discharging into the City sewer system if:
 - 1.** The discharge is required to be permitted under procedures contained in the City's approved pretreatment program; or
 - 2.** The discharger is a Significant Industrial User, which includes:
 - a.** All industrial users subject to Categorical Pretreatment standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N; and
 - b.** Any other industrial user that:
 - (1)** Discharges an average of at least 25,000 gallons per day or more of process wastewater to the POTW (excluding

**TITLE 17
PUBLIC IMPROVEMENTS**

domestic, noncontact cooling and boiler blowdown wastewater);

- (2) Contributes a process wastestream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
- (3) Is designated as such by the Director on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement in accordance with 40 CFR 403.8(f)(6),

- 3. The Director may determine that an industrial user meeting the criteria above is not a "Significant Industrial User" if the discharge has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement in accordance with 40 CFR 403.8(f)(6).

B. Existing discharges.

- 1. If discharges occur prior to the date that an industrial wastewater discharge permit is required, the discharger shall be notified in writing by the Director that such a permit is required. Such existing dischargers shall be allowed to continue discharging into the City sewer system without an industrial wastewater discharge permit until a permit is issued or denied, provided the discharger files a completed environmental survey and application for an industrial wastewater discharge permit within 90 days of receipt of the notice.
- 2. Discharges that require an industrial wastewater discharge permit and are allowed to continue discharging without such a permit under Subsection 17.34.070 B.1. shall comply with the requirements of this Chapter and rules adopted hereunder.

C. Application for industrial wastewater discharge permit.

- 1. Existing Significant Industrial Users, shall submit application for a permit on a form provided by the Director within 180 days after the effective date of a categorical pretreatment standard issued by the U.S. EPA or within 90 days after receiving notification from the Director that such a standard has been issued, whichever is sooner.

TITLE 17
PUBLIC IMPROVEMENTS

2. New Source Dischargers. Any new source discharger determined by the Director to be a Significant Industrial User shall submit an application for a permit on a form provided by the Director within 90 days of notification by the Director. However, a new source discharger may not discharge to the sewer system without a permit.
 3. Submission of the application for permit required by this Section will satisfy the requirements of 40 CFR 403.12(b).
 4. The application for permit shall not be considered complete until all information required by the application form, requirements of this Chapter, or by administrative is provided. All fees must be paid and the certification statement required by 40 CFR 403.12(b)(6) signed by the authorized representative. The Director may grant specific exemptions for these items.
- D.** Issuance of industrial wastewater discharge permits.
1. Industrial wastewater discharge permits shall be issued or denied by the Director within 90 days after a completed application is received, unless that period is extended in writing by the Director for good and valid cause.
 2. Industrial wastewater discharge permits shall contain conditions which meet the requirements of this Chapter, administrative rules and applicable state and federal laws and regulations.
 3. If pretreatment facilities are needed to meet the applicable pretreatment standards or requirements in an industrial wastewater discharge permit, the permit shall require the installation of such facilities on a compliance schedule.
 4. Whenever an industrial wastewater discharge permit requires installation or modification of pretreatment facilities or a process change necessary to meet discharge standards or spill control requirements, a compliance schedule shall be included which establishes the date for installation of the pretreatment facilities or process changes. The compliance schedule may contain appropriate interim dates for completion of specified tasks. Compliance dates established in a permit cannot exceed federal categorical deadline dates.
 5. Industrial wastewater discharge permits shall expire no later than 5 years after the effective date of the permit and shall not be transferable except with prior notification and approval from the Director.

TITLE 17
PUBLIC IMPROVEMENTS

6. The Director may deny the issuance of an industrial wastewater discharge permit if the discharge could result in violations of local, state or federal laws or regulations; cause interference or damage to any portion of the City sewer system; or create an imminent or potential hazard to human health or the environment.
- E.** Modification of permits.
1. An industrial wastewater discharge permit may be modified for good and valid cause at the written request of the permittee or at the discretion of the Director.
 2. Permittee modification requests shall be submitted to the Director and shall contain a detailed description of all proposed changes in the discharge. The Director may request any additional information needed to adequately review the application or assess its impact.
 3. The Director may deny a request for modification if he or she determines that the change will result in violations of local, State or federal laws or regulations, will cause interference or damage to any portion of the City sewer system, or will create an imminent or potential hazard to human health or the environment.
 4. If a permit modification is made at the direction of the Director, the permittee shall be notified in writing of the proposed modification at least 30 days prior to its effective date and informed of the reasons for the changes. Any request for reconsideration shall be made before the effective date of the changes.
- F.** Change in a permitted discharge. A modification to the permittee's discharge permit must be issued by the Director before any significant increase is made in the volume or level of pollutants in an existing permitted discharge to the City sewer system. Changes in the discharge involving the introduction of a wastewater not previously included in the industrial wastewater discharge permit application or involving the addition of new pollutants shall be considered new discharges, requiring application under Section 17.34.070.
- G.** Renewal of Permits. A permittee shall apply for renewal of its industrial wastewater discharge permit within 90 days of the expiration date of the existing permit. Upon timely application for renewal, an existing permit will remain effective until the renewal application is acted upon.
- H.** Appeal of permit. Upon receipt of a final industrial wastewater discharge permit, a permittee may appeal any of its terms or conditions to the Code Hearings

Officer in accordance with procedures set out at Chapter 22.10 of the Portland City Code; provided that such an appeal shall include a copy of the permit that is the subject of the appeal, shall state the basis for the appeal, and shall be filed with the Code Hearings Officer and the Bureau of Environmental Services.

17.34.075 Other Sanitary Discharge Permits or Authorizations

(Added by Ordinance No. 180037, effective April 28, 2006.) The City may require authorization for any discharge to the sanitary or combined sewer of materials that violate the discharge prohibitions listed in 17.34.030.

- A. Authorization may take the form of a written authorization for an intermittent or ongoing discharge. Authorization may also require the adherence to management practices to reduce pollutant releases associated with the authorized discharge
- B. Dischargers may be required to provide:
 - 1. Evaluation of the proposed discharge, including: sampling, prior to being granted authorization to discharge.
 - 2. Adequate information and access to the location or process creating the discharge, to allow the City to fully evaluate any pretreatment needs for authorizing the discharge.
- C. The City may require pretreatment for any discharge to the City's sewer system, including but not limited to requirements specified in 17.34.050.
- D. Non-compliance with these requirements is subject to the enforcement steps specified in 17.34.110 and in the associated Sanitary System Discharge administrative rules.

17.34.080 Inspection and Sampling.

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

- A. Inspection.
 - 1. Authorized City representatives may inspect the monitoring facilities of any industrial wastewater discharger to determine compliance with the requirements of this Chapter. The discharger shall allow the City or its authorized representatives to enter upon the premises of the discharger at all reasonable hours for the purpose of inspection, sampling, photographic documentation or records examination and copying. The City shall also have the right to install on the discharger's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and metering operations.

**TITLE 17
PUBLIC IMPROVEMENTS**

- 2.** Conditions for entry.
 - a.** The authorized City representative shall present appropriate credentials at the time of entry;
 - b.** The purpose of the entry shall be for inspection, observation, measurement, sampling, testing, photographic documentation, or records examination and copying in accordance with the provisions of this Chapter;
 - c.** The entry shall be made at reasonable times during normal operating or business hours unless an emergency situation exists as determined by the Director.
 - d.** All regular safety and sanitary requirements of the facility to be inspected shall be complied with by the City representative(s) entering the premises.

