

UPDATE INFORMATION

Vols. I & II – Portland City Code

March 31, 2019 – Quarterly Update

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

Previous Update Packet December 31, 2018

CODE OF THE CITY OF PORTLAND, OREGON
Insertion Guide for Code Revisions
Office of the City Auditor 503-823-4082
1st Quarter 2019 (March 31, 2019)

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**CHAPTER 2.10 – CAMPAIGN FINANCE IN
CANDIDATE ELECTIONS**

(Chapter added by Ordinance No. 189348, effective
January 16, 2019.)

Sections:

- 2.10.010 Contributions in City of Portland Candidate Elections.
- 2.10.020 Expenditures in City of Portland Candidate Elections.
- 2.10.030 Timely Disclosure of Large Contributions and Expenditures.
- 2.10.040 Coordination with Public Funding of Campaigns.
- 2.10.050 Implementation and Enforcement.
- 2.10.060 Adjustments.
- 2.10.070 Severability.
- 2.10.080 Definitions.

2.10.010 Contributions in City of Portland Candidate Elections.

- A.** An Individual or Entity may make Contributions only as specifically allowed to be received in this Chapter.
- B.** A Candidate or Candidate Committee may receive only the following Contributions during any Election Cycle:
 - 1.** Not more than \$500 from an Individual or a Political Committee other than a Small Donor Committee;
 - 2.** Any amount from a qualified Small Donor Committee;
 - 3.** A loan balance of not more than \$5,000 from the Candidate;
 - 4.** No amount from any other Entity, except as provided in Section 2.10.040.
- C.** Individuals shall have the right to make Contributions by payroll deduction by any private or public employer upon the employer's agreement or if such deduction is available to the employees for any other purpose.

2.10.020 Expenditures in City of Portland Candidate Elections.

- A.** No Individual or Entity shall expend funds to support or oppose a Candidate, except those collected from the sources and under the Contribution limits set forth in this Chapter.
- B.** An Entity shall register with the Oregon Secretary of State as a Political Committee under Oregon law within 3 business days of making aggregate Independent Expenditures exceeding \$750 in any Election Cycle to support or oppose one or more Candidates in any City of Portland Candidate Election.

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- C.** Only the following Independent Expenditures are allowed per Election Cycle to support or oppose one or more Candidates in any particular City of Portland Candidate Election:
- 1.** An Individual may make aggregate Independent Expenditures of not more than \$5,000.
 - 2.** A Small Donor Committee may make Independent Expenditures in any amounts from funds contributed in compliance with Section 2.10.010.
 - 3.** A Political Committee may make aggregate Independent Expenditures of not more than \$10,000, provided that the Independent Expenditures are funded by means of Contributions to the Political Committee by Individuals in amounts not exceeding \$500 per Individual per year.

2.10.030 Timely Disclosure of Large Contributions and Expenditures.

- A.** Each Communication to voters related to a City of Portland Candidate Election shall Prominently Disclose the true original sources of the Contributions and/or Independent Expenditures used to fund the Communication, including:
- 1.** The names of any Political Committees and other Entities that have paid to provide or present it; and
 - 2.** For each of the five Dominant Contributors providing the largest amounts of funding to each such Political Committee or Entity in the current Election Cycle:
 - a.** The name of the Individual or Entity providing the Contribution.
 - b.** The types of businesses from which the maker of the Contribution has obtained a majority of income over the previous 5 years, with each business identified by the name associated with its 6-digit code of the North American Industry Classification System (NAICS).
 - 3.** For each of the largest five Dominant Independent Spenders paying to provide or present it:
 - a.** The name of the Individual or Entity providing the Independent Expenditure.
 - b.** The types of businesses from which the maker of the Independent Expenditure has obtained a majority of income over the previous 5 years, with each business identified by the name associated with its 6-digit code of the NAICS.

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- B.** If any of the five largest Dominant Contributors or Dominant Independent Spenders is a Political Committee (other than a Small Donor Committee) or nonprofit organization, the prominent disclosure shall include its top three funders during the current Election Cycle.
- C.** The disclosure shall be current to within 10 business days of the printing of printed material or within 5 business days of the transmitting of a video or audio communication.

2.10.040 Coordination with Public Funding of Campaigns.

A Candidate participating in a government system of public funding of campaigns (including the Open and Accountable Elections Fund established under Portland City Code Chapter 2.16) may receive any amount that such system allows a participating candidate to receive.

2.10.050 Implementation and Enforcement.

- A.** The provisions of this Chapter shall take effect on September 1, 2019.
- B.** Each violation of any provision in this Chapter shall be punishable by imposition of a civil fine which is not less than 2 nor more than 20 times the amount of the unlawful Contribution or Expenditure or Independent Expenditure at issue.
- C.** Any person may file a written complaint of a violation of any provision in this Chapter with the City Auditor.
- D.** The City Auditor, otherwise having reason to believe that a violation of any provision has occurred, shall issue a complaint regarding such violation.
- E.** Upon receipt or issuance of a complaint, the City Auditor:
 - 1.** Shall examine the complaint to determine whether a violation has occurred and shall make any investigation necessary.
 - 2.** Within 2 business days of receiving or issuing a complaint, shall issue a notification, including a copy of the complaint, to every person who is the object of the complaint.
 - 3.** Shall accept written materials supporting or opposing the complaint for a period of 10 business days following any such notification.
 - 4.** Shall render a decision on the complaint within 10 business days of the close of the material submission period.
- F.** If the complaint is received or issued within 30 calendar days of the date of the election involving the object of the complaint, then all time periods stated in Subsections 2.10.050 E.3. and 2.10.050 E.4. shall be reduced by one-half.

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- G.** The City Auditor may issue subpoenas to compel the production of records, documents, books, papers, memoranda or other information necessary to determine compliance with the provisions of this Chapter.
- H.** Upon finding a violation of the requirement for timely disclosure set forth in Section 2.10.030, the City Auditor shall determine the true original sources of the Contributions and/or Independent Expenditures used to fund the Communication at issue and shall immediately issue a statement to all interested parties and news organizations containing all of the information about the involved donor(s) required by Section 2.10.030.
- I.** The complainant or any person who is the object of the complaint may, within 30 calendar days of the issuance of the decision, appeal that order to the appropriate Circuit Court as an agency order in other than a contested case.
- J.** The decision in the matter shall be deemed final, following completion of any judicial review. Such decision shall be enforced by the City of Portland. If the decision is not enforced within 30 calendar days of the decision becoming final, the complainant may bring a civil action in a representative capacity for the collection of the applicable civil penalty, payable to the City of Portland, and for any appropriate equitable relief.

2.10.060 Adjustments.

All dollar amounts shall be adjusted on January 1 of each odd-numbered year to reflect an appropriate measure of price inflation, rounded to the nearest dollar.

2.10.070 Severability.

For the purpose of determining constitutionality, every section, subsection and subdivision thereof of this Section, at any level of subdivision, shall be evaluated separately. If any section, subsection or subdivision at any level is held invalid, the remaining sections, subsections and subdivisions shall not be affected and shall remain in full force and effect. The courts shall sever those sections, subsections and subdivisions necessary to render this Section consistent with the United States Constitution and with the Oregon Constitution. Each section, subsection and subdivision thereof, at any level of subdivision, shall be considered severable, individually or in any combination.

2.10.080 Definitions.

Unless otherwise indicated by the text or context of this Chapter, all terms shall have the definitions at Chapter 260 of Oregon Revised Statutes, as of January 1, 2018. Terms found therein or defined below are capitalized in this Chapter.

- A.** “Candidate” has the meaning set forth at ORS 260.005(1).
- B.** “Candidate Committee” has the meaning set forth at ORS 260.039 - 260.041, as of November 8, 2016, for the term “principal campaign committee.”

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- C.** “City of Portland Candidate Election” means an election, including a primary election, to select persons to serve (or cease serving) in public offices of City of Portland.
- D.** “Communication” means any written, printed, digital, electronic or broadcast communications but does not include communication by means of small items worn or carried by Individuals, bumper stickers, Small Signs, or a distribution of 500 or fewer substantially similar pieces of literature within any 10 business-day period.
- E.** “Contribution” has the meaning set forth at ORS 260.005(3) and 260.007, as of November 8, 2016, except it does not include:
- 1.** Funds provided by government systems of public funding of campaigns; or
 - 2.** Providing rooms, phones, and internet access for use by a candidate committee free or at a reduced charge.
- F.** “Dominant Contributor” means any Individual or Entity which contributes more than \$1,000 during an Election Cycle to a Candidate Committee or Political Committee.
- G.** “Dominant Independent Spender” means any Individual or Entity which expends more than \$1,000 during an Election Cycle to support or oppose a particular Candidate.
- H.** “Election Cycle” means:
- 1.** Generally, the period between an election at which a Candidate is elected and the next election for that same office, disregarding any intervening primary or nominating election, any recall election, or any special election called to fill a vacancy.
 - 2.** For any recall election: the period beginning the day that the recall election is called or declared and ending at midnight of the day of the recall election.
 - 3.** For any special election called to fill a vacancy: the period beginning the day that the special election is called or declared and ending at midnight of the day of the election.
- I.** “Entity” means any corporation, partnership, limited liability company, proprietorship, Candidate Committee, Political Committee, or other form of organization which creates an entity which is legally separate from an Individual.
- J.** “Expenditure” has the meaning set forth at ORS 260.005(8) and ORS 260.007, as of January 1, 2018, except that:

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1. It does not include a Communication to its members, and not to the public, by a Membership Organization not organized primarily for the purpose of influencing an election.
 2. The exception in ORS 260.007(7) does not apply.
- K.** “General Election Period” means the period beginning the day after the biennial primary election and ending the day of the biennial general election.
- L.** “Individual” means a citizen or resident alien of the United States entitled to vote in federal elections; however, when this Chapter expresses a limitation or prohibition, “Individual” means any human being.
- M.** “Membership Organization” means a nonprofit organization, not formed or operated for the purpose of conducting or promoting commercial enterprise, which has Individual members who have taken action to join the organization and have made a payment of money or volunteer time to maintain membership in the organization.
1. It cannot have commercial enterprises as members.
 2. It can transfer to one and only one Small Donor Committee not more than 40 percent of the amount paid to the organization by each Individual member, with a limit of \$100 transferred per Individual member per calendar year.
 3. It shall within 30 calendar days of any such transfer notify each paying member of the amount transferred, expressed in dollars or as a percentage of the member’s amount paid to the organization. Such notice may be provided by regular mail or electronic mail to each affected member or by posting the information on the organization’s main website. If the amount transferred is the same for each member or category of members (in dollars or in percentage of amount paid), the posting may state that amount or percentage without identifying individual members.
- N.** “Primary Election Period” means the period beginning on the 21st day after the preceding biennial general election and ending the day of the biennial primary election.
- O.** “Prominently Disclose” means that the disclosure shall be readily comprehensible to a person with average reading, vision, and hearing faculties, with:
1. any printed disclosure appearing in a type of contrasting color and in the same or larger font size as used for the majority of text in the printed material;

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2. any video disclosure remaining reading on the regular screen (not closed captioning) for not less than 4 seconds;
 3. any auditory disclosure spoken at a maximum rate of 5 words per second;
 4. any website or email message in type of a contrasting color in the same or larger font size as used for the majority of text in the message;
 5. any billboard or sign other than a Small Sign: in type of a contrasting color and not smaller than 10 percent of the height of the billboard or sign.
- P.** “Small Donor Committee” means a Political Committee which has never accepted any Contributions except from Individuals in amounts limited to \$100 per Individual contributor per calendar year.
- Q.** “Small Sign” means a sign smaller than 6 square feet.

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CHAPTER 2.12 - REGULATION OF LOBBYING ENTITIES

(Chapter added by Ordinance No. 179843, effective
April 1, 2006.)

Sections:

- 2.12.010 Purpose.
- 2.12.020 Definitions.
- 2.12.030 Registration for Lobbying Entities.
- 2.12.040 Quarterly Reporting Requirements for Lobbying Entities.
- 2.12.050 Exemptions to Registration and Reporting Requirements for Lobbying Entities.
- 2.12.060 Declaration Required by Lobbyists
- 2.12.070 Reporting Requirements for City Officials.
- 2.12.080 Prohibited Conduct.
- 2.12.090 Verification of Reports, Registrations and Statements.
- 2.12.100 Public Nature of Reports, Registrations and Statements.
- 2.12.110 Auditor's Duties.
- 2.12.120 Penalties.
- 2.12.130 Severability.

2.12.010 Purpose.

The City finds that, to preserve the integrity of its decision making processes, lobbying entities that engage in efforts to influence City officials, should report their lobbying efforts to the public.

2.12.020 Definitions.

(Amended by Ordinance Nos. 180205, 180620, 180917, 181204, 182389, 182671, 184046, 184882, 185304, 186028, 186176 and 189078, effective July 18, 2018.) As used in this Chapter unless the context requires otherwise:

- A. "Calendar quarter" means one of the four three-month periods of January 1 to March 31, April 1 to June 30, July 1 to September 30 and October 1 to December 31.
- B. "Calendar year" means the period of January 1 through December 31.
- C. "City director" means the director or individual in charge of the following or its successors: the Bureau of Transportation, the Office of Management and Finance, the Office of Government Relations, the Office of Community & Civic Life, the Bureau of Planning and Sustainability, the Portland Bureau of Emergency Management, the Bureau of Emergency Communications, Portland Fire & Rescue, the Bureau of Police, the Bureau of Parks and Recreation, the Bureau of Environmental Services, the Portland Water Bureau, the Bureau of Development Services, the Portland Housing Bureau, the Bureau of Revenue, the City Budget Office, the Office of Equity and Human Rights, the Bureau of Fire and Police

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Disability and Retirement, the Bureau of Human Resources, the Bureau of Internal Business Services, the Bureau of Technology Services and the Portland Development Commission.

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

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

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

2.12.030 Registration for Lobbying Entities.

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

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

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

2.12.040 Quarterly Reporting Requirements for Lobbying Entities.

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

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

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

- a. Food, refreshments, travel and entertainment;
 - b. Printing, postage and telephone;
 - c. Advertising, direct mail and email;
 - d. Miscellaneous and gifts;
 - e. Compensation paid to lobbyists; and
 - f. Reimbursements to lobbyists for their expenses.
- 3. The name of any City official to whom or for whose benefit, on any one occasion, the lobbying entity made an expenditure in excess of \$25 in the preceding calendar quarter for the purposes of lobbying, and the date, name of payee, purpose and amount of that expenditure.
- B. Statements required by this section need not include amounts expended by the lobbying entity for personal living and travel expenses and office overhead, including salaries and wages paid for staff providing clerical assistance and others not engaged in lobbying activities and maintenance expenses. If the amount of any expenditure required to be included in a statement is not accurately known at the time the statement is required to be filed, an estimate of the expenditure shall be submitted in the statement and designated as an estimate. The exact amount expended for which a previous estimate was made shall be submitted in a subsequent report when the information is available.
- C. A lobbying entity shall update any information submitted in Section 2.12.030 that has changed since registration.
- D. A statement required by this section shall include a copy of any notice provided to a City official under ORS 244.100.
- E. An authorized representative of the Lobbying Entity must sign the declaration required by Section 2.12.090 A. for each quarterly report.
- F. Lobbying entities who expect to spend 8 hours or more lobbying City Officials in a calendar quarter, but do not anticipate spending over \$1,000 in the same reporting period for the purpose of lobbying may sign and file a certificate of limited expenditure provided by the Auditor's office in lieu of the financial portion of the quarterly report described in Section 2.10.040 A.2. The certificate affirms that the lobbying entity will spend less than the threshold required for quarterly financial reporting of moneys expended under Section 2.12.040 A.2. If a lobbying entity that files a certificate of limited expenditure spends over \$1,000 in a calendar

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

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

2.12.050 Exemptions to Registration and Reporting Requirements for Lobbying Entities.

(Amended by Ordinance Nos. 180620, 181204, 188286 and 189078, effective July 18, 2018.) In addition to the thresholds set forth in Section 2.12.030 and 2.12.040 for the registration, reporting and financial reporting of lobbying entities, Sections 2.12.030 and 2.12.040 do not apply to the following persons:

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

2.12.060 Declaration Required by Lobbyists.

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

2.12.070 Reporting Requirements for City Officials.

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

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

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

2.12.080 Prohibited Conduct.

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

- A.** No former City elected official shall, for a period of 2 years after the termination of the official's term of office, lobby for money or other consideration a City elected official or their salaried at-will staff.

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

2.12.090 Verification of Reports, Registrations and Statements.

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

- A.** Each report, registration or statement required by this Chapter shall contain or be verified by a written or electronic declaration that it is made under the penalties of false swearing. Such declaration shall be in lieu of any oath otherwise required.

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- B.** No person shall willfully make and subscribe any document which contains or is verified by a written or electronic declaration for false swearing which the person does not reasonably believe to be true and correct to every matter.

2.12.100 Public Nature of Reports, Registrations and Statements.

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

2.12.110 Auditor's Duties.

(Amended by Ordinance Nos. 187854 and 188842, effective March 30, 2018.) In carrying out the provisions of this Chapter, the City Auditor:

- A.** Shall prescribe forms for registrations, statements and reports, and provide such forms to persons required to register and to file such statements and reports;
- B.** Shall accept registrations and reports in an electronic format;
- C.** Shall accept and file any information voluntarily supplied that exceeds the requirements of this Chapter;
- D.** Shall make registrations, statements and reports filed available for public inspection and copying during regular office hours, and make copies available. The Auditor may charge fees to recover the cost of retrieval and copying;
- E.** May audit whether registrations and reports required by this Chapter have been completed properly and within the time frames specified in this Chapter;
- F.** May initiate investigations and accept and investigate complaints of alleged violations of this Chapter;
- G.** May make such inquiries and obtain such reasonable assistance and information, including records, from any office or person as the Auditor shall require for enforcement purposes, including requests to produce documentary or other evidence that is reasonably relevant to the matters under investigation;
 - 1.** For information and records sought from City offices, employees or officials, the Auditor or any agent or employee of the Auditor employed for the purpose of auditing or investigating the City may obtain confidential and legally privileged information and records held by the City so long as privilege is not waived as to third parties. The Auditor shall not disclose confidential or legally privileged information and records and shall be subject to the same penalties as the legal custodian of records for any unlawful or unauthorized disclosure.

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

2.12.120 Penalties.

(Amended by Ordinance Nos. 187854 and 188842, effective March 30, 2018.) A person who violates any provision of this Chapter or fails to file any report, registration or statement or to furnish any information required by this Chapter shall be subject to a civil penalty in an amount not to exceed \$3,000 per violation. By administrative rule, the Auditor shall establish enforcement criteria with increased fines for repeated violations. In the name of the City, the Auditor may seek civil penalties and enforcement of any provision of this Chapter in Multnomah County Circuit Court or other appropriate venue. The Auditor may bring such an action through independent legal counsel retained or employed by the Auditor, or may request that the City Attorney provide such representation.

2.12.130 Severability.

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

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CHAPTER 2.14 - REPORTING BY POLITICAL CONSULTANTS

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

Sections:

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

2.14.010 Purpose.

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

2.14.020 Definitions.

As used in this Chapter unless the context requires otherwise:

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

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

2.14.030 Registration for Political Consultants.

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

2.14.040 Termination of Registration.

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

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2.14.050 Quarterly Reporting by City Elected Official.

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

2.14.060 Public Nature of Reports and Registrations.

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

2.14.070 Prohibited Conduct.

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

2.14.080 City Auditor's Duties.

(Amended by Ordinance No. 188842, effective March 30, 2018.) The City Auditor is authorized to adopt, amend and repeal administrative rules, policies, procedures and forms for the regulation and enforcement of this Chapter, including but not limited to prescribing forms for registration and reporting, determining the method for filing, conducting appropriate inquiry and audit of reports or statements for completeness and accuracy, establishing fees for late filing or non-filing, and imposing civil penalties for non-compliance.

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

2.14.090 Penalties for Violation of this Chapter.

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

2.14.100 Enforcement.

(Amended by Ordinance No. 188842, effective March 30, 2018.) If facts supporting an enforcement action exist, the City Auditor, in the name of the City, may initiate action in Multnomah County Circuit Court to enforce the provisions of this Chapter, including collection of any unpaid fees or civil penalties. The Auditor may bring such an action through independent legal counsel retained or employed by the Auditor, or may request that the City attorney provide such representation. The City may seek enforcement of all provisions of this Chapter in the enforcement action, including but not limited to recovery of all fees and civil penalties assessed under this Chapter as well as enforcement of any other provision of this Chapter. In any enforcement action, the City shall be entitled to recover any costs and attorneys' fees incurred as a result of the violation of this Chapter.

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CHAPTER 2.16 – OPEN AND ACCOUNTABLE ELECTIONS PROGRAM

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

Sections:

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

2.16.005 Short Title.

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

2.16.010 Definitions.

(Amended by Ordinance Nos. 188853 and 189336, effective January 2, 2019.) As used in this Chapter, unless the context requires otherwise:

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

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

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

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

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

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

2.16.020 Open and Accountable Elections Fund Established.

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

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

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

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

2.16.030 Administrative Rules, Director's Duties and Authority.

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

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

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

2.16.040 Contribution and Expenditure Requirements for Participating and Certified Candidates.

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

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

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- J.** Seed money loans from the candidate or candidate's spouse must be repaid with contributions that are not eligible for public contribution matching or for which public contribution matching is not requested.
- K.** The total contributions a participating or certified candidate may collect during the primary election period or special nominating election period, consisting of allowable contributions, public contributions, seed money and in-kind contributions, cannot exceed:

 - 1. \$380,000 for a candidate for Mayor; and
 - 2. \$250,000 for a candidate for Commissioner or Auditor.
- L.** The total contributions a participating or certified candidate may collect during the general election period or special runoff election period, consisting of allowable contributions, public contributions, seed money and in-kind contributions, cannot exceed:

 - 1. \$570,000 for a candidate for Mayor; and
 - 2. \$300,000 for a candidate for Commissioner or Auditor.

2.16.050 Requirements for Certification.

- A.** In addition to the requirements of Section 2.16.040 and the limitations in Section 2.16.120, to qualify as a certified candidate:

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

2.16.060 Director Determination.

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

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

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

2.16.070 Distribution of Public Contribution.

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

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

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

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

2.16.080 Use of Contributions.

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

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

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- E.** A complaint alleging an impermissible receipt or use of funds by a participating candidate must be filed with the Director.
- F.** A participating candidate must provide the Director with reasonable access to the financial records of the candidate's publicly funded campaign account, upon request.

2.16.090 Adequate Funds.

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

2.16.100 Return of Public Contributions.

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

2.16.110 Withdrawal.

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

- A.** A participating candidate may withdraw an application for a public contribution any time before the public contribution is received by the candidate's publicly funded campaign account.
- B.** A certified candidate may withdraw from participation if the candidate:
 - 1.** Files a statement of withdrawal with the Director on a form prescribed by the Commission; and

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2. Repays to the Fund any remaining funds in their account up to the full amount of the public contribution received, together with the applicable interest established by administrative rule.

2.16.120 Participating and Certified Candidate Restrictions.

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

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

2.16.130 Open and Accountable Elections Commission.

(Amended by Ordinance Nos. 189078 and 189336, effective January 2, 2019.)

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

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

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

C. Appointments and Terms.

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

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replace any member of the Commission for due cause, including but not limited to malfeasance, incapacity, conflict of interest or neglect of duties.

D. Meetings, Officers and Subcommittees.

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

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

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

2.16.140 Additional Reporting.

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

- A. All candidates and political committees, including non-participating candidates, must report contributions and expenditure transactions electronically in the ORESTAR system in compliance with state law.
- B. Participating and certified candidates must file additional contribution and expenditure reports to the Director as the Director deems necessary to make certification and public contribution matching decisions in a timely manner, as established by administrative rule. For the purposes of Subsection 2.16.140 B., the Director is the City's election officer.
- C. In a contested election in which there is at least one participating or certified candidate, beginning on the 180th day before the election and ending on the 42nd

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day before the election, participating and non-participating candidates shall report contribution and expenditure transactions to the Director within 14 days.