B. Sampling.

- 1.** Samples of wastewater being discharged into the sewer system must be representative of the discharge. Other sampling locations may be required by permit. All sampling and analyses shall be performed in accordance with the procedures set forth in 40 CFR Part 136 and any amendments thereto or with any other test procedures approved by EPA. If there are no approved test procedures the Director may approve other analytical procedures. The results of all samples taken shall be reported.
- 2.** Samples taken by City personnel for the purpose of determining compliance with the requirements of this Chapter or administrative rule may be split with the discharger, or a duplicate sample provided in the instance of fats, oils and grease, if requested by the discharger before or at the time of sampling.

- C.** Sampling manhole or access. The Director may require an industrial wastewater discharger to install and maintain at the discharger's expense a suitable monitoring access such as a manhole in the discharger's branch sewer to allow observation, sampling and measurement of all industrial wastewaters being discharged into the City sewer system. Any monitoring access must be constructed in accordance with plans approved by the Director and must be designed so that flow measuring and sampling equipment can be conveniently installed. Access to the monitoring access must be available to City representatives at all times.

17.34.090 Reporting Requirements.

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

A. Periodic compliance reports.

1. The Director may require reporting by industrial wastewater dischargers that are not required to have an industrial wastewater discharge permit if information or data is needed to establish a sewer charge, determine the treatability of the effluent or determine any other factor which is related to the operation and maintenance of the sewer system.
2. The Discharger must submit reports to the Director during the months of June and December, unless required on other dates or more frequently by the Director based on the nature of the effluent over the previous reporting period.
3. The report must include a record of the mass and concentrations of the permit-limited pollutants that were measured. Reports shall include a record of all flow measurements taken at designated sampling locations. The Director may accept reports of average and maximum flows estimated by verifiable techniques if the Director determines that actual measurement is not feasible. Additional information shall be included as required by this Chapter or administrative rules.
4. The Director may require self-monitoring by the discharger or, if requested by the discharger, may agree to have BES staff perform the periodic compliance monitoring needed to prepare the periodic compliance report required under this Section.

B. Final Compliance Report. Any discharger subject to Subsection 17.34.090 A. must submit to the Director a report indicating the nature and concentration of all prohibited or regulated substances contained in its discharge and the average and maximum daily flow in gallons. The report must state whether the applicable pretreatment standards or requirements are being met on a consistent basis and, if not, what additional operation and maintenance and pretreatment is necessary to bring the discharger into compliance. The discharger must submit reports.

1. Within 90 days following the date for final compliance with applicable pretreatment standards and requirements set forth in this Chapter, administrative rule, or an industrial wastewater discharge permit; or

industrial user shall repeat the sampling and analysis and submit results to the Director within 30 days of becoming aware of the violation.

- H.** Notification of Changed Discharge. All industrial users shall promptly notify the Director in advance of any substantial change in the volume or character of pollutants in their discharge.

17.34.110 Enforcement.

(Amended by Ordinance Nos. 165068, 180037 and 185397, effective July 6, 2012.) Dischargers that fail to comply with the requirements of this Chapter and rules adopted hereunder may be subject to enforcement actions by the Director.

A. Violations.

- 1.** A violation shall have occurred when any requirement of this Chapter or rules adopted hereunder has not been met, or when any condition of a permit or agreement issued under the authority of this Chapter or rules adopted hereunder is not met.
- 2.** Each day a violation occurs or continues shall be considered a separate violation.
- 3.** For violations of discharge limits, each parameter that exceeds a discharge limit shall be considered a separate violation except as provided elsewhere in this Chapter or rules adopted hereunder.
- 4.** Where a discharge causes interference or pass through, the discharger shall have an affirmative defense where it is demonstrated that:
 - a.** It did not know or have reason to know that its discharge, alone or in conjunction with a discharge or discharges from other sources, would cause pass through or interference; and
 - b.** The discharge was in compliance with properly developed local limits prior to and during the pass through or interference; or
 - c.** If a local limit designed to prevent pass through or interference has not been developed for the pollutants that caused the pass through or interference, the discharger's discharge directly prior to and during the pass through or interference did not change substantially in nature or constituents from prior discharge activity which was regularly in compliance with the requirements of this Chapter and rules adopted hereunder.

TITLE 17
PUBLIC IMPROVEMENTS

- B.** Significant Non-compliance. An industrial user shall be designated in significant non-compliance if one or more of the following exist:
1. Chronic violations of wastewater discharge limits. Chronic violations occur when at least 66 percent of all the measurements taken during a 6 month period exceed any pretreatment standard for the same pollutant parameter.
 2. Technical Review Criteria (TRC) violations. TRC violations occur when at least 33 percent of all of the measurements for each pollutant parameter taken during a 6 month period equal or exceed the sum of any pretreatment standard multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease; and 1.2 for all other pollutants except pH).
 3. Any other violation of any pretreatment standard that the Director determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public).
 4. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment.
 5. Any discharge that has required the Director to use emergency authority to halt or prevent such a discharge.
 6. Failure of an industrial user to meet a compliance schedule milestone contained in an industrial wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance.
 7. Failure of an industrial user to provide, within 30 days after the due date, required reports such as applications, baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules.
 8. Failure of an industrial user to accurately report noncompliance.
 9. Any other violation or group of violations that the Director of Environmental Services determines will adversely affect the operation or implementation of the local pretreatment program.
- C.** Enforcement Mechanisms. In enforcing any of the requirements of this Chapter or administrative rule, the Director may:

**TITLE 17
PUBLIC IMPROVEMENTS**

1. Take civil administrative actions, as set out in rules adopted under the authority of this Chapter;
 2. Issue compliance orders;
 3. Institute an action before the Code Hearings Officer;
 4. Cause an appropriate action to be instituted in a court of competent jurisdiction; or
 5. Take such other action as the Director deems appropriate.
- D.** Civil Penalties. Violations of this Chapter or rules adopted hereunder may result in assessment of civil penalties in an amount up to \$5,000 per day per violation. All civil penalties shall be deposited with the City Treasurer. Failure to pay a civil penalty within 30 days following a final determination regarding the penalty is grounds for permit revocation or termination of the permittee's discharge. Penalties shall accrue interest and other charges until the penalty is paid in full.
- E.** Termination or prevention of a discharge/permit revocation.
1. The Director may terminate or prevent a discharge into the City sewer system or revoke an industrial wastewater discharge permit if:
 - a. The discharge or threatened discharge presents or may present an endangerment to the health or welfare of persons or the environment, or threatens to interfere with the operation of the City sewer system; or
 - b. The permit to discharge into the City sewer system was obtained by misrepresentation of any material fact or by lack of full disclosure; or
 - c. The discharger violates any requirement of this Chapter or of an industrial wastewater discharge permit; or,
 - d. Such action is directed by a court of competent jurisdiction.
 2. Notice of termination or prevention of discharge or permit revocation shall be provided to the industrial wastewater discharger or posted on the subject property prior to terminating or preventing the discharge or revoking a permit.