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

2.16.150 Removal of Certain Contribution Limits.

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

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

2.16.160 Penalties, Revocation of Certification and Repayment of Funds.

- A.** Civil Penalties.
 - 1.** The Director may impose a civil penalty as provided in this Section, in addition to any other remedies that are provided by this Code or other law, for:
 - a.** Violation of any provision of this chapter by a participating or certified candidate; or
 - b.** Failure to timely file a non-participating candidate or independent expenditure report or to include information required by Section 2.16.140.
 - 2.** The City may establish a penalty matrix by administrative rule detailing civil penalties for potential violations of this chapter. A civil penalty imposed under this section shall not exceed \$10,000 for any violation except as otherwise provided in this Section. Limits on penalties imposed under this Section do not include interest. Penalties are subject to interest at a rate of 12 percent of the total amount per annum.

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3. The Director shall send a notice of proposed penalty to any candidate, person or political committee against whom the Director is imposing a civil penalty.
 - a. The notice shall describe the proposed penalty and outline the procedures for requesting a penalty hearing.
 - b. The notice shall be sent by both certified and regular mail.
 - c. If a penalty hearing is not requested, the proposed penalty shall become final on the date specified in the notice, which date shall be the first day following the last day to file a request for a hearing.
 4. If a civil penalty has been imposed under this Section against a candidate or the principal campaign committee of a candidate, the candidate shall be personally liable for the amount to be paid under this Section.
 5. If a civil penalty has been imposed under this Section against a political committee other than a principal campaign committee, the directors of the political committee shall be jointly and severally liable for any amount to be paid under this Section.
 6. Penalties may be paid from any private source. A penalty may not be paid from a candidate's publicly funded campaign account.
 7. Civil penalties may be paid at any time after receiving the notice of proposed penalty, but are due immediately after the penalty has become final.
 8. Penalties imposed under this Section are subject to interest at a rate of 12 percent of the total amount per annum.
 9. All moneys received under this Section for violations of any provision of this Chapter shall be paid and credited to the Fund.
 10. At the request of the Director, the City Attorney may seek civil penalties and enforcement of any provision of this Chapter, in addition to any other remedies provided by this Code or other law, in Circuit Court or other appropriate venue.
- B. Revocation of Certification.**
1. The certification of a participating or certified candidate against whom a civil penalty has been imposed for violation of Section 2.16.080 shall be revoked by the Director and the candidate shall not be eligible to receive public contributions from the Fund during the primary and general election periods, or special nominating and special runoff period during which the

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penalty is imposed. However, revocation of a candidate's certification is permissive, not mandatory, if all of the following conditions are met:

- a.** The candidate has been found to have committed only one violation of Section 2.16.080; and
- b.** It is the candidate's first violation of Section 2.16.080.

- 2.** If it is determined that a participating candidate violated any other provision of this Chapter during the primary election matching period or after certification, the Director has the authority to revoke the candidate's certification.

C. Repayment of Funds.

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

2.16.170 Hearings.

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

- A.** Purpose. The purpose of this Section is to provide persons or political committees adversely affected by administrative determinations and decisions made under this Chapter with a timely, effective, and impartial appeal and review of the determination a Hearings Officer, to be recommended by the Open and Accountable Elections Commission and appointed by the Director.

B. Types of Hearings.

- 1.** Certification Hearings. A candidate who has received a determination denying certification or an opponent of a candidate who has been granted certification may challenge a certification decision by filing a written request for a hearing as outlined in Subsection 2.16.170 C.
- 2.** Matching Fund Hearings. A candidate who has received a determination granting or denying public contribution matching or an opponent of a candidate who has been granted public contribution matching may challenge the public contribution matching decision by filing a written request for a hearing as outlined in Subsection 2.16.170 C.

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3. Penalty Hearings. A candidate, person or political committee who has received a notice of proposed penalty from the Director may challenge the proposed penalty by filing a written request for a hearing as outlined in Subsection 2.16.170 C.

C. Requests for Hearings.

1. The written request for a hearing shall be filed with the Director not later than:
 - a. 7 days after the mailing of the determination for a certification or public contribution matching hearing; or
 - b. 7 days after the mailing of the notice of proposed penalty for a penalty hearing.
2. The request shall be filed pursuant to forms and procedures recommended by the Commission and adopted by rule. The written request shall contain either a copy of, or a full and complete description of, the decision or determination appealed and a statement of grounds upon which it is contended that the decision or determination is invalid, unauthorized, or otherwise improper, together with such other information as the Director may by require by rule.
3. No person or political committee other than those described in Subsection 2.16.170 B. may be a party to any hearing conducted under this Section.

D. Conduct of Hearings.

1. As provided in Section 2.16.130, the Open and Accountable Elections Commission shall recommend to the Director for appointment an outside panel of hearings officers to review cases and make determinations under this Section.
2. The Director shall designate and appoint the hearings officers based upon the recommendations of the Open and Accountable Elections Commission.
3. Written requests for hearings shall be filed with the Director within the deadlines established in Subsection 2.16.170 C. The Open and Accountable Elections Commission shall coordinate with the hearings officer panel to assign a hearings officer to the case and set a hearing date within the timelines established in Subsection 2.16.170 D.4.
4. The date set for hearings under this Section shall be:

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- a.** Not later than 7 days after the request for a certification or public contribution matching hearing is filed as outlined in Subsection 2.16.170 C.1.a.; or
- b.** Not more than 14 days after the request for a penalty hearing is filed as outlined in Subsection 2.16.170 C.1.b.

5. Notice.

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

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

E. Order of the Hearings Officer.

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

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

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

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2.16.180 Implementation.

(Amended by Ordinance No. 189336, effective January 2, 2019.) This Chapter applies to election after November 1, 2019.

2.16.190 Program Management.

(Added by Ordinance No. 188853; amended by Ordinance No. 189336, effective January 2, 2019.) The Commissioner of Public Utilities shall provide oversight to the Open and Accountable Elections Program until July 1, 2019. Beginning July 1, 2019, the program will sit within the Bureau of Revenue and Financial Services.

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account. The City Treasurer shall furnish each bank at which an account is maintained, a written statement naming the person or persons authorized to withdraw funds from such account, declaring the persons named therein are authorized assistants in the Public Finance and Treasury Division and certifying the signatures of the persons so named. Each bank should be authorized to honor withdrawals by the City Treasurer or by the person or persons named in such statement until written notice of cancellation or change is delivered to and received by the bank at which the account affected is maintained. In the event of the termination of services or death of the City Treasurer, the Chief Financial Officer shall make a record showing the time of termination and give notice to the banks maintaining a City account. The new City Treasurer shall be responsible for all monies received and disbursed after such time except that outstanding checks may be paid in due course and charged against the proper bank account. Each new City Treasurer shall promptly verify with each bank in which City funds are deposited and ascertain the exact balance and make sure rectification as may be needed because of outstanding checks. Each new City Treasurer shall have and exercise all of the authority of his/her predecessor and may execute any new banking agreements.

3.08.050 Liability of Treasurer for Deposit of Funds.

In the event of bank failure or bankruptcy and when deposits have been made as provided herein or authorized by law of the Charter, the Treasurer shall be exempt from all liability for loss of deposits, or bankruptcy or other acts of the bank or bankers to the extent and amount of such deposits.

3.08.060 Council May Require Additional Security from Banks.

If the Council deems the securities pledged by any bank insufficient and inadequate security for the City deposits with such bank, other or additional securities to be given by such bank shall be requested and require approval by the Council. If such bank fails to furnish such securities promptly, the Treasurer at once shall withdraw all deposits from such bank and such bank shall cease to be a depository of the City funds. To be reinstated as a depository of City funds requires that the bank deposit securities deemed satisfactory by a vote of the Council.

3.08.070 City Officers or Agents to Pay Money to the City Treasurer.

(Amended by Ordinance No. 186746, effective August 6, 2014.) Any officer or agent of this City or other person who shall receive or have possession of any money belonging to the City shall immediately pay the same to the Treasurer who shall receipt the money. Failure to pay to the Treasurer any money received within 24 hours shall be deemed sufficient cause for removal in the absence of excusable failure.

**TITLE 3
ADMINISTRATION**

**CHAPTER 3.10 - OFFICE OF CITY
ATTORNEY**

(Chapter replaced by Ordinance No. 155956,
effective June 11, 1984.)

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- 3.10.010 Office of City Attorney.
- 3.10.030 Duties and Responsibilities.
- 3.10.040 Chief Deputy City Attorney.
- 3.10.050 Records.
- 3.10.060 Attorney-Client Relationship.
- 3.10.070 Settlements.
- 3.10.080 Outside Counsel Conflicts of Interest.

3.10.010 Office of City Attorney.

(Amended by Ordinance No. 165112, effective February 26, 1992.) The Office of the City Attorney shall consist of the City Attorney and such subordinate employees as the Council may provide. The deputies of the City Attorney shall be appointed by the City Attorney in writing and shall continue in service during the City Attorney's pleasure. In the event of a vacancy in the position of the City Attorney, the deputies shall continue in office with a Chief Deputy serving as acting City Attorney until such time as the Council appoints a new City Attorney.

3.10.020 General Organization.

(Repealed by Ordinance No. 165112, effective February 26, 1992.)

3.10.030 Duties and Responsibilities.

(Amended by Ordinance Nos. 156711, 165112, 181483 and 189426, effective March 20, 2019.) The City Attorney shall have the following duties:

- A.** Appear for, represent, and defend the City, and its boards, commissions, bureaus, officers, employees and persons entitled to representation under the Oregon Tort Claims Act in all appropriate legal forums and matters. However, other than as required by the Tort Claims Act and except as provided in 3.10.030 G.4., the City Attorney shall not represent individuals in their personal capacity and shall not represent individuals who, after investigation by the OMF Risk Management Division, are found by the Bureau to have acted outside the scope of their employment or duties or to have committed malfeasance in office or willful or wanton neglect of duty. If the City Charter specifically authorizes a commission to retain or employ its own special legal counsel, then the City Attorney shall not be responsible for representing such commission on matters assigned by the commission to its special legal counsel;

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- B.** Review and approve as to form all written contracts, bonds, or other legally binding instruments to which the City is a party. It shall be the responsibility of the City officials or employees who prepare such documents to submit the documents to the City Attorney for review;
- C.** Give legal advice and opinions orally and in writing and prepare legal documents and ordinances for the Mayor, any Council member, the City Council, or any board, bureau, committee, commission, or agency of the City;
- D.** Periodically submit to Council reports summarizing the amount, type, and cost of legal services required by the City in the preceding year and highlighting significant legal cases and trends involving the City;
- E.** Seek to ensure that City employees comply with legal and ethical requirements of public employment by providing advice, direction and opinions
- F.** Seek to prevent legal problems for the City by training, directing and educating City employees about legal issues;
- G.** Institute legal proceedings for the City in any court or tribunal on direction by resolution of the Council, as otherwise provided herein. The City Attorney may institute appeals on behalf of the City for enforcement of regulations or license requirements including such payments established by Charter, Code, ordinance, or statute, and for collection of any account receivable, and may appeal in any case in which the opposing side first has appealed, as the City Attorney deems advisable. The City Attorney shall prosecute other appeals on direction by resolution of the Council. The City Attorney may also upon approval of the Commissioner In Charge and for good cause shown:
 - 1.** Seek enforcement of any regulation or license requirement including the payment of any fee, penalty, or interest, established by Charter, Code, ordinance, or statute, and collection of any account receivable and may assert a counterclaim, a cross-claim, or a third-party claim;
 - 2.** File in the appropriate forum the original or duplicate copies of a complaint for interpleader whenever the City shall come into possession of property in which it has no claim and on which multiple claims have been made by other parties;
 - 3.** File briefs and related motions as amicus curiae in any appeal or other proceeding where legal issues are of interest to the City;
 - 4.** Represent City employees in their personal capacity in legal proceedings that have a connection to their City employment and are related to their personal safety, including but not limited to initiating affirmative litigation

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on behalf of affected City employees when they petition courts for restraining orders, injunctions, and other protections and remedies;

5. File a notice of appeal to protect the City's legal right to appeal in situations where the City Attorney believes an appeal is advisable and it is not practicable to obtain a Council resolution in the time allowed to perfect an appeal. The City Attorney shall seek Council authorization by resolution to continue the appeal as soon as practicable and shall immediately dismiss any appeal which Council declines to authorize by resolution.

3.10.040 Chief Deputy City Attorney.

(Amended by Ordinance No. 165112, effective February 26, 1992.) The position of Chief Deputy City Attorney is hereby created and the City Attorney is authorized, from time to time to appoint one or more deputies to such positions and designate one Chief Deputy to be in charge of the Office in the absence of the City Attorney.

3.10.050 Records.

(Amended by Ordinance No. 165112, effective February 26, 1992.) The City Attorney shall have charge and custody of the Office of the City Attorney and of all legal papers pertaining thereto.

3.10.060 Attorney - Client Relationship.

(Amended by Ordinance Nos. 165112 and 181483, effective January 18, 2008.)

- A. The relationship between the Office of City Attorney and the City shall be an attorney-client relationship, with the City being entitled to all benefits thereof.
- B. Correspondence between the City Attorney and others in the City and the opinions and advice provided by the City Attorney to the City or to any City department, official, or employee are privileged attorney-client communications.
- C. In suits, actions, or other proceedings in which the City Attorney, with the concurrence of the OMF Risk Management Division, accepts the defense of a City official, employee, or other person pursuant to the requirements of the Oregon Tort Claims Act, the relationship between the Office of the City Attorney, and the official, employee, or other person shall be an attorney-client relationship, with the official, employee, or other person being entitled to all the benefits thereof regarding the subject matter of the suit, action, or proceeding.

3.10.070 Settlements.

The City Attorney may settle suits, actions, or proceedings as follows:

- A. As the City Attorney deems advisable, after consultation with the affected bureau, if appropriate, in cases of suits, actions, or proceedings seeking enforcement of any regulation or license requirement including payment of any fee, penalty, or interest,

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established by the Charter, Code, ordinance, or statute, and collection of any account receivable;

- B.** With the written approval of the Commissioner In Charge, in cases of any other suits, actions, or proceedings except for settlements requiring payment by the City in excess of \$5,000; and
- C.** With the approval by ordinance of the Council in cases of suits, actions, or proceedings requiring payment by the City in excess of \$5,000.

3.10.080 Outside Counsel Conflicts of Interest.

(Amended by Ordinance No. 165112, effective February 26, 1992.) The City Attorney is authorized to waive on behalf of the City potential conflicts of interest of private legal counsel retained by the City if the City Attorney determines the waiver to be in the City's interest.

3.10.090 Indemnities Fund.

(Repealed by Ordinance No. 165112, effective February 26, 1992.)

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CHAPTER 3.12 - BUREAU OF TRANSPORTATION

(Chapter replaced by Ordinance No. 182389,
effective January 2, 2009.)

Section:

3.12.010 Organization.

3.12.010 Organization.

The Bureau of Transportation shall be under the direction and control of the Director of Transportation. The Director shall be responsible for the overall coordination and management of the groups of the Bureau of Transportation to assure the goals of the City Council are met and the mission and goals of the Bureau of Transportation are achieved. This includes responsibility for productivity, responsiveness and effectiveness of the services and programs of the Bureau of Transportation. The Bureau of Transportation shall be charged with the responsibility for the finance, operation, maintenance and improvement of the transportation system and shall be made up of groups under the direction and control of the Director, as set forth in this Chapter. The City Engineer shall be an employee within the Bureau of Transportation. Responsibilities and authorities of the City Engineer provided in this Code shall be performed by a Professional Engineer. The Director of Transportation shall have authority to issue administrative rules and regulations in addition to those specified in the Charter and this Code, as are appropriate to provide for the adequate functioning of the Bureau and to carry out the responsibilities under this Section.

**CHAPTER 3.13 - BUREAU OF
ENVIRONMENTAL SERVICES**

(Chapter added by Ordinance No. 155385, effective
December 8, 1983.)

Sections:

- 3.13.010 Purpose.
- 3.13.020 Organization.
- 3.13.030 Mission.
- 3.13.040 Administrative Rules and Procedures.
- 3.13.050 Permitting Authority.

3.13.010 Purpose.

(Amended by Ordinance Nos. 163823 and 168321, effective December 30, 1994.) The purpose of this Chapter is to describe the organization, and mission of the Bureau of Environmental Services. This Bureau of Environmental Service, created by Ordinance in 1983, is committed to the proper management, protection, and where practicable enhancement of our natural resources.

3.13.020 Organization.

(Amended by Ordinance Nos. 168321, 174830 and 185397, effective July 6, 2012.) The Bureau is administered by the Commissioner in charge and led by the Director of Environmental Services. The Director works with Group Managers and their staff in pursuit of the mission. The organizational structure of the Bureau shall be determined by the Director after consultation with the Commissioner in charge. The Bureau of Environmental Services is responsible for design, construction, operation and maintenance of the sanitary and storm water collection and transport systems, and watershed management. The Director shall have authority to issue administrative rules and regulations in addition to those specified in the Charter and this Code, as are appropriate to provide for the adequate functioning of the Bureau and to carry out the responsibilities under this Code.

3.13.030 Mission.

(Amended by Ordinance Nos. 168321 and 174830, effective September 22, 2000.) The Bureau of Environmental Services serves the community by protecting public health, water quality and the environment. To achieve this, the Bureau:

- A. Protects, enhances and restores natural waterways; and
- B. Provides sewage and stormwater services to accommodate current and future needs.

3.13.040 Administrative Rules and Procedures.

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

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- A.** The Director of the Bureau of Environmental Services may adopt, amend and repeal rules, policies, procedures, and forms pertaining to matters within the scope of this Code.
- B.** Any adoption, amendment or repeal of a rule pursuant to this Section requires a public review process which includes a minimum 30-day public comment period and the opportunity for a public hearing. Notice shall be given by publication in a newspaper of general circulation not less than 30 days before adoption. Such notice shall include the location at which copies of the full text of the proposed rules may be obtained and the place and time of a proposed public hearing. The Director is only required to hold the public hearing if requested to do so.
- C.** During the public review process, the Director shall hear testimony or receive written comment concerning the proposed rules and prepare a report of findings and recommendations. The Director shall review findings and recommendations, taking into consideration the comments received during the public review process, and shall either adopt, modify or reject proposals. If a substantial modification is made, the Director may provide additional time for the public review process. Unless otherwise stated, all rules shall be effective upon adoption by the Director and shall be filed in the office of the Director and in the Portland Policy Documents repository described in Chapter 1.07.
- D.** Notwithstanding Subsections 3.13.040 B. and C., the Director may adopt an interim rule without prior notice if failure to act promptly would result in a threat to public health and safety or the environment. Any interim rule adopted pursuant to this Paragraph shall be effective for a period of not longer than 180 days.

3.13.050 Permitting Authority.

(Added by Ordinance No. 186902, effective December 26, 2014.) The Director of the Bureau of Environmental Services is authorized to develop and require permits, authorizations, inspections, and other forms of review and approval to implement and assure compliance with those sections of this code that are administered by the Bureau of Environmental Services.

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

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

Sections:

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

3.15.010 Organization.

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

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

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

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

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

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

3.15.020 Bureau of Internal Business Services.

(Amended by Ordinance Nos. 187060, 187984 and 188280, effective April 14, 2017.)

- A.** The Bureau of Internal Business Services shall be supervised by a Director who shall report to the CAO. The Bureau of Internal Business Services consists of CityFleet, Facilities Services, Printing and Distribution Services and Risk

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

B. The Bureau of Internal Business Services Director shall be authorized to:

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

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- a.** Portland City Hall located at 1221 SW Fourth Avenue;
 - b.** Portland Building located at 1120 SW Fifth Avenue;
 - c.** 1900 Building located at 1900 SW Fourth Avenue;
 - d.** Leasehold premises used by the City and managed by the Office of Management and Finance;
 - e.** Real property which the Office of Management and Finance manages under intra-bureau, interagency or intergovernmental agreement(s); and,
 - f.** City owned real property not specifically assigned to another bureau for property management.
- C.** The Commissioner-in-Charge of the Office of Management and Finance is authorized to request the City Attorney to proceed in court as necessary to enforce the provisions of any agreement authorized by Section 3.15.020.
- D.** CityFleet shall be supervised by a Fleet Manager who shall report to the Bureau of Internal Business Services Director. CityFleet is responsible for managing all City vehicles and equipment, owned leased or rented by the City. The Fleet Manager shall provide fleet management services as required by the CAO including, but not limited to:
 - 1.** Maintain an inventory of all city-owned, leased, or rented motorized vehicles and equipment, licensed trailers, and wheel-mounted equipment. This does not include fire fighting apparatus.
 - 2.** Operate the City's maintenance and repair facilities now existing or in the future established for maintenance or repair of the above described fleet equipment.
 - 3.** Assist with identifying City vehicle and equipment needs.
 - 4.** Manage the assignment of fleet vehicles and equipment.
 - 5.** Assist in the development of fuel and resource conservation plans.
 - 6.** In cooperation with the Procurement Services Division, purchase, lease or rent vehicles and equipment as defined above. Any proposed lease transactions shall first be reviewed and approved by the City's Debt Manager.

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- E.** Facilities Services shall be supervised by a Facilities Manager who shall report to the Bureau of Internal Business Services Director. The Facilities Manager shall provide facilities management services as required by the CAO including, but not limited to:
1. Provide property management services for the inventory and rental of city-owned real property. Provide property management services for the purchase, sale and replacement of city-owned real property.
 2. Provide facilities maintenance services, including but not limited to, maintenance and repair of City buildings and their related equipment; and the administration of janitorial, maintenance and security contracts.
 3. Provide architectural services including but not limited to architectural design, facilities and space planning, and project management of City capital projects.
- F.** Printing and Distribution Services shall be supervised by a Manager who shall report to the Bureau of Internal Business Services Director. Printing and Distribution Services is responsible for managing all reproduction, mail, distribution and copy services used by the City, and shall be responsible for the equipment needed to provide these services. The Printing and Distribution Manager shall provide printing and distribution management services as required by the CAO including, but not limited to:
1. Provide rapid, convenient reproduction, distribution and mail services, and provide advice and consultation on these services.
 2. In cooperation with the Procurement Services Division, review and approve requests for the lease or purchase of office copiers/printers.
 3. Manage the processing of U.S. mail and pick up and delivery of interoffice mail, packages and equipment.
- G.** Risk Management shall be supervised by a Risk Manager who shall report to the Bureau of Internal Business Services Director. Risk Management is responsible for administering, coordinating and controlling all activities related to commercial and self-insurance including, but not limited to: property and casualty insurance, workers' compensation insurance, liability insurance and the City's right to subrogation on these insurance programs. Risk Management shall obtain a public liability insurance policy or provide the necessary funding through a self-insurance program protecting the City, its officers, agents and employees with limits of not less than the maximum statutory limits of liability imposed on municipalities of the State of Oregon. Risk Management shall monitor and coordinate a citywide loss prevention and control program to minimize potential property, liability, fidelity

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and personnel losses. Risk Management shall maintain records relating to commercial and self-insurance losses or claims filed against the City. It shall execute any claim or proof of loss for damage to City property.

1. The Risk Manager is hereby delegated authority to evaluate and approve applications for self-insurance programs in lieu of commercial insurance requirements in any City agreement including, but not limited to, contracts and permits. Upon approval of a self-insurance program, the insurance coverage obligation in the City agreement shall be automatically amended without further action by the Council, subject to the approved form being filed with the City Auditor or such other bureau as may be charged with keeping the records.
2. The Risk Manager is authorized to act on behalf of the City on all matters related to workers' compensation including, but not limited to: accept, deny or defer claims; authorize payments of workers' compensation benefits in the amounts required by law relating to workers' compensation claims filed with the City; and, subject to the provisions of the City Charter governing settlements, enter into settlements of workers' compensation claims whether it be on a disputed claims disposition agreement or disputed claim settlement basis. Workers' compensation insurance shall be administered in accordance with the laws for the State of Oregon and shall be on a self insurance basis. The City Attorney may represent the City on workers' compensation matters, including litigation or settlement of claims. The City Attorney shall approval all settlements as to form.
3. Subject to the provisions of the City Charter governing settlements, the Risk Manager is authorized to act on behalf of the City of Portland in the investigation, evaluation and settlement of property damage, personal injury, and employment practices claims brought against the City under the Oregon Tort Claims Act and/or under state and federal civil rights laws, including complaints of discrimination filed with the Civil Rights Division of the Oregon Bureau of Labor and Industries, or the Equal Employment Opportunity Commission. In doing this work, the Risk Manager and designees shall be agents of the City Attorney acting on behalf of the City. Settlement of claims and court actions alleging employment discrimination or violations of employees' civil rights shall be subject to concurrence of the Bureau of Human Resources Director.
4. Subject to the provisions of the City Charter governing settlements, the Risk Manager is authorized to make settlements in an amount not exceeding \$5,000.
5. The Risk Manager is authorized to investigate and enter into settlements on fair and moral claims governed by Section 1-107 of the City Charter. Fair

and moral claims are limited to those for which the City is immune under applicable law, or that are asserted by employees for the replacement of personal property damaged in the course of employment or duties. Fair and moral claims do not include claims, legal in nature, that are barred by the applicable statute of limitations or statute of ultimate repose.

3.15.030 Business Operations Division.

Business Operations Division shall be supervised by a Manager who shall report to the CAO. Business Operations is responsible for policy development, communications, specific project management services, and budget and financial services for all bureaus and divisions in the Office of Management and Finance.

3.15.040 Bureau of Revenue and Financial Services.

(Amended by Ordinance Nos. 185652, 185807, 186746, 187060 and 189413, effective March 6, 2019.)

- A.** The Bureau of Revenue and Financial Services (BRFS) shall be supervised by a Director, who shall also serve as the Chief Financial Officer (CFO) of the City. The Director shall report to the CAO, but shall serve the entire Council including providing information and advice to elected officials. The Bureau of Revenue and Financial Services shall consist of the following units: Accounting; Public Finance and Treasury, Revenue, Procurement Services and Grants. The Bureau of Revenue and Financial Services is responsible for treasury and debt management, accounting, procurement, grants management and assigned grant funds, pension oversight, revenue and tax collection, regulatory programs, programs of the Office for Community Technology, and other services or responsibilities the Council or the CAO may assign.
- B.** Serving as CFO, the Director shall be responsible for the overall coordination of financial services of the City. The duties shall include, but not be limited to, the following Citywide responsibilities:

 - 1. Financial management and policy development
 - 2. Long-range financial planning and financial sustainability
 - 3. Revenue development and collection activities
- C.** The Accounting Division shall be supervised by a Controller who reports to the BRFS and shall have specific authority to:

 - 1. Establish, maintain and enforce Citywide accounting policies, practices, rules and regulations. The Controller shall be the final authority for interpretations of accounting and financial reporting policies and practices.

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2. Authorize reports that disclose the fiscal condition of the City to external users including the Comprehensive Annual Financial Report (CAFR), the Single Audit Report, and other reports required by federal, state and local regulations.
 3. Conduct or contract with public accounting firms to conduct financial and compliance audits and other tests to determine compliance with Citywide accounting and financial reporting policies and current professional standards and adequacy of internal controls over accounting transactions, the cost of which shall be paid by the bureau being audited.
- D.** Public Finance and Treasury Division shall be supervised by the City Treasurer, who shall report to the BRFS Director. The Treasurer shall have those authorities and responsibilities as described in PCC Chapter 3.08. Debt Management within the Public Finance and Treasury Division, shall be supervised by the Debt Manager who shall report to the City Treasurer. Debt Management is responsible for managing the City's debt program to ensure access to capital markets including long- and short-term capital financing programs, providing expert advice to City bureaus and officers regarding placement of debt and capital financing issues, and performing other duties as assigned. The Debt Manager is responsible for assuring that sales or leasing agreements entered into by the City comply with applicable Federal tax exemption regulations for funding and financing.
- E.** The Revenue Division shall be supervised by a Director who shall report to the BRFS Director. The responsibilities of the Revenue Division shall include, but are not limited to:
1. Manage all billing and collection software used by the Revenue Division including, but not limited to, maintenance, defect troubleshooting, problem resolution, development, enhancements and upgrades.
 2. Support end users in diagnosing and resolving system problems.
 3. Conduct business and system process improvements.
 4. Manage, enforce and collect business license taxes.
 5. Manage, enforce and collect transient lodging taxes.
 6. Manage, enforce and collect the Arts Education and Access Income Tax.
 7. Manage and enforce regulatory programs assigned by City Council, including the authority to enact administrative rules and regulations.
 8. Manage and collect assessments and liens.

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9. Perform business management functions including mail processing, receipting and distribution; and perform overall financial accounting of bureau revenues.
 10. Audit functions including the Portland area business license tax returns, transient lodging taxes and internal systems and processes, as well as other special audits as deemed necessary.
 11. In consultation with the requesting bureau, recommend systems for new revenue or fee collection services.
 12. Manage funds as assigned.
 13. Manage, administer and enforce such responsibilities as are assigned to the Office for Community Technology by City Code or the Council, and
 14. Perform such other duties as may be required by ordinance or by the City Council, or which are necessary to implement the purposes of this Chapter.
- F.** The Procurement Services Division shall be supervised by the Chief Procurement Officer (CPO) who shall report to the BRFS Director. The Procurement Services Division shall be responsible for procurement and contractor services as directed by the CAO. The CPO shall be responsible for the duties of the Chief Procurement Officer under the Charter, Code or general law including, but not limited to those described in PCC Section 5.33.040 and PCC Chapter 5.68.

3.15.050 Bureau of Human Resources.

(Amended by Ordinance No. 186746, effective August 6, 2014.)

- A.** The Bureau of Human Resources shall be supervised by a Director who shall report to the CAO. The responsibilities of the Bureau of Human Resources shall include coordination and control of the administrative and technical activities relating to maintenance of a comprehensive human resources system for the City, including labor relations and negotiations, promoting diversity and equity in outreach employment and recruitment services, classification and compensation, training and workforce development, human resources systems, payroll, deferred compensation, and employee benefits and wellness. The Bureau of Human Resources shall be responsible for the health benefit plan administration and funding including the Health Insurance Fund.
- B.** The Human Resources Director shall formulate, administer and monitor administrative rules approved by the Council, or the CAO, including provisions for:
1. Recruitment, examination, certification and appointment on the basis of applicants' knowledge, skills and abilities.

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2. Classification and compensation.
 3. Employee behavior and expectations.
 4. Disciplinary guidelines with notice to employees of prohibited practices.
 5. Employee training and development.
- C.** In accordance with Oregon law, the Human Resources Director or designee, on behalf of the Council, may enter into agreements with labor organizations, recognizing their exclusive representation of specified classifications within City service.
- D.** Dispute Resolution.
1. The Human Resources Director or designee(s) is the official interpreter for the City pertaining to its collective bargaining agreements and any other written compensation and benefits plans and personnel policies established by the Council.
 2. The Commissioner-in-Charge of a bureau shall retain the right to hear individual grievances and or complaints on a case by case basis. In settling such grievances and or complaints, the Commissioner-in-Charge shall do so with the advice and consent of the City Attorney and the Human Resources Director.
 3. If the Commissioner-in-Charge of a bureau does not retain jurisdiction of a grievance and or a complaint within one week of receiving the issues, then the Human Resources Director shall automatically have jurisdiction to settle the issue.
 4. Provision for resolution of disputes is as follows:
 - a. Within one (1) day following the filing of a written grievance under a collective bargaining agreement or complaint under other written personnel policy adopted by Council, the bureau or department recipient of the grievance or complaint shall provide a copy to the Human Resources Director of the written grievance or other complaint document. During the investigation of grievances and complaints, the Human Resources Director or designee(s) shall be an agent of the Office of the City Attorney for purposes of representing the City.
 - b. Where the claim is for wages or other monetary benefit not exceeding \$5,000 per claimant, the supervisor, division manager or bureau director, with the approval of the Commissioner-in-Charge

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of the bureau and of the Human Resources Director, may accept or adjust the claim in settlement on behalf of the City, where settlement is deemed prudent and appropriate, provided that:

- (1) The Human Resources Director authorizes the settlement in writing and gives written notice to the payroll division or to the benefits program manager involved to draw and issue a check not exceeding \$5,000 per claim for the settlement expense, charged to the appropriate center code, account number or fund;
 - (2) Payments which are an exception to Section 5.08.020 of the Code, which requires payroll checks to be drawn only for services rendered, shall be made only when the Human Resources Director determines such payment to be in the best interests of the City and the Office of the City Attorney approves. This Section shall be narrowly applied.
 - (3) The Office of the City Attorney reviews and approves the settlement agreement as being not in conflict with State or Federal laws, applicable ordinances and collective bargaining agreements pertaining to conditions of employment.
- c. Where a settlement agreement provides for payment of claims for back wages or other monetary benefit in an amount exceeding \$5,000, the settlement shall not be authorized or enforceable unless approved by the City Council by ordinance.
 - d. The Human Resources Director or designee is authorized to investigate complaints and reports of employment discrimination, in accordance with the Risk Management Section 3.15.020 where applicable. During the investigation of complaints and reports, the Human Resources Director or designee shall be an agent of the Office of the City Attorney for purposes of representing the City.
 - e. The Human Resources Director will file a report to Council 2 weeks after the end of each month with respect to the settlements entered into pursuant to this section.
- E.** The Human Resources Director shall establish objectives for the Bureau of Human Resources and develop a plan for accomplishing these objectives and carrying out the mission of the Bureau of Human Resources.

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- F.** The Human Resources Director shall design, manage and administer a comprehensive and competitive Classification Plan and Compensation Plan. The Council, or the Human Resources Director by express delegation by ordinance from the Council, shall fix the salaries, compensation and benefits of all officers, agents and employees of the City. No other bureau director or subordinate employee has the authority to change the salaries, compensation or benefits of any City officer, agent or employee.
- G.** The Human Resources Director and the Benefits Manager shall design, manage and administer a comprehensive, competitive and compliant benefits package, including the Deferred Compensation Program, as approved by the Council, including provisions for:
1. Medical, dental and vision coverage
 2. Dependent Care Assistance Plan
 3. Medical Expense Reimbursement Plan
 4. Life Insurance
 5. Long-Term Disability
 6. Employee Assistance Program; and
 7. Deferred Compensation Program

Such provisions shall include employee participation eligibility and enrollment, claims management, procedures for record keeping and responsibility for all applicable reporting and disclosure requirements.

3.15.060 Revenue Bureau.

(Repealed by Ordinance No. 186746, effective August 6, 2014.)

3.15.070 Bureau of Technology Services.

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

- A.** The Bureau of Technology Services shall be supervised by the Chief Technology Officer (CTO) of the City, and who shall report to the CAO. The Bureau shall be responsible for the Technology Services Fund (PCC 5.04.500). The CTO shall have specific authority to:
1. Enter into nondisclosure agreements between the City and prospective vendors in order for City employees to review proprietary information on products and technologies that are, or might be, considered for use by the City. A nondisclosure agreement is one that prohibits the release of

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proprietary or confidential information, whether held by the City or the vendor, and does not include any monetary consideration.

2. In consultation with the bureau that is the custodian of record, enter into data grant agreements between the City and grantees in order for Bureau employees to share City Geographical Information Systems data. A data grant agreement is one in which the City will grant the use of pertinent GIS data to agencies, organizations or individuals (grantees) for research projects or projects performed under contract with the City. Data grant agreements may include direct cost reimbursements to the City.
- B.** Except as specifically exempted by the CTO, the Bureau shall manage, establish policies and standards, and provide technical support for all City-owned technology systems. Technology systems include, but are limited to, information and electronic communications systems. It shall:
1. Provide citywide technology strategic planning and consulting services, including project scoping, budget preparation and analysis, system planning and procurement, resource allocation and project management for technology projects.
 2. Design, implement and manage all technology hardware and software including system security measures.
 3. Manage all citywide radio, video, data communications, microwave, wireless communications and telephone systems and equipment owned by the City.
 4. Design, implement and manage all citywide voice, video and data applications.
 5. Manage all end user technology support services, including Help Desk and Desktop Support services.
 6. Manage citywide Geographic Information Systems.
 7. Provide all Internet and Intranet services to City bureaus, offices, boards and commissions.
 8. In cooperation with the Procurement Services Division of the Bureau of Internal Business Services, review and approve the purchase of all technology software, hardware and professional consulting services. Any proposed technology lease transaction shall first be reviewed and approved by the City's Debt Manager.

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9. Provide technical expertise and information to technical oversight committees for City technology projects.
10. Provide all telephone services to City bureaus; coordinate with telephone vendors; order new facilities and equipment for city-owned or leased systems; plan telephone systems; and resolve all telephone problems.
11. Manage the City's official website.
12. Manage and authorize all City domain name registrations and renewals.

3.15.080 Enterprise Business Solution Division.

(Added by Ordinance No. 187060, effective March 25, 2015.) The Enterprise Business Solution (EBS) Division shall be supervised by a Manager who shall report to the CAO. EBS is responsible for managing technology systems used to standardize and manage the City's business affairs and providing Citywide services in, but not limited to, the areas of fiscal services, procurement, and human resources services.

CHAPTER 3.16 - CITY BUDGET OFFICE

(Chapter added by Ordinance No. 185807, effective
December 12, 2012.)

Sections:

- 3.16.010 Organization.
- 3.16.020 Authority of Council.

3.16.010 Organization.

The City Budget Office shall be under the direction and control of the City Budget Director and shall include such other employees as Council may provide. The City Budget Director shall report to the Mayor. The City Budget Director shall serve and perform the duties of the City's budget officer, as defined in Oregon Revised Statutes, or shall name a designee to perform these duties. The City Budget Office is responsible for:

- A.** Coordinating development and administration of the City's budget, including capital budgeting and the development of budget recommendations for all City bureaus and funds;
- B.** Financial planning and operational review of the City's utilities, including administration and maintenance of an independent utility review function that provides City Council with an annual review of utility rates and economic impacts;
- C.** Long range financial forecasting for the City's funds, including oversight of the General Fund;
- D.** Preparing General Fund Five-Year Forecasts at least twice each fiscal year. The General Fund Five-Year Forecasts shall be released and made publicly available on or before December 31st and on or before April 30th;
- E.** Collaborating with the Office of Management and Finance on the development of financial forecasts and providing forecasting information to the Chief Administrative Officer when requested;
- F.** Monitoring expenditures and revenues for the City and all Bureaus and providing this information to Commissioners and the Chief Administrative Officer when requested;
- G.** Developing and analyzing financial policy and performance measurement systems and providing this information to Commissioners and the Chief Administrative Officer when requested;
- H.** Providing Council with financial information that informs the City's deliberations on collective bargaining agreements, and assisting the Bureau of Human Resources with the costing of collective bargaining agreements;

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- I.** Performing other duties as assigned.

3.16.020 Authority of Council.

The City Budget Director shall be appointed by the Commissioner in Charge of the City Budget Office, but shall serve the entire Council, including providing information and advice and making available for inspection the books and records of the City Budget Office to any Elected Official making a request for the same as soon as practical.

**CHAPTER 3.18 - RULES OF CONDUCT FOR
CITY PROPERTY**

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

Sections:

- 3.18.010 Designation of Persons-in-Charge.
- 3.18.020 Rules of Conduct at City Property.
- 3.18.030 City Property Exclusions.

3.18.010 Designation of Persons-in-Charge.

- A.** For purposes of ordering persons to leave City Property, the following are Persons-in-Charge:
 - 1.** Any peace officer as defined by Oregon law and any reserve officer of the Portland Police Bureau.
 - 2.** Any person providing security services in any City Property pursuant to any contract with the City, or with any person, firm or corporation managing a City Property on the City's behalf.
 - 3.** Bureau property or facility manager, or designee.
 - 4.** With respect to facility or space assigned to a City bureau or City office, the director or manager of the City bureau or City office, or designee.
 - 5.** Any person specifically designated in writing by the Office of Management and Finance Chief Administrative Officer or by the Bureau of Internal Business Services Director.
 - 6.** Any person with exclusion authority under the Code.
 - 7.** The Mayor, a Commissioner or Auditor, or designee of these elected officials.
- B.** Delegation to a designee shall be made in writing. Any person so designated shall be a Person-in-Charge as that term is defined in ORS 164.205(5) until the delegation is terminated or the designated person ceases to be an employee or officer of the City of Portland. Copies of delegation will be provided to the City Attorney's Office and to the bureau property or facility manager.
- C.** Upon request, the City shall provide a copy of the Person-in-Charge designation or delegation list to the District Attorneys of Multnomah, Clackamas and Washington counties.

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- D.** For purposes of this Section, City Property shall include any real property either owned by the City or in which the City has a property interest or property management responsibility.
- E.** For purposes of ordering persons to leave a public meeting of a City board or commission, the following are Persons-in-Charge:
 - 1.** The presiding officer of the public meeting of a City board or commission.
 - 2.** Any person providing security services at the public meeting of a City board or commission.
 - 3.** Any person designated as a Person-in-Charge in Subsection 3.18.010 A.
- F.** The authority granted to a Person-in-Charge by this Chapter are in addition to, and not in lieu of, any other authority granted under this Code.

3.18.020 Rules of Conduct at City Property.

(Corrected under authority of PCC Section 1.01.035 on June 2, 2017.)

- A.** To maintain an environment that promotes orderly administrative and business operations, and to take reasonable and prudent actions to protect the health, welfare and safety of all persons at City Property, the Rules of Conduct in this Section apply and are to be enforced at all City Property except where specific rules of conduct or prohibitions have been adopted for designated real property the City owns or has a property interest or property management responsibilities.
- B.** The Rules of Conduct for City Property are as follows:
 - 1.** No person shall engage in any activity that would constitute a violation of federal, state or local law or regulation.
 - 2.** No person may deface, damage or destroy City Property or City-owned personal property.
 - 3.** No person shall enter, attempt to enter or remain in any areas of City Property designated as secured or restricted, or closed to public access.
 - 4.** No person shall engage in activity that disrupts or interferes with: the normal operation or administration of City business at City Property; lawful use by City employees and authorized users at City Property; or City permitted activities.
 - 5.** No person shall refuse or fail to obey any reasonable direction of a Person-in-Charge of a City Property. A direction of a Person-in-Charge is reasonable: if it directs a person to obey or to cease a violation of any law

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or regulation; if it is otherwise reasonably related to the protection of the health, welfare or safety of the person or any other person at the City Property, or to the prevention of damage to property; or if it is reasonably necessary to preserve the peace or to prevent the disruption of City operations or permitted activities, including dangerous or threatening behavior as defined in the Code.

6. No person shall possess any object specifically designed for and presently capable of causing, or carried with the intent to threaten or cause, bodily harm to another. Objects prohibited under this Paragraph include, but are not limited to, any firearm, pellet gun, spring-loaded weapon, stun gun or taser, any knife having a blade that projects or swings into position by force of a spring or by centrifugal force, any knife with a blade longer than 3-½ inches, any dirk, dagger, ice pick, sling shot, slungshot, metal knuckles, nunchaku, studded hand coverings, swords, straight razors, tear gas, tear gas weapon, mace, pepper mace or similar deleterious agent, saps, sap gloves, hatchets or axes. The prohibitions of this Paragraph do not apply to handguns lawfully carried by persons exempt from local regulation under ORS 166.173. The prohibitions of this Paragraph do not apply to any thing possessed or used to carry out actions authorized by any contract or permit at the City Property.
7. No person shall smoke or carry any lighted smoking instrument at City Property in violation of Chapter 8.65. Smoking instrument additionally includes inhalant delivery system that delivers nicotine in the form of vapor or aerosol, and electronic cigarette, personal vaporizer, or electronic nicotine delivery system. Smoking additionally includes inhaling or exhaling from a smoking instrument.
8. No person shall make use of facility materials, equipment, furniture, or fixtures of a City Property in a manner inconsistent with their customary or designated uses, or in a manner likely to cause property damage or personal injury to the actor or others.
9. No person shall interfere or obstruct free passage of City employees or authorized visitors in or on City Property, including but not limited to placing objects that impede free passage.
10. No person shall use City Property for unauthorized storage of personal property or leave personal property unattended.
11. No person shall make or continue a noise disturbance as defined under Chapter 18.04, or operate sound producing device or sound producing equipment except as permitted by the property manager of the City Property. Bullhorns and megaphones are not permitted in the interior of

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any building on City Property, or within the loggia or portico of any structure on City Property, except as permitted by the property manager for the City Property.

12. No person shall sell, distribute or deliver any alcoholic beverage on City Property, except as permitted by the property manager for the City Property.
13. No person shall sell, distribute or deliver any controlled substances on City Property. This does not prohibit a person from providing caretaking functions or assisting another in taking legally prescribed medication. Controlled substance shall have the meaning provided in Chapter 475 of the Oregon Revised Statutes.
14. No person may bring animals onto City Property, or leave animals tethered or unattended at City Property, except as permitted by the property manager for the City Property. This does not preclude entry by service animals defined under the Americans with Disabilities Act while performing services or task the animals are trained to do, animals employed in official performance of police or rescue activities, or animals authorized for entry by the property manager for the City Property.
15. No person shall solicit for or conduct business at City Property except as permitted by the property manager for the City Property.
16. No person shall use any wheeled devices, including but not limited to unicycles, bicycles, skateboards, roller skates, motorized or non-motorized scooters, inside the property boundary of City Property. All persons must dismount at City Property boundary. No bicycles and motorized wheel devices are allowed in the interior of any building on City Property except as permitted by the property manager of the City Property. The prohibition in this Paragraph does not apply to persons with mobility devices for mobility disability or medical purposes, child strollers or baby carriages.
17. No person shall use City Property for housing or camping except as permitted by the property manager for the City Property and provided such use conforms with land use, zoning, building and other property regulations.
18. No person shall misuse or damage the City's technology systems or network, including its telecommunication equipment and data.
19. No person shall enter, attempt to enter or remain in any areas of City Property for purposes other than to conduct legitimate business with City offices or tenants located at City Property, to enjoy the publicly accessible amenities at a City Property when the City Property is open to the public, or to lawfully assemble for social or public interaction at portions of City

Property specifically designated for such assembly. The director of the bureau with property management responsibility for the City Property may adopt space use policy to manage conditions for property use including but not limited to establishing a reservation protocol, priority regarding uses and users, hours of use, and fees for use.

- C. The director of the bureau with property management responsibility over a City Property, or designee, is authorized to adopt additional rules of conduct for any specified City Property managed by the bureau. The proposed additional rules of conduct shall be posted at the City Property where such proposed rules would apply, and shall be deemed part of the Rules of Conduct for the City Property. The proposed rules shall be final and effective no sooner than seven days after posting. Upon approval of the Commissioner in Charge, a bureau director may adopt interim additional rules of conduct without prior notice upon a finding that failure to act promptly will result in prejudice to the City's interest. Interim additional rules of conduct are final and effective upon posting at the City Property affected for a period not longer than 30 days. The bureau director shall submit final rules to the Auditor for filing in the Portland Policy Documents repository within two business days after the rules become effective.

3.18.030 City Property Exclusions.

- A. The exclusion procedures in this Section shall be used for City Property subject to the Rules of Conduct in Section 3.18.020. If a person violates any Rule of Conduct at City Property described in Section 3.18.020 while in or upon City Property, any Person-in-Charge may eject and direct the person to leave the City Property for a period of 24 hours. In addition, the director of the bureau assigned property management responsibility for the City Property where the violation occurred, or designee, may issue an exclusion for any period of time up to 1 year from City Property.
- B. Notwithstanding this Section, if public meetings of the City Council, or of City Boards and Commissions are held in a City Property, ejection and exclusion from the public meeting must comply with Section 3.02.060.
- C. In determining the appropriate length of exclusion under this Section, the person issuing the exclusion shall consider: the seriousness of the conduct that led to the exclusion; prior instances of violations of the Rules of Conduct at City Property by the person to be excluded; the availability of alternative means for the person to conduct business with City officials and offices; and any other facts or circumstances that the person issuing the exclusion deems relevant.
- D. The notice of exclusion shall be in writing, given to the person excluded and signed by the Person-in-Charge. It shall specify the dates and places of exclusion. It shall

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contain a warning of consequences for failure to comply with the notice of exclusion and information concerning the right to appeal the exclusion.

- E.** A person receiving a notice of exclusion may appeal, in writing, to the Code Hearings Officer in accordance with the provisions of Title 22 of the Code to have the notice of exclusion rescinded. Notwithstanding the provisions of Title 22, the appeal to the Code Hearings Officer shall be filed within 5 days of issuance of the notice of exclusion, unless extended by the Code Hearings Officer for good cause shown. The sworn statement of the Person-in-Charge who issued the notice of exclusion shall be used as evidence on appeal, unless the appellant requests, in writing, the presence of the Person-in-Charge at the appeal hearing.
- F.** A person receiving a notice of exclusion may request a limited modification from the Person-in-Charge issuing the exclusion for the purpose of attending a City Council or other public meeting or conducting specific business with a City official or office located at a City Property identified in the exclusion notice. The request must be in writing and must identify good cause for the desired modification. The Person-in-Charge may deny the request if the business with the City official or office may be conducted through alternate means or deferred until the exclusion period ends, or may deny the request on any reasonable basis. If modification is allowed, the Person-in-Charge may impose reasonable conditions for the limited entry, and may include a requirement that the person arrange with the Person-in-Charge to be escorted into and out of the location where the meeting is to be held or the business is to be conducted.