**TITLE 17
PUBLIC IMPROVEMENTS**

- a.** In situations that do not represent an imminent endangerment to health or the environment or an imminent threat of interference with the sewer system, the notice shall be in writing, shall contain the reasons for the termination or prevention of the discharge or permit revocation, the effective date, the duration, and the name, address and telephone number of a City contact, shall be signed by the Director, and shall be received at the business address of the discharger no less than 30 days prior to the effective date.
 - b.** In situations where there is an imminent endangerment to the health or welfare of persons or the environment or an imminent threat of interference with the operation of the sewer system, the Director may immediately terminate an existing discharge or prevent a new discharge from commencing or revoke a permit after providing informal notice to the discharger or after posting such notice on the subject property. Informal notice may be verbal or written and shall include the effective date and time and a brief description of the reason. Within 3 working days following the informal notice, a written formal notice as described in 17.34.110(d)(2)(A) shall be provided to the discharger.
 - 3.** The Director shall reinstate an industrial wastewater discharge permit which has been revoked or shall reinstate industrial wastewater treatment service upon clear and convincing proof by the discharger of the elimination of the noncomplying discharge or conditions creating the threat of endangerment or interference.
- F.** Annual Publication. A list of Significant Industrial Users that are subject to the definition of significant noncompliance shall be published annually in the newspaper of general circulation published in Portland, summarizing the enforcement actions taken against industrial users during a prior twelve month period.
- G.** Cost recovery.

 - 1.** The Director may recover all reasonable costs incurred by the City which are attributable to or associated with violations of this Chapter, including but not limited to the costs of administration, investigation, sampling and monitoring, legal or enforcement activities, damage to or contamination of the sanitary or combined sewer systems. BES may recover costs associated with remediation of a violation, contracts and health studies, and any fines and civil penalties assessed to the City that result from activities not in compliance with this Chapter or rules adopted hereunder.

**TITLE 17
PUBLIC IMPROVEMENTS**

Liens may be imposed on the property or properties in accordance with the provisions of Chapter 22.06.

2. All such costs shall be documented by the City and shall be served upon the discharger by certified or registered mail, return receipt requested. Such documentation shall itemize the costs the Director has determined are attributable to the violations.
3. The costs are due and payable by the discharger upon receipt of the letter documenting such costs. All such costs shall be paid to the City Treasurer and credited to the Sewage Disposal Fund. Nonpayment or disputes regarding the amount shall be referred for appropriate action to the City Attorney. The City Attorney may initiate appropriate action against the discharger to recover costs under this Section.
4. The Director may terminate a discharge for nonpayment of costs after 30 days notice to the discharger.

H. Appeal of enforcement action.

1. Upon receipt of a final determination of an enforcement action, discharger may appeal any of the following items to the Code Hearings Officer in accordance with procedures set out at Chapter 22.10 of the Portland City Code:
 - a. The final determination of violation;
 - b. The amount of civil penalty;
 - c. The required remediation action
 - d. The time frame for corrective action;
 - e. Termination of service or permit.
2. The following are not appealable to the Code Hearings Office;
 - a. Costs related to nuisance abatement, appeal processing or assessed environmental damage;
3. All appeals shall include a copy of all relevant documentation, including the Bureau's final determination letter, that is the subject of the appeal. Documentation shall state the basis for the appeal, and shall be filed with

TITLE 17
PUBLIC IMPROVEMENTS

the Bureau of Environmental Services which shall initiate the Code Hearings Officer review.

- I. City not liable. Nothing in this Chapter shall be construed to confer liability on the City for any injury or damage resulting from the failure of responsible parties to comply with the provisions of this Chapter.

17.34.115 Requests for Reconsideration.

(Added by Ordinance No. 185397, effective July 6, 2012.) A discharger may request the Director to reconsider any determination made under this Chapter if there is reason to believe that sufficient data or information is available to support a different determination. Any request for reconsideration shall be accompanied by the data and information the discharger used as a basis for the request. The Director may then revise the initial determination or retain the original determination based upon the submitted request.

17.34.120 Records Retention.

(Amended by Ordinance Nos. 172879 and 185397, effective July 6, 2012.) All dischargers subject to this Chapter shall retain and preserve for no less than 3 years all records, books, documents, memoranda, reports, correspondence and summaries relating to monitoring, sampling and chemical analyses made by or in behalf of the discharger in connection with its discharge. This period of retention may be extended per 40 CFR 493.12(o)(2) when requested by the Director, DEQ, or EPA during the course of any unresolved litigation regarding the discharger. The discharger shall retain and preserve all records which pertain to matters which are the subject of any enforcement or litigation activities brought by the City until all enforcement activities have concluded and all appeals deadlines have expired.

17.34.130 Conflict.

All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this Chapter are hereby repealed to the extent of such inconsistency or conflict.

17.34.140 Severability.

If any provision, paragraph, word, or Section of this Chapter or rules adopted hereunder is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, Sections and Chapters shall not be affected and shall continue in full force and effect.

17.34.150 Fees.

(Amended by Ordinance Nos. 173138, 173414, 181846 and 185397, effective July 6, 2012.)

- A. The Director shall set annual fees by ordinance for all industrial wastewater discharge permits. The Director shall consider: process wastewater discharge

TITLE 17
PUBLIC IMPROVEMENTS

flow; industrial user classification; permit status (new or renewed); self monitoring frequency; city monitoring frequency; regulatory history and any regulatory permits or special requirements.

- B.** Permit fees. Fees for each fiscal year are set July 1 and billed as soon after the following January 1 as is practical.

- C.** The Director shall also have authority to set fees for all non-routine, non-domestic batch discharges to the sewer system. Service fees for such discharges not otherwise addressed in an industrial wastewater discharge permit shall be calculated at a rate per occurrence, in addition to other applicable charges. The rate shall be established, annually, by general ordinance.

17.34.160 Requests for Reconsideration.

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

Chapter 17.36

SEWER USER CHARGES

(Chapter replaced by Ordinance No. 185870,
effective February 22, 2013.)

Sections:

- 17.36.010 Intent.
- 17.36.020 Definitions.
- 17.36.030 Annual Rate Ordinance.
- 17.36.040 Sewer System Connection Charges.
- 17.36.050 User Charges.
- 17.36.060 Special User Charges.
- 17.36.070 Service Outside the City.
- 17.36.080 Collection of Charges.
- 17.36.090 Adjustment of Bills.
- 17.36.100 Inspection and Enforcement.
- 17.36.110 Appeal.

17.36.010 Intent.

This Chapter governs the collection of sewer user charges by the Bureau of Environmental Services (BES) as authorized by the City Charter. It also includes collection processes applicable to other charges assessed by BES.

17.36.020 Definitions.

The following definitions apply to this Chapter:

- A. "Biochemical Oxygen Demand (BOD)"** means the quantity of oxygen utilized in the biochemical oxidation of organic matter per Guidelines Establishing Test Procedures for the Analysis of Pollutants, contained in 40 CFR 136.
- B. "Branch"** means the public portion of the horizontal piping system connecting from the plumbing system of a building or buildings to a public or private sewer.
- C. "Branch Charge"** means a connection charge that reimburses the City for the costs of designing and constructing a public sewer extension and providing individual service laterals.