CHAPTER 3.20 - BUREAU OF POLICE

Sections:

- 3.20.010 General Organization.
- 3.20.020 Council to Organize and Make Rules and Regulations.
- 3.20.030 Authority of Chief of Police.
- 3.20.040 Duties of the Chief of Police
- 3.20.050 Subordinate Officers.
- 3.20.070 Fees to be Paid Over to Treasurer.
- 3.20.080 Policemen Receiving Gifts and Employing Attorneys - Penalty for Violation.
- 3.20.110 Duties of Police Force.
- 3.20.120 Council in Emergency to Appoint Temporary Policemen.
- 3.20.130 Record of Daily Arrests.
- 3.20.140 Police Review Board.
- 3.20.150 Fingerprints, Photographs and Records of Identification.
- 3.20.160 Police Chief to Make Rules and Regulations.
- 3.20.170 Uniforms.
- 3.20.180 Appointment and Removal of Police Reserves
- 3.20.190 Application, Oath of Office, Compensation and Equipment of Police Reserves.
- 3.20.200 Membership Card and Star of Police Reserves.
- 3.20.210 Police Reserves Exempt from Civil Service.
- 3.20.230 Medical Examinations.
- 3.20.240 Membership.
- 3.20.360 Fees for Report on Police Records.
- 3.20.370 Accountability and Disposition of Fees.

3.20.010 General Organization.

(Amended by Ordinance Nos. 136814, 138453 and 159113, effective October 23, 1986.)
The Bureau of Police shall consist of the Chief of Police and such other employees as the Council may provide. The Bureau shall be responsible for the enforcement of law and order. The Chief of Police shall be the Commanding Officer of the police force and shall direct the police work of the City. The Chief of Police shall be directly responsible to the Commissioner In Charge for the proper functioning of the Bureau. For administrative purposes the Bureau shall be made up of the following branches, each of which shall be commanded by a Deputy Chief and have personnel and such duties as may be assigned by the Chief of Police, subject to the approval of the Commissioner In Charge.

- A. Operations Branch;
- B. Investigations Branch;
- C. Operations Support Branch;
- D. Administrative Support Branch.

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The Deputy Chiefs serve under the command of the Chief.

3.20.020 Council to Organize and Make Rules and Regulations.

The Bureau of Police of the City shall be organized by the Council and the members appointed as provided by the Charter, subject to the civil service rules of the Charter. To that end the Council may make all necessary or convenient rules and regulations for the organization and conduct of the police force, for the care and management of the City prison, for receiving and hearing complaints against any member of the force, for the removal or suspension of any member of the force, and for the forfeiture of all or any portion of the wages that may be due any member of such force on account of misconduct or negligence in the discharge of his duties; all the powers of the City connected with and incident to the appointment, discipline, and government of its police shall be vested in the Council, except as otherwise provided by Charter.

3.20.030 Authority of Chief of Police.

The Chief of Police, after having taken the oath of office, shall thereafter, under the direction of the Commissioner of Finance and Administration, have command and control of the police force of the City.

3.20.040 Duties of the Chief of Police.

(Amended by Ordinance No. 138453; effective July 27, 1974.) The Chief of Police is a peace officer and must execute all processes directed to him by any magistrate of this State in criminal matters. He may make arrests for breach of peace or commission of crime within the limits of the City with or without a warrant as peace officers do under the laws of this State. He must exercise a vigilant control over the peace and quiet of the City. He shall exercise such additional powers as may be conferred upon him by the ordinances of the City to enable him to carry out the objects and purposes of this Charter.

3.20.050 Subordinate Officers.

(Amended by Ordinance Nos. 136814, 138453 and 159113, effective October 23, 1986.) The Deputy Chiefs, Captains and other ranks or grades of police within the Bureau of Police shall possess like power and authority as the Chief of Police with respect to peace officer powers, except as herein provided. The Chief of Police shall have control over the Deputy Chiefs, Captains and all other employees of the Bureau of Police when they are on duty, and shall see that the City ordinances and rules, orders and regulations for the government of the police force are observed and enforced. He/she shall have power to recommend for suspension to the Commissioner In Charge any subordinate officer, member or employee for a violation of the same as prescribed by the Civil Service rules.

3.20.070 Fees to Be Paid over to Treasurer.

The Chief of Police or any other officer of the police force, when acting under or enforcing any law or statute other than a City ordinance, may collect and receive the same fees and compensation as are allowed to a constable for like services, and if collected he shall pay the same over to the City Treasurer, as provided in the case of fees which may be received

by the municipal judge; but no fees shall be taxed against Multnomah County for services rendered by either Chief of Police or municipal judge.

3.20.080 Policemen Receiving Gifts and Employing Attorneys -Penalty for Violation.

No member of the police force shall for his own benefit, under any pretense whatever, receive or share in any present, fee, gift or emolument for public service other than the regular salary and pay, except by the consent of the Council and Chief of Police, publicly given. Nor shall any member share in or receive any gift, fee, or reward from any person who may become bail for any arrested, accused, or convicted person who may become surety for any such, on appeal from or review of the judgment or decision of any court or magistrate, or any fee, gift, or reward in any case from an attorney at law who may prosecute or defend any person arrested or prosecuted for any offense in Multnomah County. Nor shall any member, directly or indirectly, interest himself or interfere in any manner whatever in the employment of any attorney to aid in the defense of any person arrested or accused. For any violation of either of the foregoing provisions the person so offending shall be immediately removed from the police force.

Upon complaint of any person alleging a violation of this Section the Council shall summon the officer accused before it and shall hold a summary hearing with power to subpoena witnesses and to compel the production of all necessary evidence. If it finds that a violation of this Section has been committed by such officer he shall immediately be dismissed from the force and shall be ineligible for reappointment.

3.20.110 Duties of Police Force.

The police force of the City shall at all times of the day and night within the boundaries of the City preserve the public peace, prevent crime, arrest offenders, protect rights of persons and property, guard the public health, preserve order, remove nuisances existing in streets, roads, public places, and highways, report all leaks and other defects in water pipes and sewers, and street lights not burning to the proper authorities, provide a proper force at every fire in order that thereby the firemen and property may be protected, protect strangers and travelers at the steamboat and ship landings and railroad stations, and generally obey and enforce all ordinances of the City Council and criminal laws of the State and of the United States.

3.20.120 Council in Emergency to Appoint Temporary Policemen.

The Council in case of any mob, riot, pestilence, or on days of public demonstration may appoint such temporary policemen as it may deem necessary, who shall have all the powers and perform all the duties of regular policemen. Such appointments shall not continue beyond the emergency.

3.20.130 Record of Daily Arrests.

The Bureau of Police shall keep a daily arrest docket and a municipal court transcript in substantially the following form:

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POLICE ARREST DOCKET AND MUNICIPAL COURT TRANSCRIPT City of Portland, Oregon DEPARTMENT OF FINANCE AND ADMINISTRATION Bureau of Police						
Name of Defendant	Address of Defendant	Arresting Officer	Complainant	Charge	Where	Age
Nativity	Occupation	Bail	Plea	Fine	Days	Remarks

The arrest docket may be printed in any size as may be determined by the Chief of Police and shall be a part of the original record of the Bureau of Police and shall be preserved and kept in the custody of the Bureau of Police.

3.20.140 Police Review Board.

(Replaced by Ordinance No. 183657; Amended by Ordinance Nos. 183995, 186416, 189159 and 189292, effective December 12, 2018.)

- A.** Purpose. The Police Review Board (“Board”) is an advisory body to the Chief of Police (“Chief”). The Review Board will make recommendations as to findings and proposed officer discipline to the Chief of Police.
- B.** Powers of the Board:
- 1.** Review incidents and investigations. Except as provided in Code Section 3.20.140 J., the Board shall review incidents and investigated complaints of alleged misconduct by non-probationary sworn officers (“officers”) who are employed by the Portland Police Bureau (“Bureau”) in the following cases:
 - a.** The supervising Assistant Chief, the Director of the Independent Police Review Division of the Auditor (“IPR”) or the Captain of the Internal Affairs Division of the Bureau (“IAD”) controverts the findings or proposed discipline of the Reporting Unit (“RU”) manager pursuant to Code Section 3.21.120.
 - b.** Investigations resulting in a recommended sustained finding and the recommended discipline is suspension without pay or greater.
 - c.** The following incidents involving use of force:
 - (1)** All officer involved shootings.
 - (2)** Physical injury caused by an officer that requires hospitalization.

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- (3) All in custody deaths.
 - (4) Any use of force where the recommended finding is “out of policy”.
 - d. All investigations regarding alleged violations of Human Resources Administrative Rules regarding complaints of discrimination resulting in a recommended sustained finding.
 - e. Discretionary cases referred by the Chief, Branch Chief, or the IPR Director.
2. Probationary sworn officers. The Board shall review incidents and investigated complaints of alleged misconduct by Portland Police Bureau probationary officers when referred by the Chief, Branch Chief or the IPR Director. However, nothing in this section prohibits the Bureau from terminating the employment of a probationary officer without following the procedures of this section.
 3. Recommendations to Chief. The Board shall make recommendations to the Chief regarding findings and discipline. The Board may make recommendations regarding the adequacy and completeness of an investigation. The Board may also make policy or training recommendations to the Chief. The Board shall make recommendations as to discipline based on discipline guidelines. The guidelines shall be developed by the Bureau in consultation with IPR
 4. On September 1, 2010, the Board shall replace the Use of Force and Performance Review Boards set forth in the Bureau’s 2009 Manual of Policy and Procedure. Before September 1, 2010, the Use of Force and Performance Review Board shall review incidents and investigated cases pursuant to the existing Bureau directives.

C. Composition of Board

1. The Board shall be composed of five voting members and eight advisory members. All Board members will be advised of every case presented to the Board. A quorum of four Voting Members, including the Citizen member and the RU Manager or designee, and four Advisory members is required to be present to make recommendations to the Chief.
 - a. Voting members

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- (1)** One citizen member from a pool of citizen volunteers recommended by the Auditor and confirmed by the City Council.
 - (a)** Citizens shall be appointed for a term of no more than three years. Citizens may serve two full terms plus the remainder of any unexpired vacancy they may be appointed to fill.
 - (b)** All citizen members must meet at least the following qualifications to participate on the PRB:
 - (i)** Pass a background check performed by the Bureau.
 - (ii)** Participate in Bureau training to become familiar with police training and policies.
 - (iii)** Sign a confidentiality agreement.
 - (iv)** Participate in ride alongs to maintain sufficient knowledge of police patrol procedures.
 - (c)** The Chief or the City Auditor may recommend that City Council remove a citizen member from the pool for the following reasons:
 - (i)** Failure to attend training
 - (ii)** Failure to read case files
 - (iii)** Objective demonstration of disrespectful or unprofessional conduct
 - (iv)** Repeated and excessive unavailability for service when requested.
 - (v)** Breach of confidentiality
 - (vi)** Objective demonstration of bias for or against the police
 - (vii)** Objective demonstration of conflict of interest

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- (2) One peer member of the same rank/classification as the involved officer; peer member will be selected from a pool of Bureau representatives pre-approved by the Chief.
- (3) The Assistant Branch Chief who is the supervisor of the involved officer.
- (4) The Director of IPR (or designee).
- (5) A Commander or Captain who is the supervisor of the involved officer (RU Manager).

b. Advisory members

- (1) The Office of Accountability and Professional Standards manager.
- (2) Representative from Bureau of Human Resources.
- (3) Representative from City Attorney's Office.
- (4) The Internal Affairs Division Manager.
- (5) Review Board Coordinator.
- (6) Representative of Commissioner in Charge of the Bureau ("Commissioner in Charge").
- (7) Representative of the Training Division.
- (8) The Assistant Chief(s) that are not the supervisor of the involved member.

c. Representatives/Individuals that may also be present during the presentation of the case include:

- (1) Bargaining Units
- (2) Involved Member

- 2.** However, when the incident to be reviewed by the board involves the following use of force incidents, one additional citizen member drawn on a rotating basis from the pool of current Citizen Review Committee members, as those members are described in Code Section 3.21.080, and one additional peer member shall serve on the Board, for a total of seven voting members. A quorum of six voting members, including two citizen

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members, and the RU manager or designee, and four Advisory members is required to be present to make recommendations to the Chief.

- a.** All officer involved shootings.
 - b.** Physical injury caused by an officer that requires hospitalization.
 - c.** All in custody deaths.
 - d.** Any use of force where the recommended finding is “out of policy”.
- 3.** Citizen Review Committee members serving on the Board shall be subject to the same qualification and removal standards as other citizen members of the Board.
- 4.** A Citizen Review Committee member who participates in a Board review of an incident cannot participate in a later appeal to the Committee of the same allegation(s).
- 5.** Removal from participation on the Board shall not affect Citizen Review Committee membership.

D. Access to information

- 1.** All members of the Board shall have access to necessary and relevant documents and an equal opportunity to participate in Board deliberations.
 - a.** The Bureau and IPR shall develop a Bureau Directive establishing confidentiality provisions and distribution timeline provisions of Board materials.
- 2.** The RU manager or designee will provide a written recommendation of the findings, reasoning for the recommendation and disposition recommendation.

E. Board Facilitator

- 1.** The Board shall be facilitated by a person who is not employed by the Bureau and who is not a member of the Board.
 - a.** The Bureau and IPR shall develop a Bureau Directive establishing selection criteria and confidentiality provisions for the Facilitator(s).
 - b.** The voting members of the Board shall schedule a meeting to recommend a pool of facilitators based the Bureau Directive for

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approval of the Commissioner in Charge in accordance with City contract rules.

2. The Board facilitator shall write the statement of recommended findings and discipline and a summary of any training and/or investigation issues or concerns on behalf of the Board and submit the statement to the Chief within two weeks of the Board meeting date.

F. Board Recommendations

1. The Board shall prepare a statement of its recommended findings and proposed discipline, if any, in every case for submission to the Chief. Such statement shall include:
 - a. The Board's recommended findings and a brief explanation of the Board's rationale for its recommendation, and a record of the Board's vote.
 - b. In the event that the Board is not unanimous, the statement shall contain a portion detailing the minority's recommendation.
2. The Board facilitator shall write the Board's statement of recommended findings and proposed discipline and a summary of any policy training and/or investigation issues or concerns on behalf of the Board and submit the statement to the Chief.
 - a. IPR and the Bureau will develop a Bureau Directive setting forth the timeliness provisions of the statement.

G. Appeal of Board Recommendation.

1. As provided in Code Chapter 3.21, once the Board has prepared a statement of proposed findings relating to complaints of alleged misconduct of an officer during an encounter involving a citizen, the complainant or involved officer may have the opportunity to appeal the recommended findings to the Citizen Review Committee.
2. Until the appeal period allowed by Code Chapter 3.21 has expired, and if an appeal is filed, until there is a final decision by the Citizen Review Committee or Council, the Chief may not issue proposed discipline or make recommendations to the Commissioner in Charge.
3. The Director of IPR, the Chief of Police, or Commissioner in Charge may request an expedited hearing by the Citizen Review Committee of an appeal when deemed necessary due to the nature of the underlying complaint.

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- H.** Action by Chief of Police and Commissioner in Charge. After receiving the Board's statement described above and after the appeal period allowed by Code Chapter 3.21 has expired, or if an appeal is filed, after the Chief receives the Citizen Review Committee or the Council's recommendation in accordance with Code Chapter 3.21:
- 1.** In the following cases, the Chief shall make a recommendation regarding the appropriate findings and level of discipline to the Commissioner in Charge:
 - a.** Investigations resulting in a sustained finding and the proposed discipline is suspension without pay or greater.
 - b.** The following incidents involving use of force:
 - (1)** All officer involved shootings.
 - (2)** Physical injury caused by an officer that requires hospitalization.
 - (3)** All in custody deaths.
 - (4)** Any use of force where the recommended finding "out of policy".
 - 2.** In the cases described in Subsection 1 above, the Commissioner in Charge shall make the final decision on findings and discipline, consistent with obligations under state and federal law, Portland City Charter and collective bargaining agreements.
 - 3.** In all other cases, unless the Commissioner in Charge exercises authority over the case, the Chief shall make the final decision on proposed findings and discipline, consistent with obligations under state and federal law, Portland City Charter and collective bargaining agreements.
 - 4.** In all cases where the Chief's and Police Commissioner's final discipline is outside of the range recommended by the discipline guide, the Chief and Police Commissioner shall provide an explanation in the final discipline letter of the reason or reasons for imposing discipline outside of the recommended range. The Chief and Police Commissioner shall not be required to disclose information that is confidential or otherwise protected against disclosure. The cumulative report of discipline imposed outside of the recommended range shall be included in the PPB semi-annual report.
- I.** Public reports. As often as deemed necessary by the Board, but at least twice each calendar year, the Board shall publish public reports summarizing its statements of

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findings and a summary of any training and/or investigation issues or concerns. Except as provided otherwise in this Subsection, the reports shall keep confidential and not include involved officers' names, the names of witnesses, or the name of any complainants. The reports shall be written by the Board facilitator. The reports may not be released before a final decision, including discipline if any, is made by the Chief or Commissioner in Charge.

- 1.** The public reports shall include the following for each case brought before the Board:
 - a.** Allegation(s) heard by the Board.
 - b.** A factual summary of the case.
 - c.** Summary of the Board's discussion.
 - d.** Record of the Board's vote, including recommended findings and discipline.
 - e.** Training and policy recommendations, including whether the recommendations were accepted by the Chief.
 - f.** The final decision of the Chief or Commissioner in Charge.
- 2.** The public reports shall include the names of involved officers and witnesses in cases of officer involved shootings or in custody deaths where the names of such persons have previously been publicly released in connection with the incident, unless confidentiality or non-disclosure is required by statute, a court order, an administrative order, or a collective bargaining agreement. Where the names have not been previously released, the report may include the names if the public interest requires disclosure or if nondisclosure would undermine the public's confidence.
- 3.** The public reports shall include any stipulated agreements where a final decision has been reached.

J. Stipulated Findings and Discipline

- 1.** The following categories of cases are not eligible for stipulated findings and recommended discipline: cases involving alleged use of excessive force; those categories of cases listed under Subsection 3.20.140 B.1.c.; cases involving alleged discrimination, disparate treatment or retaliation; reviews of officer involved shootings and in-custody deaths; and cases in which the Chief or the Commissioner in Charge does not agree to accept the member's proposed stipulation to findings and recommended discipline. These categories of cases, if they otherwise meet the criteria for review by the

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Board, shall go through Board review and recommendations.

2. The following categories of investigations are eligible for stipulated findings and recommended discipline without review by the Board when the involved member elects, with the concurrence of the Chief and the Commissioner in Charge, to accept the proposed findings and recommended discipline of the RU Manager following a full investigation of the alleged misconduct, issuance of investigative findings and concurrence with the findings by the Independent Police Review, the Professional Standards Division and the member's Branch Chief:
 - a. First time offenses that fall under Category A through Category D of the Police Bureau Discipline Guide.
 - b. Second time offenses that fall under Category A of the Police Bureau Discipline Guide.
 - c. First time off-duty driving while under the influence offenses that fall under Category E of the Police Bureau Discipline Guide. To be eligible for stipulated discipline for an off-duty driving under the influence offense, there can be no other driving-related violations or charges and the member must comply with all court ordered conditions of a diversion or delayed prosecution.
 - d. In an investigation involving multiple sustained violations, the violation with the highest category from the Police Bureau Discipline Guide will be used to determine whether the case qualifies for stipulated discipline.

3.20.150 Fingerprints, Photographs and Records of Identification.

The Chief of Police shall maintain at police headquarters suitable means and appliances for taking and preserving fingerprints, photographs, and descriptions of persons. He shall take or cause to be taken, recorded, and preserved one or more fingerprints and photographs, and a description of each person arrested and booked for the commission of a felony. Of each person arrested and booked for the commission of a misdemeanor or violation of a penal ordinance or Charter provision, he may, but is not required to, take and preserve one or more fingerprints, photographs, and a description. Such prints, photographs, and description shall be made a matter of permanent record when evidence showing previous conviction or convictions of any crime, misdemeanor, or violation of a penal ordinance or Charter provision shall have been obtained.

3.20.160 Police Chief to Make Rules and Regulations.

The Chief of Police shall have authority, subject to the approval of the Commissioner In Charge, to issue such administrative rules and regulations in addition to those embodied in

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the Charter and this Code, as are necessary to govern the conduct of the members of the Bureau of Police, and to provide for the adequate functioning of the Bureau.

3.20.170 Uniforms.

The following rules shall apply to uniforms for employees appointed to the Bureau of Police who are members of the Fire and Police Disability and Retirement System:

- A.** The Chief of Police shall, subject to the approval of the Commissioner In Charge, prescribe specifications for police uniforms and establish rules, regulations and conditions of wearing thereof;
- B.** Upon report from the Commissioner In Charge of the Bureau of Police, the Council shall designate which items of the uniform specified by the Chief of Police under subdivision (1) above shall be furnished by the City to those employees required to wear the prescribed uniform in performance of their normal and usual police duties. Each new employee shall be furnished a complete set of designated items of uniform. All other employees shall be furnished designated items of uniform on the basis of replacement when needed as determined by the Chief of Police. Items furnished by the City shall remain property of the City; and the Chief of Police shall establish rules, regulations, and conditions for issuance and control thereof;
- C.** The Chief of Police shall have the authority to designate duty assignments which require dress other than the prescribed uniform. For such designated duty, no items of uniform shall be furnished, and those employees affected shall receive an annual cash clothing allowance in lieu of items of uniform furnished by the City. Clothing allowances shall be paid in accordance with Section 5.08.070.

3.20.180 Appointment and Removal of Police Reserves.

(Amended by Ordinance No. 143623, effective June 13, 1977.) The Chief of Police is authorized, subject to the approval of the Commissioner In Charge, to appoint new members to the police reserve from time to time as need therefore arises and to accept the resignations and discontinue appointments from time to time in accordance with his judgment concerning the public welfare and safety subject to the approval of the Commissioner In Charge; provided that the total number of such reserves at any time shall not exceed 200.

- A.** Within the ranks of the police reserve the Chief of Police shall designate which members of the reserve shall serve as a special duty reserve unit. Members of the special duty reserve unit shall assist the Bureau in performing Sunshine Division, charitable, search and rescue and other non-law enforcement related functions.

3.20.190 Application, Oath of Office, Compensation and Equipment of Police Reserves.

(Amended by Ordinance Nos. 143623 and 164223, effective May 29, 1991.) Each new member of the police reserve shall make an application on a blank form provided by the Chief of Police, giving such data concerning his age, weight, identification, residence,

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occupation, previous experience in police work, if any, citizenship, and other data as the Chief of Police may find necessary or convenient, including fingerprinting for better identification. Members of such police reserve shall be entitled to no compensation unless specifically authorized and provided by the Council. Upon appointment each member shall take an oath of office similar to the oath required of regular members of the Bureau of Police, and such oath shall be filed with the City Auditor. Regular members of the reserve shall serve during the pleasure of the Chief and shall wear a uniform prescribed by the Chief of Police. They shall perform the duties and take training as directed by the Chief of Police. They shall observe the rules of deportment and conduct applicable to regular police officers. They shall, in the performance of their duties, be subject to the orders of commanding officers of the regular and reserve police force of the City. They shall, at all times, cooperate with regular police officers in the performance of their duties. While on any authorized assignment they shall be covered by the City's self-insurance as authorized under the provisions of the Oregon State Workers' Compensation Act. The insurance shall be in a form approved by the City Attorney. It is unlawful for any person whose appointment has been terminated, to retain possession or refuse to return any badge, identification or equipment issued to such person after demand for the return has been made by the Mayor, Chief of Police or anyone acting under and by the authority of the Mayor or Chief of Police. Members of the special duty police reserve shall be subject to police duty only when special occasion therefor arises. Each member shall provide his own equipment, subject to the approval of the Chief of Police, and shall make such reports as the Chief of Police may require.

3.20.200 Membership Card and Star of Police Reserves.

The Chief of Police is authorized to furnish each member of the police reserve with a membership card signed by the Chief of Police and signed by the member for identification purposes, and shall also furnish each member with a police star.

3.20.210 Police Reserves Exempt from Civil Service.

No member of the police reserve shall be regarded as a City employee or subject to civil service regulations.

3.20.230 Medical Examinations.

(Amended by Ordinance No. 134934, effective July 20, 1972.) Whenever the Chief of Police is in doubt concerning the physical or mental ability of a member of the Bureau of Police to perform full police duties, the Chief shall require that member, upon written notice, to submit to a medical examination. The examination shall be conducted without expense to the member. Unexcused failure to take an examination required by this Section, after reasonable notice, shall be cause for the member's dismissal.

3.20.240 Membership.

(Amended by Ordinance No. 136679, effective July 1, 1973.) The Bureau of Police shall consist of: a Chief of Police and all other full time members of the regular police force, and shall include all members of the women's protective division, and police matrons; and all such members shall be classed and considered as regular members of the Bureau of Police.

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All members of the Women's Protective Division, and all police matrons, are hereby required to comply with the rules and regulations of the Civil Service Board respecting physical examinations. The present police matrons shall (if they have not already done so) take and file with the City Auditor the oath of office required of members of the Bureau of Police, before they shall have full status as such members.

3.20.250 Badges.

(Repealed by Ordinance No. 176585, effective July 5, 2002.)

3.20.260 Block Home Applicants, Background Investigation Required.

(Repealed by Ordinance No. 176585, effective July 5, 2002.)

3.20.270 Maintenance of Property Room.

(Repealed by Ordinance No. 175944, effective September 26, 2001.)

3.20.280 Receipts for Property.

(Repealed by Ordinance No. 175944, effective September 26, 2001.)

3.20.290 Records.

(Repealed by Ordinance No. 175944, effective September 26, 2001.)

3.20.300 Prisoner's Property.

(Repealed by Ordinance No. 175944, effective September 26, 2001.)

3.20.310 Evidence Property.

(Repealed by Ordinance No. 175944, effective September 26, 2001.)

3.20.320 Miscellaneous Property and Storage Charges.

(Repealed by Ordinance No. 175944, effective September 26, 2001.)

3.20.330 Storage Charge on Prisoner's Property.

(Repealed by Ordinance No. 175944, effective September 26, 2001.)

3.20.340 Storage Charge on Evidence Property.

(Repealed by Ordinance No. 175944, effective September 26, 2001.)

3.20.350 Lien and Foreclosure.

(Repealed by Ordinance No. 176585, effective July 5, 2002.)

3.20.360 Fees for Report on Police Records.

(Amended by Ordinance No. 153909, effective November 22, 1982.) The Bureau of Police shall establish a schedule of fees and procedures for obtaining copies of reports, searching arrest records, accident photographs, fingerprinting, and all similar records services it performs. Except upon court subpoena, reasonable limitations may be placed upon the amount of information made available, the use for which it may be requested, and the persons entitled to receive it. The schedule of fees and procedures established under this

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Section shall not be effective until approved by the Commissioner In Charge of the Bureau of Police. No fee shall be charged to those agencies (or their representatives) who request such services for official use and who have as a primary organizational responsibility the apprehension, prosecution, or the direct supervision of the parole or probation, of criminal offenders.

3.20.370 Accountability and Disposition of Fees.

(Amended Ordinance No. 153909, effective November 22, 1982.) The Chief of the Bureau of Police shall ensure that a full and complete record of all fees collected under that authority of this Chapter is kept and that all fees so collected are remitted to the City Treasurer as provided by Section 3.08.140. The City Treasurer shall credit the amounts so received to the General Fund.

3.20.380 Conveyances Seized for Drug Transport.

(Repealed by Ordinance No. 176585, effective July 5, 2002.)

3.20.390 Multnomah County Deputy Sheriffs Authorized the Arrest or Cite for Violations of City Code Provisions.

(Repealed by Ordinance No. 176585, effective July 5, 2002.)

**CHAPTER 3.21 - CITY AUDITOR'S
INDEPENDENT POLICE REVIEW**

(Chapter replaced by Ordinance No. 175652;
amended by Ordinance No. 188331, effective May
19, 2017.)

Sections:

- 3.21.010 Purpose.
- 3.21.020 Definitions.
- 3.21.030 Independent Police Review.
- 3.21.040 Director Selection.
- 3.21.050 Staff and Delegation.
- 3.21.060 Office Facilities and Administration.
- 3.21.070 Powers and Duties of IPR.
- 3.21.080 Citizen Review Committee.
- 3.21.090 Powers and Duties of the Committee.
- 3.21.100 Council Role.
- 3.21.110 Intake.
- 3.21.120 Handling Complaints.
- 3.21.130 Communications.
- 3.21.140 Filing Requests for Review.
- 3.21.150 Case File Review.
- 3.21.160 Hearing Appeals.
- 3.21.170 Monitoring and Reporting.
- 3.21.180 Increasing Public Access.
- 3.21.190 Response of Chief.
- 3.21.200 Limitation on Power.
- 3.21.210 Subpoenas.
- 3.21.220 Bureau Witnesses.

3.21.010 Purpose.

(Amended by Ordinance No. 188331, effective May 19, 2017.) The City hereby establishes an independent, impartial office, readily available to the public, responsible to the City Auditor, empowered to act on complaints against Police Bureau personnel for alleged misconduct, and recommend appropriate changes of Police Bureau policies and procedures toward the goals of safeguarding the rights of persons and of promoting higher standards of competency, efficiency and justice in the provision of community policing services. This office shall be known as the Independent Police Review.

3.21.020 Definitions.

(Amended by Ordinance Nos. 176317, 183657, 186416 and 188331 effective May 19, 2017.) In this Chapter:

- A.** “Appellant” means either:

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1. A person who has filed a complaint with IPR and subsequently requested review of the investigation or
 2. A member about whom a complaint has been filed with IPR and who has subsequently requested review by the Committee of the investigation.
- B. “Bureau” means the Bureau of Police of the City of Portland, Oregon.
- C. “Chief” means the Chief of the Bureau.
- D. "Citizen" or “community member” means any person who is not an employee of the Bureau.
- E. “Commissioner In Charge” means the Commissioner In Charge of the Bureau.
- F. “Committee” means the Citizen Review Committee, which is appointed by City Council members to assist IPR in the performance of its duties and responsibilities pursuant to this Chapter.
- G. “Complaint” means a complaint by a citizen, the Director, a member or other employee of the Bureau of alleged member misconduct.
- H. "Complainant" means any person who files a complaint against a member of the Portland Bureau.
- I. "Director" means the director of the Independent Police Review or the Director’s designee.
- J. "Finding" means a conclusion reached after investigation as to whether facts show a violation of Bureau policy.
- K. "Early Warning System" means the Bureau's method of identifying officers exhibiting a pattern of behavior that signals potential problems for both the Bureau and public, as explained in General Order 345.00.
- L. “IAD” means the Internal Affairs Division of the Bureau, whose responsibilities and procedures are described in Section 330.00 of the Manual of Rules and Procedures of the Bureau, as amended from time to time.
- M. "IPR Investigator" means an investigator of the Independent Police Review.
- N. "IPR" means the Independent Police Review.
- O. "Member" means a sworn employee of the Bureau or a supervisor of sworn employees. An “involved” member is a member about whom a complaint has been submitted to IPR or the Bureau.

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- P.** “Misconduct” means conduct by a member which conduct violates Bureau regulations or orders, or other standards of conduct required of City employees.
- Q.** “Request for Review” means a request by an appellant that the Committee review an IAD or IPR investigation of alleged member misconduct.
- R.** “RU (Responsibility Unit) Manager” means a commanding officer or manager of a Bureau division, unit or precinct.
- S.** “Supported by the Evidence.” A finding regarding a complaint is supported by the evidence when a reasonable person could make the finding in light of the evidence, whether or not the reviewing body agrees with the finding.
- T.** “Police Review Board” means the board established by Code Section 3.20.140.
- U.** "Policy-related issue" means a topic pertaining to the Police Bureau's hiring and training practices, the Manual of Policies and Procedures, equipment, and general supervision and management practices, but not pertaining specifically to the propriety or impropriety of a particular officer's conduct.
- V.** “Supervisory Investigation” means a formal, non-disciplinary process where the involved member’s supervisor is tasked with reviewing a complaint stating a member provided poor quality of service or committed a rule violation that if sustained would not result in corrective action greater than command counseling, as defined by the Bureau’s discipline guide.

3.21.030 Independent Police Review.

(Amended by Ordinance No. 188331, effective May 19, 2017.) There is established by the City Council the Independent Police Review, a division within the Auditor's Office.

3.21.040 Director Selection.

(Amended by Ordinance Nos. 186416 and 188842, effective March 30, 2018.) The City Auditor shall select the Director of IPR in accordance with the Auditor’s human resource policies and rules and any other applicable laws. The Director shall be a person of recognized judgment, objectivity and integrity who is well-equipped to analyze problems of administration, and public policy, and shall have a working knowledge in criminal justice commensurate to the powers and duties of the office.

3.21.050 Staff and Delegation.

(Amended by Ordinance No. 186416, effective February 7, 2014.)

- A.** The Director may appoint other personnel necessary to carry out the provisions of this chapter, when in keeping within the adopted budget for the IPR.
- B.** The Director may delegate to a designee any or all duties or responsibilities.

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3.21.060 Office Facilities and Administration.

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

- A.** The City shall provide suitable office facilities for the Director and staff in a location convenient for the public but separate from the Bureau.
- B.** The IPR office shall be located within the City Auditor's office, and be accountable to the City Auditor. The Director shall comply with the Auditor's purchasing procedures but shall have sole discretion in choosing consultants to assist with investigations.

3.21.070 Powers and Duties of IPR.

(Amended by Ordinance Nos. 176317, 183657, 185076, 186416, 188331, 188547 and 188842, effective March 30, 2018.) The Director's powers and duties are the following:

- A.** Intake. IPR shall receive complaints and select the appropriate manner to address the complaint.
- B.** Report on complaint activities. IPR shall track and report on the disposition of complaints to the public, IAD, the Chief, and the Council and monitor and report measures of activity and performance of IAD and IPR. IPR will also monitor and track trends relating to member history and complaint type as well as frequency, consistency and adequacy of discipline imposed. In performing these duties, IPR shall have access to Bureau data and records, including but not limited to raw data, tabulated summary statistics, other source materials, and any other format source necessary for IPR to perform its duties. IPR shall also have direct access to original database sources as permitted by state and federal law.
- C.** Access to Police data and data sources. IPR shall have access to Bureau data and records, including but not limited to raw data, tabulated summary statistics, other source materials, and any other format source necessary for IPR to perform its duties. IPR shall also have direct access to original database sources as permitted by state and federal law.
- D.** Initiate, monitor and conduct investigations. IPR is authorized to initiate, monitor and conduct administrative investigations. IPR is authorized to identify complaints or incidents involving members that are of community concern which merit additional involvement of the Director and to review evidence and IAD investigation efforts, participate in investigations with IAD investigators, or conduct the investigations in conjunction with or independent of the Bureau.
 - 1.** For investigations conducted by IPR, investigation reports will include recommended findings.

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2. The Bureau shall notify the Director that it intends to conduct an administrative investigation into misconduct before initiating the investigation.
- E. Compel review. In accordance with the procedures of Code Section 3.20.140, the Director may compel review by the Police Review Board of any RU Manager's or Commanding Officer's proposed findings and discipline resulting from a Bureau or IPR administrative investigation of a member. The Director may compel review by the Police Review Board on the basis of recommended discipline whether or not discipline was recommended as a result of the investigation.
- F. Communicate with Complainants. IPR will be the primary contact with the complainant regarding the status and results of the complaint; to assist IAD in communicating with the Member.
- G. Arrange hearings of appeals. IPR will explain the appeal options to complainants and schedule hearings before the Committee and Council.
- H. Recommend policy changes. IPR will evaluate complaint and other information and investigation practices to make recommendations to the Chief to prevent future problems. Policy change recommendations shall be published for public review.
- I. Outreach. IPR will widely distribute complaint forms in languages and formats accessible to citizens, educate them on the importance of reporting complaints, and hold public meetings to hear general concerns about police services.
- J. Access to information. Notwithstanding any other provision of City law, IPR shall have access to and be authorized to examine and copy, without payment of a fee, any bureau information and records, including confidential and legally privileged information and records so long as privilege is not waived as to third parties, and police databases, subject to any applicable state or federal laws. The Director shall not disclose confidential or legally privileged information or records and shall be subject to the same penalties as the legal custodian of the information or records for any unlawful or unauthorized disclosure.
- K. Adoption of rules. IPR shall adopt, promulgate, amend and rescind rules and procedures required for the discharge of the Director's duties, including policies and procedures for receiving and processing complaints, conducting investigations, and reporting findings, conclusions and recommendations. However, the Director may not levy any fees for the submission or investigation of complaints.
- L. Review of closed investigations. IPR shall hire a qualified person to review closed investigations pertaining to officer-involved shootings and deaths in custody on an ongoing basis. IPR shall issue reports on an annual basis identifying any policy-related issues or quality of investigation issues that could be improved. The

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Director and the Citizen Review Committee shall address any policy-related or quality of investigation issues that would warrant further review.

- M.** Additional public reports. The Director may issue public reports related to member misconduct trends and Bureau disciplinary practices.
- N.** Conduct investigative interviews of Bureau employees.
- O.** All Bureau employees shall be truthful, professional and courteous in all interactions with IPR. No member shall conceal, impede or interfere with the filing, investigation or adjudication of a complaint.
- P.** The Auditor may retain or employ independent legal counsel.

3.21.080 Citizen Review Committee.

(Amended by Ordinance Nos. 177688, 185076, 186416, 188331 and 189078, effective July 18, 2018.)

- A.** The Committee shall consist of eleven citizens. Five members shall constitute a quorum of the Committee. Decisions shall be made by a majority of Committee members present and constituting a quorum. However, adoption or amendment of rules of procedures or protocols requires an affirmative vote of six members. The Committee members shall be appointed as follows:
 - 1.** The Director shall solicit applications from the Office of Community & Civic Life, the seven Neighborhood Coalition offices, Mayor and commissioners' offices, PPB advisory committees, and the general public.
 - 2.** The City Auditor shall appoint a committee that shall recommend to the Auditor the appropriate number of nominees to fill impending vacancies. The selection committee shall consist of three CRC representatives, either past or not applying for reappointment, two members of the community, and the Director. Three of the selection committee members, including one CRC representative and the Director, shall serve as the interview panel.
 - 3.** Selection criteria shall include a record of community involvement, passing a criminal background check performed by an agency other than the Bureau, and absence of any real or perceived conflict of interest. The selection committee will nominate individuals who are neutral, unbiased, and capable of making objective decisions. The Mayor and commissioners may each submit an applicant meeting these qualifications.
 - 4.** The Auditor shall recommend nominees to Council for appointment.

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5. In the event a majority of the Council fails to appoint a person nominated under the provisions of City Code Section 3.21.080 the Auditor shall initiate the process again within 30 days after the Council action.
6. In selecting Committee members, consideration shall be given to the current composition of the Committee and appointments should be made that will cause the group to best reflect the demographic make-up of the community.

B. The Committee members shall:

1. Participate in orientation and training activities that may include review of Bureau and IPR procedures, participation in Bureau training to become familiar with police training, policies and investigative practices, including Police Review Board process, participate in ride-alongs with officers, to maintain sufficient knowledge of police patrol procedures.
2. Each serve a term of three years, subject to reappointment by Council. Upon expiration of the term, a committee member shall serve until re-appointed or replaced.
3. Attend committee meetings or provide an explanation in advance for an absence.
4. Serve staggered terms to better ensure continuity. Four members of the Committee shall be appointed to one year terms in July 2001.
5. Select a chair from among their members. Adopt such operating policies and procedures as necessary to carry out their duties.
6. Sign a confidentiality agreement.
7. Serve on the Police Review Board when the Board reviews use of force cases as defined in Chapter 3.20. Committee members shall serve on the Police Review Board on a rotating basis for no more than two terms of three years.

3.21.090 Powers and Duties of the Committee.

(Amended by Ordinance Nos. 177688 and 185076, effective December 14, 2011.)

A. The Committee's duties and powers are the following:

1. Conduct meetings. To schedule and conduct at least four meetings per year for the purpose of exercising the authority delegated to it in this chapter. Quarterly meetings and hearings conducted pursuant to the Chapter shall be subject to the Oregon Public Meetings Law, ORS 192.610 through 192.710. The number of Committee members required for a quorum shall be five.

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2. Gather community concerns. To participate in various community meetings to hear concerns about police services.
3. Recommend policy changes. To evaluate complaint, investigative practices, and other information to make policy recommendations to the Chief of Police, the Director, and the Council to prevent and rectify patterns of problems.
4. Advise on operations. To review methods for handling complaints and advise on criteria for dismissal, mediation, and investigation.
5. Hear appeals. To hold hearings of complainant or member appeals as defined in City Code Section 3.21.160; to recommend referral to a final hearing before Council; to publicly report its findings, conclusions and recommendations.
6. Outreach to public. To advise and assist the Director to disseminate information about IPR and Committee activities to organizations in the community; to present reports to Council.
7. Create other committees. To create special purpose subcommittees or committees including other citizens to address particular short-term issues and needs.

3.21.100 Council Role.

- A. Council shall review applications of nominees to the Committee and vote whether to approve each appointment.
- B. Council shall hear final appeals as specified in 3.21.160.

3.21.110 Intake.

(Amended by Ordinance Nos. 179162, 186416, 188331 and 188842, effective March 30, 2018.)

- A. The Director shall receive complaints from any source concerning alleged member misconduct. The Director shall make reasonable accommodation when complainants cannot file their complaint at the IPR office. All allegations of use of excessive force shall be subject to a full and completed investigation resulting in findings, unless there is clear and convincing evidence to IPR that the allegation has no basis in fact.
 1. A community member may file a complaint or commendation regarding alleged member misconduct with IPR, Internal Affairs, a Police Bureau Precinct, the Police Commissioner, or with any Bureau member.

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- a.** All complaints regardless of intake point will be forwarded to IPR or Internal Affairs and entered into the Administrative Investigation Management database.
 - b.** All Bureau facilities will have complaint and commendation forms available in areas accessible to the public.
 - c.** All Bureau issued business cards intended to be given to community members during calls for service will have IPR's phone number and email address printed on them.
- 2.** All complaints of alleged member misconduct will be investigated as either:
 - a.** Formal administrative investigations conducted by either Internal Affairs or IPR.
 - b.** Supervisory investigations conducted by a supervisor assigned to the same responsibility unit as the involved member.
 - (1)** Supervisory investigations will only be used for non-disciplinary complaints, such as those related to quality of service or minor rule violations.
 - (2)** All supervisory investigations will include a recommended disposition.
 - (3)** All completed supervisory investigations must be reviewed by Internal Affairs and IPR.
 - (4)** Completed supervisory investigations will not be subject to appeal.
- 3.** The Director will be notified in a timely manner by either the Assistant Chief of Investigations, Captain of IAD, or a member of the Police Commissioner's staff upon their knowledge that a member has engaged in conduct that may be subject to criminal and/or administrative investigation.
- 4.** IPR may request that the Bureau open an administrative deadly force investigation into any incident where IPR believes the physical force used by a member was such that it was readily capable of causing death or serious physical injury.
- 5.** When members of the public make complaints that do not allege member misconduct but do raise issues of a broader systemic nature, IPR may conduct reviews of Bureau policies and practices.

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- B.** The Director shall develop procedures for handling complaints and appeals involving matters currently in litigation or where a notice of tort claim has been filed. The Director shall not initiate a case where a grievance or other appeal has been filed under a collective bargaining agreement or City personnel rules; or with respect to employee or applicant discrimination complaints.
- C.** The Director, when requested, shall protect the confidentiality of complainants, members or witnesses consistent with the requirements of the Oregon Public Records Law, except insofar as disclosures may be necessary to enable the Director to carry out their duties, or to comply with applicable collective bargaining agreements, or the disclosure of records is directed by the District Attorney. When considering a request for public records, the Director shall consult with appropriate Bureau personnel and obtain approval from the Bureau prior to disclosure of records under the Oregon Public Records Law.
- D.** No member of the community or the Police Bureau shall face retaliation, intimidation, coercion, or any adverse action for reporting misconduct or cooperating with a misconduct investigation.

3.21.120 Handling Complaints.

(Amended by Ordinance Nos. 179162, 183657, 186416, 188331 and 188547, effective September 8, 2017.) To ensure appropriateness and consistency in handling complaints the Director shall work with the Committee to establish procedures for taking action based upon the characteristics of the complaint.

- A.** Mediation. The complainant, the Member who is the subject of the complaint, and Bureau administration must all agree before mediation can be conducted. A complaint that undergoes mediation shall not be investigated. A mediation may be suspended if, in the opinion of the mediator, there is no reasonable likelihood of reaching resolution.
- B.** Complaint Types:
 - 1.** Complaint Type I: IPR is the intake point for complaints from community members and others regarding the conduct of members during an encounter involving a community member. Type I complaints involve alleged misconduct of a member during an encounter involving a community member.
 - 2.** Complaint Type II: A complaint about alleged member misconduct that does not occur during an encounter involving a community member is a Type II complaint. Such a complaint may be initiated by another Bureau employee or supervisor, or may be based on information obtained from another law enforcement agency, an employee of governmental agency

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acting in an official capacity or a community member. These complaints may be filed with the Bureau or with IPR.

3. Complaint Type III: A complaint may be initiated by the Director at the discretion of the Director that an administrative investigation is warranted. IPR can initiate a complaint whether or not the alleged misconduct occurred during an encounter involving a community member and is not dependent on a community or Bureau member filing a complaint.
 - a. IPR will initiate and conduct administrative investigations in accordance with Human Resources Administrative Rules regarding process and investigation of complaints of discrimination.
 - b. If a criminal investigation has been initiated against the involved member, or during the course of an IPR administrative investigation a basis for conducting a criminal investigation arises, IPR shall advise the City Attorney and/or District Attorney prior to initiating or continuing an administrative investigation. IPR shall take all steps necessary to meet constitutional requirements and comply with existing provisions of City labor agreements.
4. Complaint Type IV: When Bureau supervisors generate complaints about poor member performance or other work rule violations. RU managers are responsible for intake and investigation of allegations of Type IV cases.
5. For all complaint types, the Bureau shall notify IPR prior to the termination of any administrative investigation that has not been assigned for recommended findings.

C. Initial Handling and Investigation of Type I Complaints

1. Once IPR receives a Type I complaint regarding alleged misconduct of a member during an encounter involving a community member, IPR will:
 - a. Gather information about the complaint through an intake interview;
 - b. Assign an IPR/IAD Case Number;
 - c. Make a case handling decision; and
 - d. Send a letter to the complainant summarizing the complaint and the Director's case handling decision.
2. If IPR determines an investigation is appropriate, IPR will identify the complainant's allegations and either:

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a. Recommend that the Bureau/IAD conduct an investigation

IPR shall gather information from the complainant and forward it to the Bureau/IAD. IPR shall monitor the on-going Bureau investigation. The Director may determine that a Bureau/IAD investigation should also involve IPR personnel. When forwarding the complaint to the Bureau/IAD the Director shall notify the Captain of IAD of the extent that IPR personnel must be included in the investigation. Bureau/IAD personnel shall schedule interviews and other investigative activities to ensure that IPR personnel can attend and participate.

IPR personnel shall have an opportunity to review and comment on draft reports regarding a Bureau/IAD investigation to ensure accuracy, thoroughness, and fairness. The investigation cannot be closed or sent to the RU manager without IPR's determination that the investigation is complete.

To facilitate review, IAD shall tape record all interviews with witnesses, including members of the Bureau, conducted during an IAD investigation and shall make those tapes, or accurate copies, available during a review of an IAD investigation.

In carrying out its functions, the IPR may visit IAD offices, examine documents, reports and files and take such other actions as the Director deems necessary and consistent with the purposes of this Chapter. To maintain the security of IAD documents, reports or files, the Chief may require that the examinations be conducted in the IAD offices.

b. IPR may conduct an independent investigation.

The Director shall have discretion to initiate and conduct an independent investigation of alleged member misconduct. The Director may conduct an independent investigation whether or not the alleged misconduct involves an encounter with a community member.

IPR investigations shall be conducted in conformance with legal and collective bargaining provisions. The Director shall notify the Captain of IAD that IPR has undertaken an investigation and the reason.

To facilitate review, IPR shall tape record all interviews with witnesses, including members of the Bureau, conducted during an

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investigation and shall make those tapes, or accurate copies, available during a review of an investigation.