TITLE 17
PUBLIC IMPROVEMENTS

- D.** “**Connection Charge**” means a charge assessed by the City for providing public sewer and stormwater management services to a property. A connection charge may include a line charge, branch charge, sanitary sewer system development charge, and a stormwater system development charge. Connection charges are for use or expansion of use of City sanitary or stormwater management services.
- E.** “**Director**” means the Director of the Bureau of Environmental Services or the Director’s designee.
- F.** “**Equivalent Dwelling Unit (EDU)**” means the estimated average sanitary flow from a single-family dwelling charged to a sewer account.
- G.** “**Extra Strength Charge**” means the additional charge to wastewater dischargers who have constituent discharges at concentrations above levels normally expected in domestic wastewater, as determined by this Chapter and general ordinance.
- H.** “**Groundwater**” means subsurface water that occurs in soils and geological formations that are fully saturated. Groundwater fluctuates seasonally and includes perched groundwater. Groundwater related discharges include, but are not limited to, subsurface water from site remediation and investigations, well development, Brownfield development, discharges from footing and foundation drains, rainwater infiltration into excavations and subsurface water associated with construction or property management dewatering activities.
- I.** “**Impervious Area**” means the area of a property that does not allow rainwater to percolate naturally into the ground. The City classifies the following as impervious areas for billing purposes: roofs; paved areas such as driveways, parking lots, or walkways; and areas of property that are covered by porous pavement. The City does not bill for the following impervious areas: public rights-of-way; outdoor recreation areas that are available to the general public without condition or restriction; and areas covered by compacted soils and compacted gravels.
- J.** “**ITE Manual**” means the manual used per Section 17.15.020 to determine transportation system development charges.
- K.** “**Line Charge**” means a connection charge that reimburses the City for the costs of designing and constructing sanitary sewer lines that serve multiple connecting properties.
- L.** “**Net New Impervious Area**” means the difference between existing impervious area on a property, and any increase in impervious area that results from a proposed use(s) of the property.

**TITLE 17
PUBLIC IMPROVEMENTS**

- M.** “**Net New Vehicular Trips**” means the difference between the vehicular trips generated by the existing use of a property, and any increased number of the vehicular trips generated from a proposed use(s) of the property.
- N.** “**Non-Routine Discharge**” means a definable/explainable uncontrolled release or spill to the sanitary sewer system that is not representative of the normal or expected characteristics of a facility’s wastewater discharge and that may include discharges defined as slugloads under Chapter 17.34.
- O.** “**Rate**” means the multiplication factor used to generate a connection or user charge based on cost-per-unit proxies such as gallons of discharge, square feet, or feet of road frontage. Rates can be multiplied by other factors
- P.** “**Ratepayer**” means a person who has the right to possession of a property and:
1. Who causes or permits the discharge of sanitary sewage into the public sewer system, or
 2. Whose use of the property directly or indirectly benefits from stormwater management services provided by the City.
- Q.** “**Rolling Average**” means the average of the 10 most recent monthly averages of representative City- and/or self-monitoring events for the purpose of calculating an extra-strength sewage charge rate, unless another period is approved by the Director.
- R.** “**Sanitary Sewage**” means wastewater discharged to the public sewer system by permit or other approval of the Director and includes, but is not limited to, domestic wastewater, industrial and commercial process wastewater and contaminated stormwater.
- S.** “**Sanitary Sewer Conversion Charge**” means the charge to convert a nonconforming sewer defined in Chapter 17.33. This charge is assessed in lieu of line and branch connection charges.
- T.** “**Sanitary System Development Charge (SDC)**” means a connection charge for new or increased demand of the public sewer system. This charge reimburses the City for an equitable portion of the costs of major sewer facilities such as wastewater treatment facilities, pump stations and interceptor sewers.
- U.** “**Seed**” means a population of microorganisms capable of oxidizing biodegradable organic matter that is added to a wastewater sample as part of the analysis of biochemical oxygen demand (BOD). Only seed prepared using

**TITLE 17
PUBLIC IMPROVEMENTS**

primary effluent from the City's Columbia Boulevard Waste Water Treatment Plant may be used for this analysis.

- V.** **“Stormwater Management Facility”** means a facility or other technique used to reduce volume, flow rate, or pollutants from stormwater runoff. Stormwater facilities may reuse, collect, convey, detain, retain, or provide a discharge point for stormwater runoff.
- W.** **“Stormwater Management Services”** means services and actions used to collect, convey, detain, retain, treat or dispose of stormwater runoff. These services include managing stormwater runoff from public streets, mitigating flooding, preventing erosion, improving water quality of stormwater runoff, collecting and conveying stormwater runoff from private properties when runoff exceeds the capacity of private facilities to manage stormwater onsite, mitigating impacts to natural habitats caused by stormwater runoff, and protecting properties and natural habitats from hazardous soils and materials that are discharged from private properties and public rights-of- way.
- X.** **“Stormwater System Development Charge (SDC)”** means a connection charge for new or increased demand of the public stormwater and drainage system. This charge reimburses the City for an equitable portion of the costs of public stormwater management facilities such as collection and conveyance facilities, detention and disposal facilities, and water pollution reduction facilities.
- Y.** **"Temporary Connection"** means a connection to the sanitary sewer system where the duration of the connection is less than three years and connection and disconnection occur only once. Connections made to the public sewer, stormwater or drainage system made for the purpose of environmental remediation will not be considered a temporary connection unless approved by the Director.
- Z.** **"Temporary Structure"** means a structure that is separate and distinct from all other structures and is created and removed in its entirety within 3 years, including all impervious area associated with the structure.
- AA.** **"Total Suspended Solids (TSS)"** means the total suspended matter that either floats on the surface or is suspended in water or wastewater and that is removable by laboratory filtering (as approved in Guidelines Establishing Test Procedures for the Analysis of Pollutants, contained in 40 CFR 136 and amendments thereto, as published in the Federal Register).
- BB.** **“Transportation SDC Study”** means the transportation system development methodology established by Chapter 17.15.

- CC.** “**User Charge**” means a charge paid by a ratepayer for the use of public sanitary or stormwater management services. User charges are calculated on a routine basis such as monthly or annually.

17.36.030 Annual Rate Ordinance.

Charges authorized by this Chapter pay for the City to provide sewer and stormwater management services. Charges are calculated based on true costs of service or may be based on rates per unit volume or usage or area served. Charges and rates are established via a BES rate ordinance adopted annually by the City Council. Charges are effective on a fiscal-year basis (July 1 to June 30 of the following year).

17.36.040 Sewer System Connection Charges.

Connection charges are for establishing a new connection, new use or expanding existing uses of the public sewer and City stormwater facilities. A property may be subject to one or more of these charges depending on the connections made.

- A.** The methodology for calculating connection charges is set forth in the Sanitary and Stormwater System Development Charge Methodology administrative rules (PPD item ENB – 4.05).
- B.** Payment is required upon issuance of a building or connection permit or, for connections related to City sewer extension projects, prior to or at the time a property physically connects to the public system.
 - 1.** Prepayment. A person may pre-pay connection charges by providing a letter of intent that includes the parcel description and address, if applicable, and the estimated number of EDUs or impervious area. The Director may grant a refund at any time for excess charges at the rate in effect at the time of building permit or connection. Prepayment of connection charges does not guarantee reserved system capacity or usage of City sewer or drainage services. The Director may accept a cash or surety bond posted by the owner of the occupancy in lieu of immediate payment of the charge if:
 - a.** The appropriate number of EDUs for the occupancy cannot be determined before the permit is issued; or
 - b.** The Director has determined the number of equivalent dwelling units for the occupancy but the applicant does not agree with the Director’s determination.
 - 2.** True-up. Within 2-1/2 years after connection, the Director will determine the number of EDUs and the amount of the SDCs due, using water consumption records or other evidence. Upon notice, the applicant must

**TITLE 17
PUBLIC IMPROVEMENTS**

pay the SDCs within 60 days or the bond will be forfeited upon approval by the Director and the Commissioner-in-Charge.