The Director shall provide the Captain of IAD and the Police Chief with a report on the investigation, including recommended findings, and present the IPR investigation, with recommended findings to the RU manager for preparation of RU Manager's proposed findings and discipline. At the completion of the investigation and any appeal process the records of the investigation shall be transferred to the IAD offices for retention.

3. Referral. IPR may refer a complaint regarding quality of service or other rule violations that likely would not result in discipline according to the Bureau. The Director may refer the complainant to another bureau in the City or another agency that would be more appropriate to address the complaint.
4. Administrative Closure. After an initial investigation, IPR may decline to take further action on a complaint. If there is an administrative closure, IPR will provided notification to the complainant. IPR will also notify the involved officer(s) and their commanding officer within 30 calendar days of the administrative closure. The Director may administratively close a complaint for the following reasons:
 - a. Another remedy exists that would resolve the complainant's issue.
 - b. The complainant delayed too long in filing the complaint to justify present examination;
 - c. Even if all aspects of the complaint were true, no act of misconduct would have occurred;
 - d. The complaint is trivial, frivolous or not made in good faith;
 - e. Where there is clear and convincing evidence that the involved member did not engage in misconduct.
 - f. The complainant withdraws the complaint or fails to complete necessary steps to continue with the complaint.
 - g. IPR was unable to identify the involved member.
 - h. Lack of jurisdiction.

D. Initial Handling and Investigation of Type II Complaints

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1. If a Type II complaint is filed with IPR, IPR will gather information about the complaint and make a case handling decision. When appropriate, IPR will assign an IPR/IAD case number. Before disposing of a complaint of alleged misconduct or initiating an investigation, IPR shall notify the Bureau in writing how it intends to process the complaint and whether it intends to refer the case to the Bureau/IAD to conduct an investigation or conduct an independent investigation as set forth below. IPR will make an entry regarding the allegations in the Administrative Investigation Management (AIM) or other appropriate database which can be reviewed by the Director.
2. If a Type II complaint is filed within the Bureau, Bureau/IAD staff will create an intake worksheet and assign an IPR/IAD case number for use by IAD. Before disposing of a complaint of alleged misconduct or initiating an investigation, the Bureau/IAD shall notify the Director in writing how it intends to process each complaint and whether it intends to conduct an internal investigation. In addition, the Bureau/IAD will make an entry regarding the allegations in the Administrative Investigation Management (AIM) database or other appropriate database which can be reviewed by the Director.
3. Bureau/IAD Investigation. If the Type II complaint is filed with IPR, IPR shall gather information from the complainant and forward it to the Bureau/IAD. IPR shall monitor the on-going investigation. The Director may determine that a Bureau/IAD investigation should also involve IPR personnel. When forwarding the complaint to the Bureau/IAD, the Director shall notify the Bureau/Captain of IAD of the extent that IPR personnel must be included in the investigation. Bureau/IAD personnel shall schedule interviews and other investigative activities to ensure that IPR personnel can attend and participate.

IPR personnel shall have an opportunity to review and comment on draft reports and recommended findings regarding a Bureau/IAD investigation to ensure accuracy, thoroughness, and fairness. The investigation can not be closed or sent to the RU manager without IPR's determination that the investigation is complete.

To facilitate review, IAD shall tape record all interviews with witnesses, including members of the Bureau, conducted during an IAD investigation and shall make those tapes, or accurate copies, available during a review of an IAD investigation.

In carrying out its functions, the IPR may visit IAD offices, examine documents, reports and files and take such other actions as the Director deems necessary and consistent with the purposes of this Chapter. To

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maintain the security of IAD documents, reports or files, the Chief may require that the examinations be conducted in the IAD offices.

4. IPR independent investigation. The Director shall have discretion to initiate and conduct an independent investigation of alleged member misconduct. The Director may conduct an independent investigation whether or not the alleged misconduct involves an encounter with a community member. The IPR investigations shall be conducted in conformance with legal and collective bargaining provisions. The Director shall notify the Bureau/Captain of IAD that IPR has undertaken an investigation and the reason.

To facilitate review, IPR shall tape record all interviews with witnesses, including members of the Bureau, conducted during an investigation and shall make those tapes, or accurate copies, available during a review of an investigation.

The Director shall provide the Captain of IAD and the Police Chief with a report on the investigation, including recommended findings and present the IPR investigation with recommended findings to the RU manager for preparation of RU Manager's proposed finding and discipline. At the completion of the investigation the records of the investigation shall be transferred to the IAD offices for retention.

5. Referral. IPR may refer a complaint regarding quality of service or other rule violations that likely would not result in discipline according to the Bureau. The Director may refer the complainant to another bureau in the City or another agency that would be more appropriate to address the complaint.

E. Initial Handling and Investigation of Type III Complaints

Upon opening a Type III IPR initiated complaint investigation. IPR staff will create an intake worksheet and assign an IPR/IAD case number. If a Type III case involves alleged member misconduct during an encounter involving a community member, the case will be handled following the same procedures as a Type I complaint. If a Type III case involves alleged member misconduct that does not occur during an encounter involving a community member, the case will be handled following the same procedures as a Type II complaint.

F. Initial Handling and Investigation of Type IV Complaints

RU managers are responsible for intake and investigation of allegations of Type IV cases. The RU manager will provide the Director a summary of the complaint and a summary of any subsequent investigation of a sworn member. The Director may

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refer the matter to IAD for further investigation, conduct additional investigation, or controvert the RU manager's recommendations and compel review by the Police Review Board after receiving the completed investigation.

G. Type I, II, III & IV Post-Investigative Case Handling Procedures:

- 1.** Adequacy of investigation. When an investigation of any type of complaint is conducted by IAD or other designated PPB division, after the investigation, including RU Manager's proposed finding and discipline, is complete, IAD will provide the Director with a copy of and provide unrestricted access to the entire investigation file. Upon review of the file, the Director or designee must determine whether or not the investigation is adequate, considering such factors as thoroughness, lack of bias, objectivity, and completeness. If the Director determines that the investigation is not adequate, the investigation shall be returned to the IAD or other designated division within the Bureau explaining the determination and providing direction. Such direction shall include, but not limited to, rewriting portions of the summary, gathering additional evidence, conducting additional interviews, or re-interviewing officers or civilians. The investigation can not be closed or sent to the RU manager without IPR's determination that the investigation is complete. Upon receipt of IPR's determination that the investigation is complete, IAD shall send the investigation to the appropriate RU Manager.
- 2.** Submission of recommended findings to RU Manager. The RU manager will review the investigation and recommended finding for any type of complaint when the investigation is conducted by IAD, other designated PPB division or IPR and submit the RU Manager's proposed finding and discipline to the Captain of IAD. The Captain of IAD will circulate the RU Manager's proposed finding to the Director and the Supervising Assistant Chief. After receipt of the RU Manager's proposed finding and discipline, the supervising Assistant Chief, the Director or the Captain of IAD may controvert the RU Manager's proposed finding and/or discipline. All controverts shall be documented in a memo that clearly articulates that the reviewer wishes to controvert and provides an adequate explanation for the writer's basis for disagreeing with the recommended finding or discipline.

 - a.** If the RU Manager determines that an investigation by IAD or IPR is not adequate, the RU Manager may return the investigation to the investigating entity for further investigation explaining the determination and providing direction for further investigation. Such direction shall include, but not be limited to, investigating additional allegations of misconduct, gathering additional evidence, conducting additional interviews, re-interviewing officers or

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civilians, or requesting factual errors within the investigative report be corrected.

- b.** If the RU Manager disagrees with the recommended finding by IA or IPR the RU Manager will document their disagreement, based on the evidentiary record, with the investigative entity in the RU's proposed finding and discipline
- 3.** Police Review Board meeting. If the RU Manager's proposed findings and/or proposed discipline are controverted, the Bureau shall schedule a Police Review Board meeting on the complaint. As specified in Code Section 3.20.140, the Police Review Board shall also hold a meeting for review of a case if it involves an officer-involved shooting, physical injury caused by an officer that requires hospitalization, an in-custody death, a less lethal incident where the recommended finding is "out of policy" or if the investigation resulted in a proposed sustained finding and the proposed discipline is suspension without pay or greater.
- 4.** Notification and Appeals of Type I and III complaints without Police Review Board meeting. In Type I cases, and Type III cases where the alleged misconduct occurred during an encounter involving a community member, if the RU Manager's proposed findings and discipline are not sent to the Police Review Board for a meeting, the Director shall send a letter to the complainant explaining the disposition of the complaint and add any appropriate comment regarding the reasoning behind the decision. Both the complainant and involved member will be notified of the investigative entity's recommended finding. IPR will notify the complainant that they have a right to request a review of the Bureau's proposed findings to the Committee and provide an appeal form. The Bureau will notify the involved member regarding the disposition of the complaint. The Bureau will notify the involved member of the right to request a review of the proposed findings to the Committee. The Bureau will be responsible for providing the member and union representative with the appeal form. A copy of the communications sent by IPR and IAD will be placed into the AIM database or other appropriate database for both IPR and IAD review.
- 5.** Notification and Appeals of Type I and III complaints after Police Review Board hearing. In Type I cases and Type III cases where the alleged misconduct occurred during an encounter with a community member and the RU Manager's proposed findings and discipline are sent to the Police Review Board for a meeting, the Director shall send a letter to the complainant explaining the disposition of the complaint and add any appropriate comment regarding the reasoning behind the decision. Both the complainant and involved member will be notified of the investigative entity's recommended finding. IPR will notify the complainant that they

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have a right to request a review of the proposed findings to the Committee and provide an appeal form. The Bureau will notify the involved member regarding the proposed findings of the Police Review Board. The Bureau will notify the involved member of the right to request a review of the proposed findings to the Committee. The Bureau will be responsible for providing the member and union representative with the appeal form. A copy of the communications sent by IPR and IAD will be placed into the AIM database or other appropriate database for both IPR and IAD review.

6. No appeal of Type II and certain Type III complaints. In Type II cases and Type III cases that involve alleged member misconduct that does not occur during an encounter involving a community member, the recommended findings may not be appealed to the Committee.
7. Nothing in this section prohibits the Bureau from terminating the employment of a probationary officer without following the procedures of this Section.
8. The Police Commissioner and the City Auditor shall be notified and provided with explanatory information in all cases where an administrative investigation exceeds 129 days, and the information posted on the City's website.

3.21.130 Communications.

The IPR shall ensure that the complainant and member complained about are informed of the progress and status of the complaint or appeal. Communication may be accomplished orally or by first class mail.

3.21.140 Filing of requests for review.

(Amended by Ordinance Nos. 183657 and 187136, effective June 19, 2015.)

- A. Any complainant or member who is dissatisfied with an investigation of alleged member misconduct that occurred during an encounter with a community member may request a review.
- B. The request for review must be filed within 14 calendar days of the complainant or member receiving IPR's notification regarding disposition of the case. The Director may adopt rules for permitting late filings. When good cause has been established, the Director may accept late filings. Good cause includes, but is not limited to:
 1. Appellant has limited English language proficiency.
 2. Appellant has physical, mental or educational issues that contributed to an untimely request for review.

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- C. A request for review must be filed in writing personally, by mail or email with the IPR Office, or through other arrangements approved by the Director.
- D. The request for review shall include:
 - 1. The name, address, and telephone number of the appellant;
 - 2. The approximate date the complaint was filed (if known);
 - 3. The substance of the complaint;
 - 4. The reason or reasons the appellant is dissatisfied with the investigation.
- E. The complainant or member may withdraw the request for review at any time.

3.21.150 Case File Review.

(Replaced by Ordinance No. 187136; Amended by Ordinance No. 188331, effective May 19, 2017.)

- A. When the Director receives and accepts a timely request for review, a Case File Review and Appeal Hearing shall be scheduled before the Committee. The Director will notify the CRC Executive Committee upon receipt of a request of review. The Case File Review shall take place prior to the Appeal Hearing either on the same day or on an earlier date.
- B. The Case File Review will be an opportunity for the Committee to assess the completeness and readiness of the investigation for an Appeal Hearing. Public comment will be allowed before the Committee has made a decision whether a case is ready for an Appeal Hearing. In the event that the Committee conducts a Case File Review and Appeal Hearing on the same day, public comment will be allowed before the Committee has made its recommendation to the Bureau.
- C. During either the Case File Review or Appeal Hearing, the Committee may direct, by majority vote, additional investigation by either IAD and/or IPR.
 - 1. Only Committee members who have read the case file are eligible to vote.
 - 2. The Committee will have one opportunity to direct additional administrative investigation, all other requests will be at the discretion of either IAD or IPR.
 - 3. The request for additional investigation may include multiple areas of inquiry.
 - 4. All additional investigation will be conducted in a timely manner, with the Committee given regular updates.

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- D.** If the committee agrees no further investigation and consideration of the evidence appears warranted, the committee shall vote on when to hold an Appeal Hearing.

3.21.160 Hearing Appeals.

(Amended by Ordinance Nos. 185076, 188331 and 188547, effective September 8, 2017.)

- A.** An Appeal Hearing shall be conducted after a majority vote of the Committee to hold such a hearing at the case file review or other meeting of the full Committee. Public comment will be allowed before the Committee has made its recommendation to the Bureau.

- 1.** At the Appeal Hearing the Committee shall decide by majority vote:

- a.** To recommend further investigation by IAD or IPR; or
- b.** If the finding is supported by the evidence. In a case where the majority of the voting members of the Committee affirms that the Bureau's proposed findings are supported by the evidence, the Director shall close the complaint; or
- c.** If the finding is not supported by the evidence. In a case where a majority of the voting members of the Committee challenges one or more of the Bureau's proposed findings by determining that one or more of the findings is not supported by the evidence, and recommends a different finding, the Director shall formally advise the Bureau in writing of the Committee recommendation.
 - (1)** If the Bureau accepts the recommendation, the Bureau shall formally advise the Director in writing, and the Director shall close the case.
 - (2)** If the Bureau does not accept the recommendation, the Bureau shall formally advise the Director in writing, and the Director shall schedule the case for a conference hearing.
 - (a)** At the conference hearing, if the Committee, by a majority vote, is able to reach an agreement with the Bureau on the proposed findings, the Director shall close the case.
 - (b)** If, by majority vote, the Committee can not reach an agreement with the Bureau on the proposed findings, the Committee shall vote whether to present the appeal to City Council.

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- (c) If, by majority vote, the Committee decides to present the appeal to City Council, the Director and the Committee Chair will schedule an appeal hearing before City Council. The Committee shall appoint one of its members to present its recommended findings during the appeal to City Council.
2. In its hearing the Council shall decide:
 - a. If the finding is supported by the evidence. The Director shall inform the complainant, member, IAD and the Chief of the Council's decision and close the complaint; or
 - b. If the finding is not supported by the evidence. The Council shall decide what the finding is. The Director shall inform the complainant, member, IAD and the Chief of the Council's decision and close the complaint.
- B. In reviewing the investigation, the Committee may examine the appeal form and any supporting documents, the file and report of the IAD and IPR, and any documents accumulated during the investigation and may listen to the tape recordings of the witnesses produced by IPR and IAD. The Committee may receive any oral or written statements volunteered by the complainant or the member or other officers involved or any other citizen. The complainant or member may appear with counsel. When the Committee's review process develops new information, the Committee may consider the new information when determining if additional investigation is warranted, but the Committee may not incorporate the new information in the evidentiary record the Committee considers when determining if a finding is supported by the evidence.
- C. In reviewing the investigation, the Council may examine the appeal form and any supporting documents, the file and report of the IAD and IPR, any documents accumulated during the investigation, the recording of the Committee's case file review and appeal hearing, the Committee's Case File review Worksheet, and may listen to the tape recordings of the witnesses produced by IPR and IAD. The Council may receive any oral or written statements volunteered by the complainant or the member about whether or not they believe the finding is or is not supported by the evidence in the record. No new evidence may be introduced in the hearing. The complainant or member may appear with counsel.
- D. Witnesses.
 1. The Committee and Council may require within its scope of review the investigators and Captain of IAD and the Director to appear and answer questions regarding the investigation and may also require the responsible

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Bureau Commander to answer questions regarding the basis and the rationale for a particular decision.

2. Other Witnesses. Other witnesses shall not be required to appear involuntarily before the Committee.
3. Council may utilize the full powers granted by Section 2-109 of the Charter, including the power to compel the attendance and testimony of witnesses, administer oaths and to compel the production of documents and other evidence. The power to compel the attendance and testimony of witnesses in accordance with City Code Section 3.21.160 D.3. shall not be delegated by the Council to the Committee.

3.21.170 Monitoring and Reporting.

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

- A. The Director shall develop a data system to track all complaints received, develop monthly reports to inform IAD and the Chief regarding IAD workload and performance, and inform complainants and members regarding the status of complaints and appeals.
- B. The Director shall use complaint and OMF Risk Management Division data to support the Bureau's Early Warning System.
- C. The Director shall work with the Committee to develop recommendations to modify Bureau policies and procedures in order to prevent problems, improve the quality of investigations, and improve police-community relations.
- D. The Director shall work with the Committee to develop quarterly and annual summary reports for the Chief, Commissioner in Charge, Council and public on IPR and IAD activities, policy recommendations, and Bureau follow-through on recommendations. The report may include analysis of closed files which were not appealed, but it is not the intent that the files be reopened.

3.21.180 Increasing Public Access.

(Amended by Ordinance No. 186416, effective February 7, 2014.)

- A. The Director shall work with the Committee to make complaint forms available in formats and locations to reach as many community members as possible.
- B. The Director shall work with the Committee to develop programs to educate the public about IPR and the importance of reporting problems.
- C. The Director shall work with the Committee to develop programs to educate Bureau personnel on the complaint process, mediation, and IPR activities. Bureau

personnel shall be informed that IPR is the primary means for citizens to file complaints.

- D.** IPR, Committee and Bureau shall develop guidelines for situations when a commander or supervisor in a precinct is directly contacted by a complainant with a complaint. In general, they may intervene and attempt to resolve the complaint themselves, but they must also inform complainants that they can still file with IPR if they do not achieve satisfaction.

3.21.190 Response of Chief.

(Amended by Ordinance No. 186416, effective February 7, 2014.)

- A.** The Chief, after reviewing a report provided by IPR under City Code Section 3.21.170, shall respond promptly to IPR in writing, but in no event more than 60 days after receipt of the report. The response shall indicate what, if any, policy or procedural changes are to be made within the IAD or the Bureau.
- B.** If the Chief fails to respond within 60 days after receipt of the Committee Report, the Auditor shall place the matter on the Council Calendar, for consideration by City Council, within 15 days thereafter.

3.21.200 Limitation on Power.

The Committee and Director are not authorized to set the level of discipline for any member pursuant to any request for review made under this Chapter. However, this Section shall not be construed to limit the authority granted to City Council by the City Charter, City Code, state statutes, and other applicable law.

3.21.210 Subpoenas.

(Added by Ordinance No. 183657; Amended by Ordinance No. 186416, effective February 7, 2014.) IPR shall have the authority to issue subpoenas for the purpose of compelling witness testimony or the production of documents, photographs, or any other evidence necessary for IPR to fully and thoroughly investigate a complaint or conduct a review.

IPR personnel will not subpoena a sworn Bureau member employed by the Portland Police Bureau, but is authorized to direct Bureau members to cooperate with administrative investigations as described in Sections 3.21.120 and 3.21.220.

Any person who fails to comply with a subpoena will be subject to contempt proceedings as prescribed by State law; provided that such persons shall not be required to answer any question or act in violation of rights under the constitutions of the State or of the United States.

3.21.220 Bureau Witnesses.

(Added by Ordinance No. 186416, effective February 7, 2014.)

- A.** A Bureau employee shall attend investigative interviews conducted by IPR, cooperate with and answer questions asked by IPR during an administrative

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investigation of a member conducted by IPR. If an employee refuses to attend an investigative interview after being notified to do so by IPR or refuses to answer a question or questions asked by IPR during an investigative interview, the Police Chief or Police Commissioner shall direct the employee to attend the interview and answer the question or questions asked.

- B.** All IPR interviews of Bureau employees shall be conducted in conformance with legal requirements and collective bargaining provisions.
- C.** Prior to being interviewed, a Bureau employee will be:
 - 1.** Notified of the time, date, and location of the interview.
 - 2.** Informed of the right to bring a union representative to the interview.
 - 3.** Read a statement, issued under the authority of the Police Chief or Police Commissioner, that the employee is directed to attend the interview, cooperate during the interview and answer all questions fully and truthfully and, if the employee fails to attend the interview, cooperate during the interview or answer any questions fully and truthfully, the employee will be subject to discipline or discharge
 - 4.** Provided with any other information or protections required by any applicable collective bargaining agreement.
- D.** A representative of the Police Bureau shall attend IPR interviews of Bureau employees for the purpose of reading the statement referenced in Subsection C. and to provide any assistance required by IPR.

**CHAPTER 3.22 - PORTLAND FIRE &
RESCUE**

(Chapter amended by Ordinance No. 180917,
effective May 26, 2007.)

Sections:

- 3.22.010 General Organization.
- 3.22.020 Organized by Council - Subject to Civil Service.
- 3.22.030 Council Powers.
- 3.22.040 Care of Property by Council.
- 3.22.050 Duties of Chief Engineer.
- 3.22.060 Destroying Buildings to Check Fire.
- 3.22.070 Appointment of Temporary Employees.
- 3.22.080 Assignment of Disabled Members.
- 3.22.090 Rules and Regulations and Administrative Orders.
- 3.22.100 Uniforms.
- 3.22.110 Fire Suppression and/or Prevention Contracts.
- 3.22.120 Renewal Notices.
- 3.22.130 Contract Form to be Approved by City Attorney.
- 3.22.140 Mutual Assistance Agreements.
- 3.22.150 Use of Fire Boats for Pumping Water Out of Boats and Barges.
- 3.22.160 Fees for Pumping Water from Imperiled Vessels.
- 3.22.170 Distribution of Awards Earned by Members of Portland Fire & Rescue.
- 3.22.180 Forested and Wildland Interface Areas Fire Protection Plan.

3.22.010 General Organization.

(Amended by Ordinance Nos. 136677, 149110, 150993, 158149, 160883 and 182105, effective September 12, 2008.) Portland Fire & Rescue shall consist of the Chief Engineer (generally referred to as the Chief of the Bureau) and such other employees as the Council may provide. The mission of Portland Fire & Rescue shall be to safely protect life, property, and the environment by providing excellence in emergency services, training and prevention. Portland Fire & Rescue shall be comprised of the following divisions:

- A.** The Emergency Operations Division, which shall be responsible for the saving of life and property from fire or other disaster, emergency medical services, hazardous materials incidents, conducting a fire loss control program, training and other miscellaneous public services;
- B.** The Fire Prevention Division, which shall be responsible for fire prevention inspections and Code enforcement (Title 31), fire and life safety plans review, fire and arson investigation, enforcement of harbor regulations (Title 19), and conducting an educational fire prevention program;

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- C.** The Management Services Division, which shall be responsible for budget and finance, long range capital planning and program development, special projects, manual and automated management information systems, planning and administrative support services, and supplying logistical support which shall include facility and vehicle maintenance, operational supplies and services;
- D.** The Training and Safety Division, which shall be responsible for initial training of all newly hired firefighters, on-going training to maintain and improve the skills of all personnel, safety and risk management programs, accident and injury investigation and analysis, researching and developing new technologies and practices, and promoting training and educational opportunities for career development of all Bureau personnel.

3.22.020 Organized by Council - Subject to Civil Service.

(Amended by Ordinance No. 160883, effective June 9, 1988.) Portland Fire & Rescue of the City shall be organized by the Council and the members appointed as provided by the Charter, subject to the Civil Service rules of the Charter, and thereafter, subject to the restrictions contained in the Charter. All the powers of the City connected with and incident to the appointment, discipline, and government of its Portland Fire & Rescue shall be vested in the Commissioner In Charge of Portland Fire & Rescue .

3.22.030 Council Powers.

(Amended by Ordinance No. 160883, effective June 9, 1988.) The Council shall have the power and it is hereby made its duty to organize, govern, and conduct a Portland Fire & Rescue for effective service within the City, and to that end may authorize the appointment of a Chief Engineer (Fire Chief) and as many other officers and employees as in its opinion are necessary. It shall have the power to make, or power to delegate authority to the Commissioner In Charge of Portland Fire & Rescue to make, all necessary or convenient rules and regulations for the organization and conduct of the Bureau, for receiving and hearing complaints against any members, and for the removal or suspension of any member of the Bureau. The Civil Service rules prescribed in the Charter shall apply to every officer and member of the Bureau and shall govern the actions of the Council in its organization and government of the Bureau.