3. Deferral of connection charges. Users who qualify to defer SDC or other sewer connection charges but who want to connect to the system can defer payment of connection charges until such date as the Director may specify as authorized by ordinance. The charge in effect at the time of connection is applied at time of payment. Deferred connection charges are delinquent when not paid after a period of 90 days from the date due and bear interest and penalties as set forth in this Chapter. Users may convert the deferral to an installment payment loan. The Director will establish rules, procedures and forms to govern the administration of the deferral program.

C. Sanitary System Development Charge (SDC).

1. A person must pay sanitary SDCs for:
 - a. Connecting a building property to a sanitary or combined sewer;
 - b. Increasing sewer usage by alteration, expansion, improvement, or conversion of a building already connected to the sewer; or
 - c. Increasing flow to a sanitary or combined sewer by causing contaminated stormwater or groundwater to enter the sewer.
2. Sanitary SDCs are calculated based on the number of EDUs.
 - a. EDUs for nonresidential uses will be calculated from Plumbing Fixture Units (PFUs), as defined by the Oregon Plumbing Specialty Code in effect at the time of the permit application.
 - b. Industrial wastewater. Industrial wastewater dischargers are subject to review of sewer usage within two years of occupancy. EDUs are calculated from the highest 6-month average of metered usage over that period. The user of record is responsible for EDUs in excess of those paid at the issuance of the permit.
 - c. EDUs for groundwater or other permitted discharges to sanitary or combined sewer are calculated based on estimated discharge volume.
3. Temporary use. Temporary structures and connections are not subject to sanitary SDCs. However, sanitary SDCs, including penalties and interest

TITLE 17
PUBLIC IMPROVEMENTS

charges, become due and payable for structures or connections that are not removed within three years. Temporary structures and temporary connections are not exempt from paying user charges, including extra strength charges.

4. Credits. Sanitary SDC credits may be rewarded for:
 - a. Prior sewer connections. Full credit may be awarded for each EDU purchased and in existence prior to its demolition or disconnection.
 - b. Prior sewer user charge payments. A credit of \$21 per EDU for each year of sanitary sewer user charge payments from 1949 to 1991 may be awarded for buildings not demolished or disconnected prior to July 1, 1971.

D. Sanitary Line Charge.

1. Residential Property. The line charge is based on the square footage of that portion of the property receiving service that lies within 100 feet of the public right-of-way or easement where a sewer has been constructed or is planned. Such street or easement line is considered as continuing 100 feet beyond the end of the main line sewer or beyond where the sewer turns away from the property. The minimum line charge is based on a minimum assumed lot size of 1,200 square feet.
2. Non-Residential Property. The line charge is based on the square footage of the portion of the property receiving service that lies within 300 feet of the public right-of-way or easement where a sewer has been constructed or is planned. Such street or easement line is considered as continuing 300 feet beyond the end of the main line sewer or beyond where the sewer turns away from the property. The minimum line charge is based on a minimum lot size of 3,600 square feet.
3. When an adjacent, developed lot, as defined in Title 33 of this Code, is under the same ownership and used in conjunction with a neighboring, developed lot that is connected to the sewer, the adjacent lot is charged a line charge for its frontage as described above. This condition includes but is not limited to improved parking lots, and lots with garages or landscaping.
4. Lack of gravity service. When a sewer is constructed that can not provide full gravity service, the line charge is reduced by:

**TITLE 17
PUBLIC IMPROVEMENTS**

- a.** 50 percent if the property has gravity service to the first floor only and must install a pump for the basement; and
- b.** 75 percent if no gravity service is available for the first floor and the property must install a pump.

The adjustment may not exceed the costs associated with the installation of a pump system. The ratepayer may appeal this determination to the Director.

- E.** Branch charge. BES collects a branch charge for providing a branch sewer to the property, but only if the property was not assessed for the branch or its equivalent previously.
 - 1.** Additional charges may be assessed to cover the City's design and construction costs for branches that were requested by the user but not ultimately used. These charges must be paid before the property may be connected to the public system.
 - 2.** BES collects a branch charge for City adoption of private nonconforming sewer lines located within the public right-of-way as provided under Subsection 17.32.055 B.2.
 - 3.** Sampling manhole charge. When a property is subject to an extra strength charge as described in Subsection 17.36.060 A., the user may request that the City install a sampling manhole on the branch. The user must pay all direct and indirect costs of installing the manhole.
- F.** Sewer Conversion Charges. A property owner must pay sanitary sewer conversion charges according to the following two categories and as determined by administrative rule at the time the City provides a new sewer connection or when the property owner requests a permit for a new conforming sewer connection.
 - 1.** Residential Conversion Charges. Single-family, duplex, three-plex, or four-plex properties are assessed the residential sewer conversion charge, which is the branch rate in place at the time of connection.
 - 2.** Commercial Conversion Charges. All multifamily, commercial, mixed-use, industrial, and institutional properties are assessed according to administrative rule and are calculated to recover costs for City sewer extension projects that serve the property. The commercial conversion charge replaces line, branch, system development and connection charges in this context.

TITLE 17
PUBLIC IMPROVEMENTS

- G.** Stormwater System Development Charge. The stormwater SDC consists of two parts: an onsite charge, reflecting use of public facilities handling stormwater flows from individual properties; and an off-site charge, reflecting use of system facilities handling stormwater flows from rights-of-way.
- 1.** The onsite charge is calculated by multiplying the net new impervious area by a rate per thousand square feet of impervious area. In the case of groundwater flows directed into stormwater facilities, the charge is calculated based on the amount of impervious area necessary to produce an equivalent flow given average rainfall.
 - 2.** The offsite charge is calculated in two parts: local access, and use of arterial streets.
 - a.** The local access portion of the offsite charge is calculated by multiplying the length of the property's frontage by a per lineal foot rate. For properties on which there is existing development and for which a stormwater SDC has previously been paid, the local access portion will be waived.
 - b.** The arterials portion of the offsite charge is calculated by multiplying net new vehicular trips by a rate per vehicular trip. Vehicular trips for a particular development are determined by the Transportation SDC Study, the ITE Manual, or an alternative study acceptable to the Bureau of Transportation.
 - 3.** Credits. Credits may be granted for the onsite portion of the stormwater SDC in one of the following two cases:
 - a.** Credits of up to 100 percent of the onsite portion of the stormwater SDC may be granted for areas draining, either in whole or in part, directly to the Willamette or Columbia Rivers or to the Columbia Slough. Only discharges that do not pass through City-financed stormwater facilities and meet all applicable water quality standards are eligible for credits. Credit applications must adequately demonstrate the satisfaction of these conditions. Development using stormwater facilities built under a public works permit that convey stormwater runoff directly to the Willamette or Columbia Rivers or the Columbia Slough without passing through other City stormwater facilities is eligible for up to 100 percent credit for the onsite charge.
 - b.** A 100 percent credit may be granted for areas draining to facilities providing effective on-site retention for a 100 year storm event

**TITLE 17
PUBLIC IMPROVEMENTS**

with a safety factor of two, defined as a rainfall intensity of 8.28" per hour per square foot of impervious area. Those applying for this credit must provide adequate documentation to demonstrate this additional retention capacity, including testing of infiltration facilities, and that on-site flows are directed to these facilities.

- c. No credits may be granted for the offsite portion of the stormwater SDC.

- H. Partial and Full Exemptions for Affordable Housing Developments. Permanent affordable housing developments may be eligible for a waiver of sanitary and stormwater SDCs pursuant to Section 30.01.095.

17.36.050 User Charges.

Sewer user charges are established and made effective as follows:

- A. Timing. User charges are calculated on a routine basis, such as monthly, quarterly or annually.
- B. Sanitary Sewer Services. The City calculates and collects user charges for sanitary sewer services from ratepayers who cause or permit the discharge of sanitary sewage from a property in their possession into the public sewer system. Charges for sanitary sewer services may include sanitary sewer volume charges, account service charges and penalties for non-payment or late-payment of sewer charges and other charges:
 - 1. Residential dwellings. Residential dwelling units are assessed based on the volume of sewage discharged to the sanitary sewer system. The Director may elect to use water consumption as the basis of this calculation. To avoid including irrigation water usage in this calculation, the Director will establish a procedure that allows for irrigation credit. When a water meter reading is not available, a sanitary sewer discharge estimate will be made based on the ratepayer class of characteristics per administrative rule.
 - 2. Non-residential occupancies. The City calculates charges for commercial, industrial, and all occupancies based on the amount of incoming water volume as measured by the City water meter, information from the water district serving the property, or by an approved meter that measures actual sanitary discharge volume.
 - 3. Combined dwelling units and other. Where dwelling units and other occupancies use the same water supply, the City calculates charges for

**TITLE 17
PUBLIC IMPROVEMENTS**

sanitary sewer service in the same manner as those for commercial, industrial, and all occupancies other than residential.

4. Estimating wastewater discharges for mobile dischargers. User charges are applicable to all wastewater discharges to the City sewer system regardless of the source. In unusual circumstances where the wastewater is not from a fixed location, such as ships, barges, houseboats and other movable facilities or dwelling units, a method of determining the volume provided by the user may be used if approved by the Director. Otherwise, the Director estimates the volume of water to which user charges apply and this determination is final.
 5. In areas served by separated storm and sanitary sewer systems, the City may accept the discharge of contaminated stormwater into the sanitary sewer. The discharge volumes will be determined by the amount of impervious area producing the contaminated stormwater plus the average rainfall or a discharge meter. The discharge will be charged based on sanitary sewer volume rates.
- C. In cases where water is supplied solely from a private source or sources such as wells, springs, rivers or creeks, or from a partial supply in addition to that furnished by the City, residential ratepayers are assigned the class average volume for their alternative source water use. Commercial ratepayers must meter the private supply either as an inflow or a discharge in conformance to the provisions of this Chapter.
- D. Meters required. Any meter or method used for calculation of a adjusted charge or credit is subject to the administrative or special meter charge for each such meter or method. The property owner is responsible for purchasing, installing, maintaining, and calibrating the private meter and must comply with all provisions in this Title. Meters must be approved by the Director as to type, maintenance, calibration schedule, size and location before installation.
1. All meters must register in cubic feet.
 2. Meters installed on water systems supplied from private or public sources and used to measure cooling, irrigation, evaporation or product water for the purpose of obtaining reduced sewer charges must be connected in such a manner as to register only that portion of the water supply used for that purpose.
 3. Meters placed below the ground or pavement surface must have the top of the meter not more than 8 inches below the surface and must be enclosed in a standard water meter box and cover as used by the Portland Water

TITLE 17
PUBLIC IMPROVEMENTS

Bureau. Meters located above the ground or floor level must not be more than 3-1/2 feet above the ground or floor level.

4. All meters must be located in an area that is freely accessible at all times and that, in determination of the Director, does not present a danger to City employees.
 5. The owner of a meter must implement a program to ensure meter accuracy. The program should consider the manufacturer's periodic maintenance and calibration requirements. All maintenance and calibration records must be retained and available for review by City personnel.
 6. Failure of the owner, the owner's lessee, or others acting under the owner to maintain the meter in good working order constitutes a violation of this Chapter. During the period of the meter's non-operation and pending the proper repair and reinstallation of the meter, the account may be billed on the basis of three times the normal water usage or in such an amount as deemed proper by the Director.
- E. Credits.** A ratepayer must submit a written request for establishing reduced charges or credit for water not subject to sewer user charges. Requests must be received prior to any use of water that may be subject to reduced or special charges, and prior to installation of any meter. A request for credit must include a meter maintenance plan and a mechanical plan showing the proposed meter location, access route to the meter, the water supply or source, the cooling or other water-using equipment, and the discharge point. Reduced charges or credits will not be given for any period prior to the date of approval. No reduced sewer charge may be given until the Director has approved the request.
1. Water not subject to sewer user charges. The Director may exempt from sewer user charges water that is used in a manufactured product such as ice, canned goods or beverages; or for water lost by evaporation or used in irrigation. To calculate the quantity of exempt water, a meter must be installed to the satisfaction of the Director.
 2. Clean water discharges. When a non-residential ratepayer requests approval for a temporary or permanent discharge of clean water to a public sewer system, the discharger must install meters or provide other verifiable and quantifiable information using a method approved by the Director to determine the volume of water to be discharged. Water such as that used for refrigerating or cooling purposes or condensed from steam and that has been put to no other use may be discharged into the sanitary system as clean water.

2. Impervious Area. This portion of the charge is the stormwater management services charge multiplied by the Portland Harbor Superfund Impervious Area rate.

17.36.060 Special User Charges.

The following charges are applicable to only certain user groups and are assessed in addition to other user charges. Users may be subject to one of more of these charges. The current charge rates are provided on the BES annual rate ordinance.

- A. Extra-Strength Charge. Wastewater discharged to a City sewer, either directly or indirectly, is subject to an extra-strength charge if the discharge has a BOD or TSS in excess of concentration thresholds determined by the Director. The Director may establish concentration thresholds for other pollutants that are subject to extra-strength charges. Payment of an extra-strength charge does not excuse the discharger from complying with all other applicable provisions of Chapter 17.34 of this Code.

1. Calculation of Charges. Extra-strength charges are based on the following:

- a. The concentration of pollutants in excess of thresholds established by the Director and adopted by Council.
- b. The total metered water supplied to the premises. The extra-strength charge may be reduced where commercial or industrial wastewater is discharged separately from domestic sanitary wastes or cooling waters and the user provides a meter or other measurement method acceptable to the Director. For multiple tenant buildings with shared water service, extra-strength charges will be apportioned by class of individual tenant with an estimated volume as a portion of the total sewer bill.

2. Methodologies for calculating extra-strength charges.

- a. Measured Rolling Average. This method bases a user's rate on the average concentration of the ten most recent monthly concentration averages. Rolling averages are initiated with samples taken over a 5-day period unless otherwise specified by the Director. Samples must be taken daily at an approved sampling manhole or other location as determined by the Director.

- (1) Self-monitoring. A user may be authorized to submit monitoring data as a basis for rate calculations.

**TITLE 17
PUBLIC IMPROVEMENTS**

Wastewater samples must be representative of the discharge.