3.22.040 Care of Property by Council.

(Amended by Ordinance No. 160883, effective June 9, 1988.) The Council shall have the custody and management of all the public property, including the fire alarm telegraph, pertaining to Portland Fire & Rescue. It shall have power and authority, subject to the limitations and appropriations made and expenditures authorized by the Council, to purchase and acquire all necessary apparatus, including fireboats, engines, hose, hose carriages, and all other personal property which the exigencies of an efficient Portland Fire & Rescue may require. It shall have power and authority to sell and dispose at public sale under the provisions of the Charter relating to sales of public property of any portion of said personal property whenever the same is not required, or when it may be considered by the Council unfit for service in the Bureau. The proceeds of any such sale shall be paid by

the purchaser to the Treasurer of the City, who shall issue a proper receipt therefor, and all such monies shall be credited to the General Fund of the City.

3.22.050 Duties of Chief Engineer.

(Amended by Ordinance No. 160883, effective June 9, 1988.) The Chief Engineer (Fire Chief) shall diligently observe the condition of the apparatus and property and workings of the Bureau and make an annual report in writing to the Commissioner In Charge of Portland Fire & Rescue. The Chief Engineer (Fire Chief) shall also make recommendations from time to time with regard to the needs of the Bureau as he may deem proper.

3.22.060 Destroying Buildings to Check Fire.

The Chief Engineer, or, in his absence, any Assistant Chief Engineer, may during a conflagration, cause to be cut down, or otherwise removed, any buildings or structures for the purpose of checking the progress of such conflagration.

3.22.070 Appointment of Temporary Employees.

The Council, in case of any general conflagration or great emergency, may appoint such temporary employees as it may deem necessary and to whom Civil Service rules shall not apply.

3.22.080 Assignments of Disabled Members.

Members and officers of a higher grade who have done faithful service and have been disabled so as to unfit them for serving in the position occupied when so disabled may be assigned to other duties suitable to their physical abilities and shall always have preference in such assignments.

3.22.090 Rules and Regulations and Administrative Orders.

(Amended by Ordinance No. 160883, effective June 9, 1988.) The rules and regulations of Portland Fire & Rescue shall be promulgated by the Chief Engineer, subject to approval by the Commissioner In Charge of the Bureau, and the Chief Engineer shall have authority to issue general and special orders which shall be administrative in nature and shall be in addition to or supplemental to the rules and regulations as promulgated by the Chief Engineer and approved by the Commissioner In Charge. The rules and regulations and the general or special orders shall govern the conduct of the members of Portland Fire & Rescue and shall be designed for the efficient and effective functioning of the Bureau.

3.22.100 Uniforms.

(Amended by Ordinance No. 160883, effective June 9, 1988.) The following rules shall apply to uniforms for employees appointed to Portland Fire & Rescue who are members of the Fire and Police Disability and Retirement System:

- A. The Chief of the Bureau shall, subject to the approval of the Commissioner In Charge, prescribe specifications for fire uniforms and establish rules, regulations and conditions of wearing thereof.

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- B.** Upon report of the Commissioner In Charge of Portland Fire & Rescue, the Council shall designate which items of the uniform specified by the Chief of the Bureau under subdivision A above shall be furnished by the City to those employees required to wear the prescribed uniform in performance of their normal and usual fire duties. Each new employee shall be furnished a complete set of designated items of uniform. All other employees shall be furnished designated items of uniform on the basis of replacement when needed as determined by the Fire Chief. Items furnished by the City shall remain property of the City. The Fire Chief shall establish the rules, regulations and conditions for issuance and control thereof;
- C.** The Chief of the Bureau shall have the authority to designate duty assignments which require dress other than the prescribed uniform. For such designated duty, no items of uniform shall be furnished, and those employees affected shall receive an annual cash clothing allowance in lieu of the items of uniform furnished by the City. Clothing allowances shall be paid in accordance with Section 5.08.070.

3.22.110 Fire Prevention and Suppression Contracts.

(Amended by Ordinance Nos. 132356, 160840, and 160883, effective June 9, 1988.) The Commissioner In Charge of Portland Fire & Rescue and the City Auditor hereby are authorized to enter into contracts under the provisions of the State Rural Fire Protection District Act. Contracts authorized by this Section are subject to the following conditions:

- A.** The City shall provide both fire prevention and fire suppression services and will not provide fire suppression services only.
- B.** Payment for services by individuals and private organizations, having no tax levying authority under State law, shall be in advance, excepting those contracts in excess of \$25,000, which may be paid on a quarterly basis in advance. The Auditor shall execute such contracts only upon receipt of such payment;
- C.** Contracts with political subdivisions of the State shall be entered into only upon certification to the Auditor by the governing body of such political subdivision that there will be assessed upon the taxpayers of such political subdivision an amount not less than:
 - 1.** The contract price.
 - 2.** Unpaid balances, if any, owing the City on previous fire prevention and suppression contracts.
 - 3.** An estimated amount sufficient to compensate for the delinquencies, based upon previous experience.

The Auditor shall execute such contracts only upon receipt of such certification, unless specially authorized by ordinance. Payment upon such contracts shall be

due in equal semi-annual installments on or before January 1 and June 1 of the year in which the contract is in effect;

D. As used in this Section:

1. **“Effective year”** means the fiscal year in which the contract is operative,
2. **“Previous year”** means the fiscal year first preceding the effective year.
3. **“Property owner’s assessed value”** means the assessed value in the previous year of land, improvements and personal property of the individual, organization or political subdivision contracting for City fire prevention and suppression, provided, however, that for political subdivisions, the City Auditor shall decrease such assessed value to adjust for changes in boundaries which become effective during the previous year as the result of annexations to the City. If property or a portion thereof, which is included in the determination of property owner’s assessed valuation, be outside Multnomah County, the assessed value shall be adjusted so as to bear the same ratio to true cash value as the ratio of assessed value to true cash value in Multnomah County, as determined by the State Tax Commission.
4. **“Assessed value of City property”** means the assessed value, in the previous year, of land, improvements and personal property in the City. The assessed value of those portions of the City lying outside Multnomah County shall be adjusted so as to bear the same ratio to true cash value as the ratio of assessed value to true cash value in Multnomah County, as determined by the State Tax Commission.
5. **“Cost to City taxpayers”** means the sum, to the nearest dollar, of:
 - a. Portland Fire & Rescue General Fund budget of the previous year,
 - b. A portion of the budget for Fire and Police Disability and Retirement Fund based upon the ratio of the number of firemen to the number of policemen employed on January 1 of the previous year, and;
 - c. Ten percent of the total of a. and b. to allow for payroll taxes and other expenditures outside the Portland Fire & Rescue General Fund budget;

E. The charge for City fire suppression and fire prevention services by contract authorized under this Section shall be computed by the following formula:

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(Cost To City Taxpayers)
Multiplied by
(Property Owner's Assessed Value)
Divided by
(Assessed Value of City Property)

- F. Each application for a fire suppression and/or fire prevention contract under this Section, and for renewal of a previous contract under this Section, shall be forwarded to the Chief of Portland Fire & Rescue. The Chief shall attach thereto his report upon the accessibility, water supply, distance from the City fire equipment, and other conditions pertaining to the area to be protected. The Chief shall then submit the application to the Commissioner In Charge of Portland Fire & Rescue for approval or disapproval before a contract is entered into.

3.22.120 Renewal Notices.

(Amended by Ordinance No. 132356, effective April 1, 1971.) On or near February 15 of each year the Auditor shall mail to each individual, organization and political subdivision then under contract with the City for fire suppression and/or fire prevention, letter stating the dollar amount the City will charge for renewal of the contract in the next succeeding fiscal year. This amount will be computed by the formula in Section 3.22.110. The letter, if directed to a political subdivision contracting under Section 3.22.110 B, will also state the amount owed the City and then in arrears, if any, under preceding contracts or the contract then in effect. Such letter shall not operate as a waiver or estoppel of the right of the City to refuse renewal of any contract under Section 3.22.110 B because of delinquencies or other good cause.

3.22.130 Contract Form to be Approved by City Attorney.

All contracts executed in accordance with the provisions of this Chapter shall be approved as to form by the City Attorney.

3.22.140 Mutual Assistance Agreements.

(Amended by Ordinance No. 160883, effective June 9, 1988.) The Mayor and the Commissioner In Charge of Portland Fire & Rescue may enter in agreements with agencies of the federal government and with political subdivisions of a state in which each party agrees to provide mutual assistance, in the form of men and equipment, in combating large fires within the boundaries of the other party or parties to such agreements.

3.22.150 Use of Fire Boats for Pumping Water Out of Boats and Barges.

(Amended by Ordinance No. 160883, effective June 9, 1988.) Upon the approval of the Chief of Portland Fire & Rescue and of the Commissioner In Charge, the fire boats of Portland Fire & Rescue may be used for the purpose of pumping out water from boats and barges which ply the Willamette or Columbia rivers.

3.22.160 Fees for Pumping Water from Imperiled Vessels.

(Amended by Ordinance No. 160883, effective June 9, 1988.) The fees for the emergency pumping services permitted by Section 3.22.150 shall be \$200 per hour. The owner, owner's agent, or master of the vessel requesting the nonfire emergency pumping service shall be advised that the pumping fee shall be \$200 per hour before a fire boat is dispatched to the emergency location. The fire boat officer, on arrival, shall obtain written agreement from the owner, owner's agent or master of the vessel in peril to pay the City \$200 per hour for salvage pumping before beginning operations. When the service of the fire boat is completed, the Chief of Portland Fire & Rescue shall certify to the Commissioner In Charge the exact time employed by the fire boat, and the Commissioner shall thereupon make a final charge for such service and require payment of such charge by the applicant. In the event salvage efforts fail, and if so recommended by the Chief Engineer (Fire Chief), the Commissioner In Charge of Portland Fire & Rescue may reduce or omit the pumping fee.

3.22.170 Distribution of Awards Earned by Members of Portland Fire & Rescue.

(Amended by Ordinance No. 160883, effective June 9, 1988.) All awards earned by members of Portland Fire & Rescue participating in Rose Festival activities shall go to the personnel and improvements of the fire engine quarters where such companies are housed.

3.22.180 Forested and Wildland Interface Areas Fire Protection Plan.

(Amended by Ordinance Nos. 160127, 160883, 168127 and 182389, effective January 2, 2009.)

A. General Provisions.

1. Title. This plan shall be known as the Forested and Wildland Interface Areas Protection Plan of the City.
2. Scope. This plan is primarily designed for the detection and suppression of forest and brush fires in forested, rural and urban areas of the City, and in all areas with which the City has contracted to furnish fire protection. Additionally, the fire suppression provisions of this plan may be activated when a fire outside the City becomes a threat to areas within.
3. Purpose. The purpose of this plan is to establish operational responsibilities of departments and bureaus of the Portland municipal government and supporting agencies within the scope of this plan.
4. Participation required. Participation is required of the Bureaus of Parks, Portland Fire & Rescue, Police, Waterworks, General Services and Maintenance Operations.
5. Participation voluntary. Voluntary participation by nongovernmental agencies, having emergency capabilities in areas of disaster relief, is

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authorized and encouraged; provided, however, that each voluntary agency shall submit an operational program to this plan as hereinafter provided.

B. Plan Coordination.

1. **Coordinator.** The Chief of Portland Fire & Rescue is known as the coordinator of this plan. He shall see that the operational programs of departments, bureaus and supporting agencies are submitted and made a part of this plan and kept current from year to year.
2. **Operational Programs.** The head of each participating bureau, office and/or agency shall submit an operation program to the Coordinator and keep him/her informed of changes at all times. Such operational programs shall be a part of this plan. They shall include the names and telephone numbers of key alerting personnel, a listing of other personnel by number and job classification, and a listing of all mobile and special equipment. Additionally, operational programs of Portland Fire & Rescue and the Bureau of Parks shall contain descriptive details of routine maintenance and regulatory responsibilities. The operational programs shall be respectively identified as follows:

PROGRAM I:	Bureau of Parks
PROGRAM II:	Portland Fire & Rescue
PROGRAM III:	Bureau of Police
PROGRAM IV:	Portland Water Bureau
PROGRAM V:	General Services
PROGRAM VIII:	Maintenance Operations
PROGRAM IX:	Reserved for Nongovernmental
PROGRAM X:	Reserved for Nongovernmental

C. Command Responsibility for Fire Fighting.

1. In all forested and rural areas lying within the City, and in all areas for which the City has a contract to furnish fire protection, overall command of fire fighting operations shall be the responsibility of the Chief of Portland Fire & Rescue.
2. Operating units will in all cases be under the direct control of their own commanders or foremen, superintendents, etc. However, such units will function in conformity with the tactical fire-fighting plan established by the sector commander to whom they are assigned.

D. Activation and Response.

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1. All participants and resources listed in the plan will be activated in accordance with the plan at the request of the Incident Commander.
2. All participants in the plan will send liaison personnel to the field headquarters, support command headquarters, and the Emergency Operations Center as requested by the Incident Commander.

E. Personnel alerting.

1. The Bureau of Emergency Communications will initiate the alerting of participating services as outlined in the plan. The person contacted is then to complete the calls required by his/her bureau, office or agency.
2. For the purpose of alerting as required in 1 above, the head of each participating service shall establish and maintain master-call lists or a key-alerting system.

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CHAPTER 3.24 - PORTLAND WATER BUREAU

(Chapter replaced by Ordinance No. 182053,
effective August 15, 2008.)

Sections:

- 3.24.010 Organization.
- 3.24.020 Administration.
- 3.24.030 Customer Service Group.
- 3.24.040 Engineering Services Group.
- 3.24.050 Finance and Support Services Group.
- 3.24.060 Maintenance and Construction Group.
- 3.24.070 Operations Group.
- 3.24.080 Resources Protection and Planning Group.

3.24.010 Organization.

The Portland Water Bureau will be under the direction and control of the Administrator of the Portland Water Bureau. The Bureau will be charged with the responsibility for the finance, operation, maintenance and improvement of the City's water distribution system and will be made up of the work groups set forth in this Chapter. The Administrator shall coordinate and manage the Bureau's work groups in a manner that achieves the Bureau's mission and meets the goals established by the City Council.

3.24.020 Administration.

The Administrator's Office is responsible for policy planning, leadership, direction, and operation of the Bureau. The Administrator's Office also manages security for the distribution system, property management, organization development, Bureau human resources management, public information/involvement, long-range planning, government and community relations, legislative activities, and liaison with the Commissioner-in-Charge and City Council.

The Administrator of the Portland Water Bureau is authorized to enforce the provisions of Portland City Code Chapters 17.36 Sewer User Charges and 21.16 Rates and Charges addressing delinquent water, sewer and stormwater management charges, collections, adjustments and refunds.

The Administrator of the Portland Water Bureau may issue administrative rules and regulations pursuant to Section 21.24.080 Administrative Rules, Procedures and Forms.

3.24.030 Customer Service Group.

The Customer Service Group manages billing and collection services for the Portland Water Bureau including but not limited to, establishment of new accounts, close out of terminated accounts, meter reading, meter inspection services, leak repair notification, bill generation, payment application, remittance processing, approval of adjustments and refunds, delinquent account notification, collection of delinquent accounts by all legal means, termination of service for delinquency, resumption of water service and such other

duties as requested by the Administrator. The Group will also be responsible for responding to ratepayer inquiries, hearing appeals of the matters for which the Group is responsible and managing financial assistance programs.

When performing these responsibilities for the Bureau of Environmental Services, the Group's authority may be defined by written agreement and Administrative Rules.

3.24.040 Engineering Services Group.

The Engineering Services Group is responsible for planning, design, and construction of the Water System. In addition, this group serves as customer liaison for new service installation, drafting (including geographic information system), surveying, inspecting, and maintaining records on distribution system improvements. This group manages the Bureau's emergency management program. This group also has responsibility for developing facility standards, asset management, contract management, and developing and managing the Bureau's Capital Improvement Projects (CIP). Administrative oversight of the Hydroelectric Power function is conducted within this group.

3.24.050 Finance and Support Services Group.

The Finance and Support Services Group provides financial planning, rate setting, budgeting, accounting, payroll, auditing, financial analyses, and fiscal monitoring functions for the Bureau. It also provides clerical support for Bureau staff in the Portland Building. This includes the interfaces to City financial and personnel systems, and other Bureau-specific software systems.

3.24.060 Maintenance and Construction Group.

The Maintenance and Construction Group is responsible for repair, operation, and maintenance of the distribution system. Installation, operation, and maintenance functions related to mains, services, valves, hydrants, and leak detection are performed by this group. This work includes direct services and related support for control valves, carpentry, purchasing and stores operation, and loss control programs. This group manages the Bureau's two apprentice programs. The emergency crew provides response for outside normal work hour requirements, including main breaks and other emergency responses.

3.24.070 Operations Group.

The Operations Group is responsible for the operation and maintenance of water supply and treatment from the Watershed and the Columbia South Shore Well Field (CSSWF). This group operates and maintains the conduits, terminal storage reservoirs, tanks, pump stations, water treatment facilities, pressure regulators, an accredited Laboratory, and the Water Control Center. Work responsibilities include water quality protection, regulatory compliance, laboratory services, system metering, and addressing water quality customer complaints. This group is also responsible for the operation and maintenance of the decorative fountains.

3.24.080 Resources Protection and Planning Group.

The Resource Protection and Planning Group is responsible for Watershed and Columbia South Shore Well Field (CSSWF) management and coordination with federal, state and

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local partners to protect the quality of both of Portland's drinking water sources. This responsibility includes addressing legislative and regulatory issues and performing integrated resource planning, comprehensive planning on major issues, supply and demand analysis, and coordination of the Regional Water Providers Consortium. This Bureau work group is also responsible for the Bureau's business, residential and multifamily water conservation programs and Bureau sustainability efforts.

CHAPTER 3.26 - BUREAU OF PARKS

Sections:

- 3.26.010 Organization Generally.
- 3.26.020 Executive and Clerical Division.
- 3.26.030 Park Maintenance and Operation Division.
- 3.26.040 Nursery and Planting Division.
- 3.26.050 Public Recreation Division.
- 3.26.080 Sale or Exchange of Surplus Animals, Birds or Reptiles.

3.26.010 Organization Generally.

The Bureau of Parks shall consist of the Superintendent of Parks who shall be in charge, and such other employees as the Council may provide. The Bureau of Parks shall be made up of the divisions set forth in this Chapter.

3.26.020 Executive and Clerical Division.

The Executive and Clerical Division, supervised by a Principal Clerk or other competent person, shall maintain the necessary records with regard to payrolls, requisitions, and cost accounting for the Bureau of Parks, and in addition shall have control over the women's comfort stations maintained by the Bureau of Parks.

3.26.030 Park Maintenance and Operation Division.

The Park Maintenance and Operation Division, supervised by an Assistant Superintendent of Parks or other competent person, shall have charge of the care, upkeep, and repair of park property in the Zoo, parks, and playgrounds of the City including all swimming tanks. This Division shall also have control over the trucks owned by the Bureau of Parks.

3.26.040 Nursery and Planting Division.

(Amended by Ordinance No. 184522; Amended by Ordinance Nos. 185448 and 186053, effective January 1, 2015.) The Nursery and Planting Division, supervised by a Director of Park Plantings or other competent person, shall have control over the gardening and nursery functions and properties of the Bureau of Parks, including the greenhouse, nursery, golf courses, and floral displays.

Removal of trees, permits for removal of trees, removal of limbs of trees and reports in regard to trees shall be subject to the rules and requirements of Title 11. The City Forester shall be responsible for the application and enforcement of provisions of the Tree Regulations in Title 11, as further specified within that Title.

3.26.050 Public Recreation Division.

The Public Recreation Division, supervised by a Director of Recreation, shall have charge of the public recreational program and property of the Bureau of Parks, including activities at community houses, summer playgrounds, swimming tanks and summer camps.

3.26.060 Municipal Stadium Division.

(Repealed by Ordinance No. 185569, effective September 28, 2012.)

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3.26.080 Sale or Exchange of Surplus Animals, Birds or Reptiles.

The Superintendent of Parks, with the approval of the Commissioner In Charge, hereby is authorized to trade, sell or exchange surplus animals, birds or reptiles, with public or private zoos throughout the United States or Canada, provided that the value of such animal, bird or reptile so traded, sold, or exchanged does not exceed the sum of \$1,000. The Superintendent of Parks, in connection with such transaction, hereby is authorized to pay necessary handling charges incident to such trade, sale or exchange.

3.26.090 Solar Friendly Trees.

(Repealed by Ordinance No. 184522; Amended by Ordinance Nos. 185448 and 186053, effective January 1, 2015.)

**CHAPTER 3.27 - PORTLAND PARKS AND
RECREATION BOARD**

(Chapter added by Ordinance No. 176002, effective
October 10, 2001.)

Sections:

- 3.27.010 Purpose.
- 3.27.020 Definitions.
- 3.27.030 Members and Terms.
- 3.27.040 Organization and Meetings.
- 3.27.050 Duties.
- 3.27.060 Staff Liaison and Support.

3.27.010 Purpose.

The Portland Parks and Recreation Board is hereby established, for the following purposes: to ensure that the vision and recommendations of the Parks 2020 Vision are at the forefront of discussions about park and recreation issues and trends over time, in all areas of the city; to advocate for parks on a city and regional basis to ensure that parks, natural areas, open spaces and recreation facilities are advanced in city and regional planning and design; to provide continuity when transitions occur in the leadership of Portland Parks and Recreation and on the City Council; and to provide a forum for public discussion and decision-making about park issues, bringing a city-wide and long-term perspective to neighborhood-based issues.

3.27.020 Definitions.

As used in this Chapter, unless the context requires otherwise, the following definitions apply:

- A. “Board” means the Portland Parks and Recreation Board.
- B. “Bureau” or “Portland Parks and Recreation” means the Bureau of Parks and Recreation of the City of Portland, or whatever agency is given responsibility for the City’s system of parks and recreation.
- C. “Commissioner” means the Commissioner in Charge of Portland Parks and Recreation.
- D. “Council” means the City Council of the City of Portland, Oregon.
- E. “Director” means the Director of Portland Parks and Recreation, or the Bureau head, however designated.

3.27.030 Members and Terms.

(Amended by Ordinance No. 184647, effective June 8, 2011.)

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- A.** Voting Members. The Portland Parks Board shall consist of a minimum of nine (9) and a maximum of fifteen (15) voting members appointed by the Mayor in consultation with the Commissioner, and confirmed by the Council. Members shall serve without compensation for terms of three years. No member shall be appointed to more than two full consecutive terms. A member appointed initially to a term of less than three years may thereafter be re-appointed to two consecutive three-year terms. A member otherwise may be re-appointed after at least one full year following completion of the member's two consecutive terms. The initial appointments shall be staggered in order to provide for a proportional turnover of terms each year. Members shall be appointed who demonstrate a commitment to Portland Parks and Recreation and to the mission of the Board. Members are expected to bring a system-wide perspective to the Board, and shall not represent individual interests or areas of the City. However, the membership of the Board shall strive to reflect the demographic and geographic diversity of the City.
- B.** Ex Officio Members. The Board may, in its discretion, appoint such ex officio members as, in the judgment of the Board, will assist it in carrying out its functions. Such ex officio members shall be appointed in a manner to be determined by the Board. Ex officio members shall not have the right to vote. Ex officio members shall not be subject to the term limitations of Subsection A. of this Section, but the Board may, by rule or regulation, provide for terms and other conditions of service of ex officio members as it may deem necessary or desirable.

3.27.040 Organization and Meetings.

The Board shall adopt such rules of procedure as it deems necessary to the conduct of its duties. The Board shall elect each year a Chair and such other officers as the Board may from time to time establish. The Board shall meet at least quarterly, and may meet more often. The Board Chair, in consultation with the Commissioner and the Director, shall set the agenda for Board meetings.

3.27.050 Duties.

The Board shall:

- A.** Advise the Council, the Commissioner and the Director on policy matters pertaining to Portland Parks and Recreation, using the Parks 2020 Vision as its guide.
- B.** Advise the Council, the Commissioner and the Director on the preparation and contents of the annual Portland Parks and Recreation budget request.
- C.** Review plans and policies, either existing or being developed, by other City bureaus, boards and commissions or by other government agencies, that affect parks and recreation in the City of Portland, and advocate for the advancement of parks, natural areas, open spaces and recreation facilities and services in City and regional planning and design.