- (a)** Reports. Self-monitoring reports must include sufficient information to calculate the extra-strength rolling average.
 - (b)** All analytical data submitted for rate calculations must be in accordance with procedures approved in Guidelines Establishing Test Procedures for the Analysis of Pollutants, contained in 40 CFR 136 and amendments thereto as published in the Federal Register.
 - (c)** Laboratories analyzing for BOD must use approved seed in their analysis. Laboratory reports must indicate the use of approved City seed in order for the data to be used in extra-strength charge calculation. The Director may require a split of any independent sample collected by the user for the purpose of extra-strength charge calculation.
 - (2)** Additional sample requests. Any user subject to the measured rolling average method may request that BES collect additional samples. Requests must be submitted in writing. Full payment of re-sampling charges must be received prior to BES incorporating sampling results into the rolling average.
 - (a)** Split samples. The Director may allow samples collected by the City for the purpose of determining an extra-strength sewage charge to be split with the user, as provided for in administrative rule.
 - (3)** Non-routine Discharges. The Director may allow the exclusion of monitoring data from samples collected during a non-routine discharge from use in calculating a ratepayer's rolling average, using criteria defined in administrative rules.
- b.** Extra-strength class averages. The Director may establish a rate structure for users to be billed extra-strength charges based on the average discharge concentration of their business class. Businesses subject to class-average extra-strength charges will be

TITLE 17
PUBLIC IMPROVEMENTS

categorical industrial user, significant industrial user, or neither. Charges are calculated from the actual costs of BES staff to provide such services as data entry, permit administration, inspection, and permit processing for industrial users.

- E.** Batch Discharge Charges. Users desiring City authorization for one-time discharges from their site must pay the batch discharge review charge. This charge reimburses the City for site research, system capacity, and pretreatment evaluation for requested discharges.
- F.** Discharge Authorization (DA) Charges. A user seeking City authorization for on-going discharges from their site or typical business activity must pay a discharge authorization review charge. This charge reimburses the City for site research, system capacity, and pretreatment evaluation for requested discharges. DA charges will be assessed on a sliding scale depending on the level of review necessary for submittals provided or required to approve the DA request.
- G.** Sampling Charges. A discharger requesting City sampling and analysis assistance to support discharge authorization, permit, or other compliance activities will receive a specific cost estimate from BES.

17.36.070 Service Outside the City.

- A.** The City charges for the use of sanitary sewer and stormwater management services from properties outside the City based on annually established rates.
- B.** Determination of whether a property is outside the City. The Director determines whether any residential or business, industrial, commercial, institutional or other property is inside or outside of the City limits. For purposes of this Section, the property is outside of the City limits where 66.7 percent or more of the assessed valuation of the property is recorded in the records of the County Assessor as lying beyond the City limits.
- C.** The Director may require and enter into agreements for and on behalf of the City permitting connection and providing sanitary sewer or stormwater management services to commercial and industrial properties outside the City when the Director finds such service feasible and appropriate.

17.36.080 Collection of Charges.

- A.** All charges for services provided to a property are the responsibility of the ratepayer benefiting from or using City services at that property. This responsibility will attach to the ratepayer's subsequent City utility accounts and

TITLE 17
PUBLIC IMPROVEMENTS

applies whether the ratepayer is the sole user of the services or furnishes them in turn to third parties.

- B.** Billing due dates. User charges are computed monthly, bimonthly, or quarterly, coincident with user charges for water service .
 - 1.** When billed with the utility bill, user charges are due and payable on the date provided on the water service bill. The City may prorate user charges for a portion of a utility billing period based on the effective date of the sanitary sewer or stormwater management service.
 - 2.** For ratepayers who do not receive water service from the City, user charges will be computed and billed monthly, bimonthly, or quarterly.
- C.** Collections. Upon determination by the Director that a charge is past due or otherwise delinquent, the City may avail itself of the full range of actions authorized by City Code.
- D.** Discontinuation of services. Charges not paid in accordance with the due date in the bill or invoice may be subject to water shutoff pursuant to Title 21 of this Code. The Director, with approval of the Commissioner-in-Charge, may also discontinue sanitary sewer service by disconnecting and plugging the sewer service line to properties whose delinquent user charges exceed \$10,000 for a period of 90 days or more. Ratepayers and property owners must be notified in writing of the City's intent to disconnect the sewer not less than 30 days prior to disconnection. Payment of the delinquent amount, including outstanding user charges or charges, accrued interest and collection costs, and all costs associated with disconnecting and reconnecting the sewer line, must be received by the City before the property may be reconnected to the sewer. The delinquent amount remains the responsibility of the ratepayer. In the event a ratepayer who is not the owner terminates their lease and moves from a disconnected property before reconnection has occurred, the City will reconnect the property and collect the cost as well as all delinquent amounts from the ratepayer who originally incurred the charges.

17.36.090 Adjustment of Bills.

- A.** When the Director determines that a billing error has occurred, the Director may authorize an adjustment of the ratepayer's utility account for the period of the error, not to exceed 3 years from the date the error is identified.
- B.** Except as set forth in this Subsection, a ratepayer's eligibility for an adjustment will end 6 months after the date a final bill was issued for the subject account.

**TITLE 17
PUBLIC IMPROVEMENTS**

The Director may authorize an adjustment to the outstanding balance of a closed utility account more than 6 months after the issuance of the account's final bill if:

1. The ratepayer was billed for sanitary sewer services for a property that was not connected to the City's sewer system;
 2. The error is discovered after the 6 month deadline for adjustments to a final bill;
 3. The request is made in writing by the ratepayer of record at the time the billing error occurred; and
 4. The adjustment is limited to the sanitary sewer user charge.
- C. Adjustments will be in the form of credits or additional charges to active utility accounts. The City may not issue refunds for billing adjustments unless approved by the Director. Refunds are chargeable to the Sewer System Operating Fund.
- D. Ratepayers who receive a back billing or a delayed billing will be offered the opportunity to pay the balance due over a set period based on current City collection policies.

17.36.100 Inspection and Enforcement.

- A. Right of Entry. To the full extent permitted by the law, the City has authority to enter all private and public premises at any time for the purpose of inspecting sources of potential or actual discharges to the City's sewers and drainage systems and to perform any other lawful act required by or authorized under this Code or ordinances of the City, the Charter, or state or federal law. This authorization includes but is not limited to inspection, sampling, testing, photographic documentation, record examination, copying, and installation of devices as necessary to conduct sampling, inspection, testing, monitoring and metering operations to determine compliance with the requirements of this Chapter. City representatives shall not be required to sign any type of confirmation, release, consent, acknowledgement or other type of agreement as a condition of entry.
- B. Conditions for Entry.
1. The City representative shall present appropriate credentials at the time of entry.
 2. The City representative shall comply with routine safety and sanitary requirements of the facility or site to be inspected as provided by the facility operator at the time of entry. The facility operator shall provide

TITLE 17
PUBLIC IMPROVEMENTS

the City representative with any facility-specific safety protective equipment necessary for entry.

- C.** Meter Tampering Unlawful. It is unlawful to install, change, bypass, adjust, or alter any metering device or any piping arrangement connected therewith as to show the quantity of water reaching the public sewer under City control to be less than actual quantity.
- D.** Sampling Tampering Unlawful. It is unlawful to tamper in any manner with City-owned or City-installed sampling equipment or samples therefrom.
- E.** Falsifying applications or records. Ratepayers shown to have falsified applications and records may be subject to enforcement action.
- F.** Enforcement Actions may include:
 - 1.** Withholding of City services;
 - 2.** Withholding of City permits;
 - 3.** Reversal of credits. Any credits awarded based on falsified data may be reimbursed to the City via additional charges on the City water and sewer bill.
- G.** Civil Remedies.
 - 1.** In addition to the remedies provided by any other provision of this Chapter, the City may obtain, in any court of competent jurisdiction, a judgment against a person or property failing to comply with the provision of this Chapter. In any such action, the measure of damages shall be the costs for abatement by the City, administrative costs, permit charges, overhead costs, penalties, and other charges as determined by the Director.
 - 2.** In addition to any other remedy provided in this Chapter, the City Attorney, acting in the name of the City, may commence and maintain an action or proceeding in any court of competent jurisdiction to compel compliance with, or prevent by injunction, the violation of any provision of this Chapter.

17.36.110 Appeal.

If a ratepayer, property owner or owner's agent believes that the connection charges or user charges for the property were not calculated in compliance with this Chapter, they may file a written appeal to the Director for an administrative review prior to or within 10 days of the postmark on the bill or invoice. The appellant may present evidence in

TITLE 17
PUBLIC IMPROVEMENTS

support of their position. The Director's final decision will be made within 30 days of receipt of the appeal and may be appealed to the Code Hearings Officer as provided in Chapter 22.10 of this Code.

A. Appeals to specific programs. The following specific programs have distinct appeal and administrative review processes established in program administrative rules found on Portland Policy Documents (PPD):

1. Extra Strength Program (PPD item ENB 4.25)
2. Clean River Rewards Program (PPD item ENB 4.16)
3. Sewer User charges (PPD item ADM 14.02)

Chapter 17.103

SINGLE-USE PLASTIC CHECKOUT BAGS

(Chapter replaced by Ordinance No. 185737,
effective March 1, 2013.)

- 17.103.010 Purpose.
- 17.103.020 Definitions.
- 17.103.030 Authority of Director to Adopt Rules.
- 17.103.040 Checkout Bag Regulation.
- 17.103.050 Enforcement and Penalties.
- 17.103.060 Severability.

17.103.010 Purpose.

The purpose of this Chapter is to regulate the distribution of plastic bags at retail and food establishments. The distribution of plastic bags has significant, on-going harmful impacts upon the environment, including

- A. Plastic bags are a major source of litter.
- B. When littered, the material is detrimental to wildlife that ingests it.
- C. The materials used in plastic bags are persistent in the environment.

17.103.020 Definitions.

For purposes of Chapter 17.103, and any rules adopted thereunder, the following terms shall have the meanings specified in this Section.

- A. **“Director”** means the Director of the Bureau of Planning and Sustainability, or his or her authorized representative, designee or agent.
- B. **“Food provider”** means any person in the City that provides prepared food for public consumption on or off its premises and includes, without limitation, any retail establishment, shop, sales outlet, restaurant, grocery store, delicatessen, or catering truck or vehicle.
- C. **“Grocery store”** means any business in the City with gross annual receipts of \$2,000,000 or greater, offering for sale items of food and perishable items as well as other household goods and supplies.

TITLE 17
PUBLIC IMPROVEMENTS

- D. “Recycled paper bag”** means a paper checkout bag provided by a retail establishment or food provider to customers, meeting the following requirements:
1. Contains a minimum of 40 percent recycled content; and,
 2. Is accepted for recycling in the City of Portland recycling program regulations under Chapter 17.102 of the City Code.
- E. “Reusable bag”** means a bag with handles that is specifically designed and manufactured for long-term multiple reuse and is
1. Made of cloth or other machine washable fabric; or
 2. Made of durable plastic that is at least 4.0 mils thick.
- F. “Retail establishment”** means any sole proprietorship, partnership, limited partnership, family limited partnership, joint venture, association, cooperative, trust, estate, corporation, personal holding company, limited liability company, limited liability partnership or any other form of organization located within the City that sells or offers for sale goods to a customer.
- G. “Single-use plastic checkout bag”** means a plastic bag that is provided by a retail establishment or food provider to a customer and is not a reusable bag. A single-use checkout bag does not include either of the following:
1. A bag provided by a pharmacist to contain prescription medication purchased by customers of the pharmacy;
 2. A non-handled bag used to protect a purchased item from damaging or contaminating other purchased items when placed in a recycled paper bag or reusable bag; or,
 3. A plastic cover designed and used for protecting garments on a hanger.

17.103.030 Authority of Director to Adopt Rules.

- A.** The Director is hereby authorized to administer and enforce the provisions of this Chapter.
- B.** The Director is authorized to adopt rules, procedures, and forms to implement the provisions of this Chapter.
1. Any rule adopted pursuant to this Section shall require a public review process. Not less than 10 nor more than 30 days before such public

TITLE 17
PUBLIC IMPROVEMENTS

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. If a substantial modification is made, the Director shall conduct additional public review, but no additional notice shall be required if such additional review is announced at the meeting at which the modification is made. Unless otherwise stated, all rules shall be effective upon adoption by the Director and shall be filed in the Office of the Director and with the City Auditor's Portland Policy Documents repository.
3. Notwithstanding paragraphs 2 and 3 of this Section, an interim rule may be adopted by the Director without prior notice upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties, including the specific reasons for such prejudice. Any rule adopted pursuant to this paragraph shall be effective for a period of not longer than one year (365 days). Within 5 business days of the adoption of an interim rule, the Director shall send notice of the rule to all the following, giving the language of the rule change, describing the purpose of the rule, and inviting the submission of comments.
 - a. Neighborhood associations recognized by the City Office of Neighborhood Involvement,
 - b. District Coalitions recognized by the City Office of Neighborhood Involvement,
 - c. Business District Associations identified by the City Office of Neighborhood Involvement; and,
 - d. Persons on the Bureau of Planning and Sustainability list of parties interested in administrative rules.

17.103.040 Checkout Bag Regulation.

- A. As of March 1, 2013, the following shall provide only recycled paper bags or reusable bags as checkout bags to customers:

**TITLE 17
PUBLIC IMPROVEMENTS**

1. Grocery stores; or,
 2. Retail establishments or food providers with greater than 10,000 square feet in specific store size.
- B.** As of October 1, 2013, all retail establishments and food providers shall provide only recycled paper bags or reusable bags as checkout bags to customers.
- C.** Violators of the requirements of Subsection 17.103.040 A. shall be subject to penalties as set forth in Section 17.103.050.

17.103.050 Enforcement and Penalties.

- A.** Any retail establishment or food provider that violates this Chapter shall be subject to:
1. Upon the first violation, the Director shall issue a written warning notice to the retail establishment or food provider that a violation has occurred.
 2. Upon subsequent violations, the following penalties shall apply:
 - a. \$100 for the first violation after the written warning in a calendar year;
 - b. \$200 for the second violation in the same calendar year; and,
 - c. \$500 for any subsequent violation within the same calendar year.
 3. No more than one penalty shall be imposed upon any single location of retail establishment or food provider within a 7-day period.
- B.** Upon making a determination that a violation of this code or regulations duly adopted pursuant to this Chapter 17.103 has occurred, the Director will send a written notice of the violation by mail to the retail establishment or restaurant specifying the violation and the applicable penalty as set forth in Subsection A.
- C.** Any store receiving a notice of violation must pay to the City the stated penalty or appeal the finding of a violation to the Code Hearings Officer in accordance with the procedures set forth in Section 22.10.030.

17.103.060 Severability.

If any Section, Subsection, sentence, clause, or phrase of this Chapter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Chapter. The Council declares that it would have passed this

TITLE 17
PUBLIC IMPROVEMENTS

Chapter, and each Section, Subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more Sections, Subsections, sentences, clauses, or phrases may be declared invalid or unconstitutional, and, if for any reason this Chapter should be declared invalid or unconstitutional, then the remaining Section, Subsection, sentence, clause or phrases shall be in full force and effect.