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- D.** Engage in such public outreach, education and advocacy, to the extent permitted by law, as the Board determines necessary or advisable in order to provide a forum for public discussion and decision-making about park and recreation issues.
- E.** Prepare and submit to the Council an annual report which shall summarize the Board's activities during the year and which shall identify the major issues facing Portland Parks and Recreation and the Board's recommendations for addressing them in the coming year.

3.27.060 Staff Liaison and Support.

The Director shall be the staff liaison to the Board, and shall, to the extent budgeted funds are available therefor, provide the Board with staff assistance necessary to the discharge of its duties.

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CHAPTER 3.28 - BUREAU OF HEALTH

Sections:

- 3.28.010 Transfer of Functions.
- 3.28.020 Executive and Clerical Division.
- 3.28.030 Communicable Disease Control Division.
- 3.28.040 Tuberculosis Control Division.
- 3.28.050 Venereal Disease Control Division.
- 3.28.060 Laboratory Division.
- 3.28.070 School Hygiene Division.
- 3.28.080 Emergency Hospital Division.
- 3.28.090 Pure Food Sanitation Division.
- 3.28.100 Division of Mental Health.
- 3.28.110 Division of Home Health Care.

3.28.010 Transfer of Functions.

During the term of a contract presently existing between the City and Multnomah County whereby functions of the City's Bureau of Health are being performed by the County, and the County Health Officer is acting as the City Health Officer, and all Bureau of Health Employees, are now County employees, the Multnomah County Department of Medical Services shall perform the functions heretofore performed by divisions of the City Health Bureau, as set forth in this Chapter.

3.28.020 Executive and Clerical Division.

The Executive and Clerical Division shall maintain the central office and all necessary records thereof, including all statistics relating to births and deaths as required by law.

3.28.030 Communicable Disease Control Division.

The Communicable Disease Control Division shall exercise the power of quarantine and detention and shall adopt such other measures as will prevent the spreading or aid in the prevention of communicable diseases such as typhoid fever, smallpox, tuberculosis, scarlet fever and others.

3.28.040 Tuberculosis Control Division.

The Tuberculosis Control Division shall provide clinical services for diagnosis and a visiting nurse service to make sure that the lessons of prevention are carried out by the patients under actual home conditions.

3.28.050 Venereal Disease Control Division.

The Venereal Disease Control Division shall provide clinical services for diagnosis, control, and prevention of venereal disease.

3.28.060 Laboratory Division.

The Laboratory Division shall conduct tests and examinations for bacteria content and such other laboratory services as the other divisions request.

3.28.070 School Hygiene Division.

The School Hygiene Division shall be responsible for the prevention of communicable diseases in the schools through promoting vaccination against smallpox and the use of toxoid against diphtheria, and through ascertaining that children sick with communicable diseases are excluded. This Division shall also conduct examinations of school children at regular intervals for the purpose of discovering defects which may be remedied and shall notify the parents regarding the need for attention to vision, infections, nutrition, and postural defects and diseases.

3.28.080 Emergency Hospital Division.

The Emergency Hospital Division is designed to take care of those who are injured or who are taken sick suddenly, and have no means of providing for themselves the medical and hospital care they need, or who are ineligible for care by Multnomah County because they are not residents.

3.28.090 Pure Food Sanitation Division.

The Pure Food and Sanitation Division shall be divided into the following Sections:

- A. The Milk Inspection Section, which shall provide inspection of the milk supply, including the source, transportation, handling, and preparation for distribution;
- B. The Meat Inspection Section, which shall provide inspection of meat in an effort to keep unwholesome meats and meat products from the market;
- C. The Sanitation Inspection Section, which shall provide general sanitation inspection services, such as restaurant inspection, food inspection, market inspection, food handler's examinations, inspections of hospitals and certain manufacturing plants, and the inspection of housing conditions, including ventilation, lighting and sanitation fixtures.

3.28.100 Division of Mental Health.

The Division of Mental Health shall provide psychiatric consultation with school children and adults, assist the emergency hospital in the handling of persons with mental health problems, act as liaison between the Bureau of Health and mental health institutions and organizations, and generally provide a mental health service for the City.

3.28.110 Division of Home Health Care.

The Division of Home Health Care shall provide the limited nursing services such as but not limited to prescribed treatment, application of dressings, irrigations, exercises and baths and home health aide services including but not limited to nonprofessional care of ill or injured persons, food marketing or other needed shopping or errand, preparation and serving of meals and light housekeeping.

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CHAPTER 3.30 - BUREAU OF DEVELOPMENT SERVICES

(Chapter replaced by Ordinance No. 175237,
amended by Ordinance No. 176955, effective
October 9, 2002.)

Sections:

- 3.30.005 Organization.
- 3.30.010 Duties of the Bureau of Development Services.
- 3.30.020 Responsibility for the Development Services Center and Development Review.
- 3.30.030 Development Review Advisory Committee.
- 3.30.040 Administration and Enforcement.
- 3.30.045 Administrative Rulemaking Procedures.
- 3.30.050 Special Jurisdiction.
- 3.30.060 Nuisance Abatement Contracts.
- 3.30.070 Inspections.
- 3.30.080 Stop Work Orders.

3.30.005 Organization.

(Amended by Ordinance No. 176955, effective October 9, 2002.) The Bureau of Development Services shall be under the supervision of the Director. The Director shall be directly responsible to the Commissioner in Charge.

3.30.010 Duties of the Bureau of Development Services.

(Amended by Ordinance Nos. 176955, 180330, 182671, 182962, 186216, 184522, 185448 and 186053, effective January 1, 2015.) The Bureau of Development Services shall be responsible for:

- A. The administration and enforcement of provisions of the Tree Regulations, Title 11, as further specified in that Title.
- B. The administration and enforcement of:
 - 1. Building Regulations, Title 24.
 - 2. Plumbing Regulations, Title 25.
 - 3. Electrical Regulations, Title 26.
 - 4. Heating and Ventilating Regulations, Title 27.
 - 5. Floating Structures, Title 28.
 - 6. Property Maintenance Regulations, Title 29.

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7. Signs and Related Regulations, Title 32.
 8. Original Art Murals, Title 4.
 9. State of Oregon Regulations regarding manufactured dwellings.
 10. Other regulations enacted by the State of Oregon and adopted by the City Council and assigned to the Bureau.
- C. The application and enforcement of the provisions of Planning and Zoning Regulations, Title 33 as delegated by the Director of the Bureau of Planning and Sustainability.
- D. The examination and checking of applications, plans, specifications and supporting documentation required as a prerequisite to the approval of land use actions and permits for development.
- E. The coordination of related permits with other bureaus and offices as required to manage the Development Services Center.
- F. The issuance of approvals and permits required for the construction, installation, repair, or alteration of land, buildings or equipment.
- G. The inspection of sites, buildings or other structures and equipment for compliance with plans and specifications and with applicable Code provisions and laws; and
- H. Other duties as assigned to the Bureau.
- 3.30.020 Responsibility for the Development Services Center and Development Review.**
(Amended by Ordinance No. 176955, effective October 9, 2002.)
- A. The Bureau of Development Services shall be responsible for the operation and management of the City's Development Services Center.
- B. The Bureau of Development Services has management responsibility for assigned personnel through direct assignment or through interagency agreements, and manages the daily operation of the Center.
- 3.30.030 Development Review Advisory Committee.**
(Amended by Ordinance Nos. 176955, 178954, 184046 and 184183, effective November 26, 2010.)
- A. **Purpose.** The Development Review Advisory Committee is a citizen advisory body, representing those with interests in the outcome of policies, budgets, regulations, and procedures that affect development review processes. The purpose of the Committee is to foster a timely, predictable and accountable development

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review process that implements the City's goals for land use, transportation, housing, economic development, neighborhood livability and the environment. The Committee advocates for and supports consistent and fair application and implementation of regulations. The Committee provides public input into the development review process by:

1. Providing leadership and expertise on issues affecting development;
2. Providing feedback to Bureaus, Review Bodies, and City Council on the impact of potential regulations and administrative rules on the development review process, taking into consideration the full range of City goals and objectives;
3. Providing recommendations for regulatory, code, and administrative rule changes affecting the development review process;
4. Monitoring the application and enforcement of regulations for their effectiveness in achieving the City's development goals;
5. Recommending customer service, permitting, process, and compliance improvements to Bureaus, Review Bodies, and/or City Council;
6. Serving as an advisory board to Development Review Directors and Bureaus on development review processes and procedures;
7. Providing input to ensure budgets of development review agencies are adequate to meet service goals and desired system outcomes.

B. Membership. The Development Review Advisory Committee shall consist of seventeen members. The members shall be appointed by the Commissioner-in-Charge of the Bureau of Development Services and confirmed by the City Council. The members shall be selected to provide representation of those persons concerned about planning, design and development. The areas of interest of members shall include, but not be limited to, development, planning, construction contracting, public works, design professions, neighborhood interests, business interests, historic preservation, environmental organizations, and institutional properties. Members shall be appointed so that the Committee consists of one member from organizations representing each of the following groups, or if organizations do not exist, an individual advocate for the representative group will be appointed:

1. Frequent development review customers
2. Citywide neighborhood interests
3. Design professionals

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4. Environmental conservation and green building
5. Historic preservation
6. Home builders
7. Home remodelers
8. Land use planning professions
9. Large developers
10. Large construction contractors
11. Low-income housing developers
12. Major facilities landowners
13. Minority construction contractors and development professionals
14. Neighborhood Coalition Land Use Committees
15. Small businesses
16. Planning and Sustainability Commission, as designated by the Planning and Sustainability Commission President, and serves as an ex officio member of the Committee.
17. Public works permit customers

C. Appointments and Terms. Appointment to the Development Review Advisory Committee shall be for a three-year term. If a position is vacated during a term, it shall be filled for the unexpired term. Members of the Development Review Advisory Committee shall serve no more than two, complete three-year terms.

D. Meetings, Officers, and Subcommittees.

1. The Development Review Advisory Committee shall meet at least five times yearly and as otherwise necessary to conduct its business. Meetings shall be conducted in accordance with adopted rules of procedure. Seven members shall constitute a quorum. A quorum shall be necessary to make decisions that represent the position of the Development Review Advisory Committee and to conduct any other Committee responsibilities. The election of officers shall take place at the first meeting of each calendar year.

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2. The officers of the Committee shall consist of a Chairperson and a Vice-chairperson. The chairperson shall be responsible for conducting the meetings of the committee. The vice chairperson shall act as chair when the chairperson is not available.
 3. The Development Review Advisory Committee may divide its members into subcommittees which are authorized to act on behalf of the committee for an assigned purpose. Subcommittee actions require the affirmative vote of at least three members.
- E. Attendance.** Members of the Development Review Advisory Committee are expected to attend each meeting of the committee. The Commissioner-in-Charge may replace any member who accrues unexcused absences from three or more consecutive meetings or more than 50 percent of the meetings in any year.
- F. Compensation.** Development Review Advisory Committee members shall serve without compensation.

3.30.040 Administration and Enforcement.

(Amended by Ordinance Nos. 175327, 176955, 183793, 186564, 186736 and 189413, effective March 6, 2019.) In order to carry out the duties as set forth in Section 3.30.010, the Director of the Bureau of Development Services may:

- A.** Adopt, amend and repeal administrative rules, policies, procedures and forms for the enforcement of applicable Code provisions and laws.
- B.** Establish enforcement fees or penalties for non-compliance.
- C.** Establish enforcement priorities based on the number of budgeted enforcement personnel, public safety and welfare factors, and any priorities established by City Council.
- D.** Gain compliance by:
 1. Instituting an action before the Code Hearings Officer in the manner provided for by Title 22 of this Code.
 2. Causing appropriate action to be instituted in a court of competent jurisdiction.
 3. Issuing a code violation citation directly to the contractor or person responsible for carrying out the work. Any person receiving a citation for violating the provisions of the City Code administered by the Bureau of Development Services shall be subject to a fine of up to \$1,000 for each citation issued.

4. Taking other lawful action.
 5. Revoking a Type B home occupation permit for failure to comply with the regulations of City Code Chapter 33.203 or revoking a Type A accessory short-term rental permit for failure to comply with the regulations of City Code Chapter 33.207 by using the following procedures:
 - a. If the Director determines that cause for revocation of a permit exists, the Director shall provide written notice thereof to the permittee. The notice shall contain a brief description of the facts supporting the revocation, the date the revocation shall become final and a notice of the permittee's right to appeal the revocation.
 - b. The notice shall be mailed by certified mail, return receipt requested, and regular mail to the permittee. The notice shall be effective upon three days after mailing.
 - c. The revocation shall become final and effective ten days after the notice is effective, unless an appeal is filed.
 - d. Any permittee whose permit has been revoked may appeal the revocation to the Code Hearings Officer pursuant to the provisions of City Code Chapter 22.10. The filing of an appeal shall stay the effective date of the revocation until the appeal is determined in a final decision by the Code Hearings Officer.
- E.** Impose fees or penalties for non-compliance, provide notification, and allow for appeals by:
1. Initiating the notification procedures provided in Section 29.60.050.
 2. Imposing monthly enforcement fees or penalties for each property that meets the following conditions:
 - a. The property is the subject of a notice of violation by the Bureau of Development Services; and
 - b. A response period of 30 days has passed since the effective date of the initial notice of violation; and
 - c. The property remains out of compliance with the initial notice of violation or any subsequent notice of violation.
 3. Doubling the penalties if the violations are not corrected within three months from the initial notice of violation.

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4. Imposing an additional penalty as set forth in the Enforcement Fee and Penalty Schedule against any property for which a code enforcement proceeding is initiated before the Code Hearings Officer pursuant to the provisions of Title 22 of this Code.
5. All required fees or penalties are listed in the Enforcement Fee and Penalty Schedule adopted by City Council. Fees or penalties may be updated annually or on an as needed basis. The approved Enforcement Fee and Penalty Schedule will be available at the Bureau of Development Services Center and on the bureau's Web site.
6. When a property meets the conditions for charging any Council approved fee or penalty for noncompliance, the Director shall file a statement with the Revenue Division identifying the property, the amount of the fee or penalty and the date upon which the charge should be assessed. The Revenue Division shall notify the property owner of the amount of the assessed fees and penalties, and a 10 percent Revenue Division charge. The Revenue Division shall record the total amount as a lien in the Docket of City Liens. The Revenue Division shall maintain the lien record until the lien and all associated interest and costs are paid in full, and the Director certifies that all violations listed in the original or subsequent notice of violation have been corrected.
7. Providing for administrative procedures as set forth in Subsections 29.70.010 C. through E.
8. Providing for administrative review and the opportunity for appeal to the Code Hearings Officer as set forth in Section 29.80.010.
9. Allowing exceptions as provided in Section 29.60.100.

3.30.045 Administrative Rulemaking Procedures.

(Added by Ordinance No. 186564; amended by Ordinance No. 189078, effective July 18, 2018.)

- A. The Director has been delegated the authority to adopt and administer administrative rules appropriate to perform the duties set forth in Section 3.30.010 of this Title. Such administrative rules shall be adopted according to the procedures in this Section.
- B. Permanent rules.
 1. Prior to the adoption of a permanent rule, the Director shall:
 - a. Publish a notice in a newspaper of general circulation in the City. The notice must be published not less than thirty days before

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adoption of the administrative rule. The notice shall include the place and time of a proposed public hearing; a brief description of the subjects covered by the proposed rule; the final date for acceptance of written comments; the location to submit comments; and the location where copies of the full set of the proposed rules may be obtained. A copy of the notice will be provided to the Office of Community & Civic Life at least thirty days before adoption. The Director is only required to hold the public hearing if a written request is filed seeking a hearing.

- b.** During the public review process, the Director shall hear testimony and receive written comments regarding the proposed rules.
- c.** The Director will review the testimony and comments and may either adopt the proposed rule, modify it or reject it.
- d.** If the Director makes a substantial modification to the proposed rule, the Director may provide additional time for public review and comment prior to adoption.

- 2.** Unless otherwise stated, all rules will be effective upon adoption by the Director.

C. Interim rules.

- 1.** The Director may adopt an interim rule without prior notice upon a finding that a failure to act promptly will result in prejudice to the public interest.
- 2.** Interim rules will be effective for a period of not longer than 180 days.
- 3.** The Bureau of Development Services shall post public notice of the interim rule not more than 30 days after adoption by posting on its website and shall send notice to the Office of Community & Civic Life. Such notice shall identify the location at which copies of the full set of the interim rules may be obtained.

- D.** All final and interim rules shall be filed in the office of the Director. Copies of all final and interim rules will be made available to the public at the Development Services Center.

3.30.050 Special Jurisdiction.

(Amended by Ordinance Nos. 176585, 176955 and 182456, effective December 24, 2008). The Bureau of Development Services shall have authority to enforce Section 14A.20.070, and Subsections 16.10.200 L., 16.20.120 H., and 16.20.130 I., 16.20.160 and Sections 16.20.170, 16.70.450 and 16.70.800. The Bureau shall have authority to issue parking

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citations and order the towing and storage and/or removal of such vehicles and objects. In addition, violations of Section 16.20.160 are also subject to the Bureau of Development Services enforcement remedies as described in Subsection 3.30.040 C.

3.30.060 Nuisance Abatement Contracts.

(Amended by Ordinance No. 176955, effective October 9, 2002.) When authorized elsewhere in this Code to abate a nuisance, the Bureau of Development Services may either abate the nuisance with City personnel as may be provided by this Code, or when necessary, the Bureau of Development Services, acting through its Director, may contract with eligible contractors for the performance of nuisance abatement services pursuant to the procedures established in Sections 3.30.040 through 3.30.060 of this Code.

3.30.070 Inspections.

- A.** Definitions. The terms used in this Section shall be defined as provided in this subsection, unless the context requires otherwise:
 - 1.** Building Regulations means any city code title listed in 3.30.010, or any other safety or health statute, ordinance, regulation, rule, standard or order the Director is authorized to enforce.
 - 2.** Property means real property and all improvements or structures on real property, from property line to property line.
- B.** Warrants. Whenever an inspection is necessary to enforce any of the provisions authorized by this Title, or whenever the Director has reasonable cause to believe that there exists in any building or upon any property any condition which makes such property substandard as defined in any building regulations, the Director may request any Circuit Court judge to issue an inspection warrant for the inspection or investigation of any building or upon any property as required or authorized by city code or by statute. The inspection warrant is an order authorizing a safety or health inspection or investigation to be conducted at a designated building or property.
- C.** Grounds for Issuance of Inspection Warrants; Affidavit.
 - 1.** Affidavit. An inspection warrant shall be issued only upon cause, supported by affidavit, particularly describing the applicant's status in applying for the warrant, the statute, ordinance or regulation requiring or authorizing the inspection or investigation, the building or property to be inspected or investigated, and the purpose for which the inspection or investigation is to be made including the basis upon which cause exists to inspect. In addition, the affidavit shall contain either a statement that entry has been sought and refused or facts or circumstances reasonably showing that the purposes of the inspection or investigation might be frustrated if entry were sought without an inspection warrant.

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2. Cause. Cause shall be deemed to exist if reasonable legislative or administrative standards for conducting a routine, periodic or area inspection are satisfied with respect to any building or upon any property, or there is cause to believe that a condition of nonconformity with any building regulations exists with respect to the designated property, or an investigation is reasonably believed to be necessary in order to discover or verify the condition of the property for conformity with any building regulations.

D. Procedure for Issuance of Inspection Warrant.

1. Examination. Before issuing an inspection warrant, the judge may examine the applicant and any other witness under oath and shall be satisfied of the existence of grounds for granting such application.
2. Issuance. If the judge is satisfied that cause for the inspection or investigation exists and that the other requirements for granting the application are satisfied, the judge shall issue the warrant, particularly the person or persons authorized to execute the warrant, the property to be entered, and the purpose of the inspection or investigation. The warrant shall contain a direction that it be executed on any day of the week between the hours of 8:00 a.m. and 6:00 p.m., or where the judge has specially determined upon a showing that it cannot be effectively executed between those hours, that it be executed at any other time of the day or night.

E. Execution of Inspection Warrants.

1. Occupied Property. Except as provided in subsection 2. of this section, in executing an inspection warrant, the person authorized to execute the warrant shall, before entry into the occupied premises, make a reasonable effort to present the person's credentials, authority and purpose to an occupant or person in possession of the property designated in the warrant and show the occupant or person in possession of the property the warrant or a copy thereof upon request.
2. Unoccupied Property. In executing an inspection warrant on unoccupied property, the person authorized to execute the warrant need not inform anyone of the person's authority and purpose, as prescribed in subsection 1. of this section, but may promptly enter the designated property if it is at the time unoccupied or not in the possession of any person or at the time reasonably believed to be in such condition. In such case a copy of the search warrant shall be conspicuously posted on the property.
3. Police Assistance. In issuing an inspection warrant, the judge may authorize any peace officer, as defined in Oregon Revised Statutes, to enter the

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described property to remove any person or obstacle and assist the building inspector or representative of the bureau inspecting the property in any way necessary to complete the inspection.

4. Return. An inspection warrant must be executed within 10 working days of its issue and returned to the judge by whom it was issued within 5 working days from its date of execution, unless such judge before the expiration of such time extends the time for five days. After the expiration of the time prescribed by this subsection, the warrant unless executed is void.

3.30.080 Stop Work Orders.

(Amended by Ordinance Nos. 176955, 186564 and 187432, effective December 4, 2015.)

- A. When it is necessary to obtain compliance with this Title, or any violations of provisions administered by the Bureau of Development Services, the Director may issue a stop work order requiring that all work, except work directly related to elimination of the violation, be immediately and completely stopped. If the Director issues a stop work order, activity subject to the order may not resume until such time as the Director give specific approval in writing. The stop work order will be in writing and will include:
 1. The date of the order is issued;
 2. Permit or registration number, where applicable;
 3. Site address, legal description or project location that is subject to the stop work order;
 4. A description of violations observed; and
 5. The conditions under which the work may resume.
- B. The stop work order will be posted by the Director at a conspicuous location at the site. In addition, a copy of the order will either be personally delivered or sent to the property owner (and any person authorized to act on the owner's behalf, if identified) by regular first-class mail.
- C. It is unlawful for any person to remove, obscure, mutilate or otherwise damage a stop work order.
- D. A stop work order is effective upon posting.
- E. When an emergency condition exists, the Director may issue a stop work order orally. The Director will then issue a written notice as provided under Section A., above, within one working day.

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- F.** The Director may issue a stop work order for work commenced without a required permit.
- G.** The Director may impose a penalty as set forth in the Enforcement Fee and Penalty Schedule adopted by the City Council when a stop work order is issued. The stop work order penalty may be assessed daily for each day the violation or condition giving rise to the order continues.
- H.** Review of Stop Work Order by the Director.
 - 1.** If a property owner (and any person authorized to act on the owner's behalf) has received a stop work order as described in this Section and the property owner (and any person authorized to act on the owner's behalf) believes the order has been issued in error, the property owner (and any person authorized to act on the owner's behalf) may request that the order be reviewed by the Director. The property owner (and any person authorized to act on the owner's behalf) must submit a written request to the Director within 15 calendar days of the date of the order. The written request shall be submitted together with all evidence that supports the request. Work subject to a stop work order may not be resumed until approved according to Subsection A. of this Section. Following review, the Director will issue a written determination. The Director's determination will be served on the property owner (and any person authorized to act on the owner's behalf) by regular mail.
 - 2.** A property owner (and any person authorized to act on the owner's behalf) may appeal the Director's written determination to the Code Hearings Officer in accordance with Portland City Code Chapter 22.10.
 - 3.** Nothing in this Chapter limits the authority of the Director to initiate a code enforcement proceeding under Title 22.

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CHAPTER 3.32 - BUREAU OF LICENSES

(Chapter repealed by Ordinance No. 179566,
effective October 1, 2005.)

**CHAPTER 3.33 - BUREAU OF PLANNING
AND SUSTAINABILITY**

(Chapter added by Ordinance No. 182671, effective
May 15, 2009.)

Sections:

- 3.33.010 Purpose.
- 3.33.020 Organization.
- 3.33.030 Functions.

3.33.010 Purpose.

The purpose of this Chapter is to describe the organization and functions of the Bureau of Planning and Sustainability.

3.33.020 Organization.

The Bureau is administered by the Commissioner in charge and led by the Director of Planning and Sustainability. The organizational structure of the Bureau shall be determined by the Director of the Bureau after consultation with the Commissioner in charge.

3.33.030 Functions.

(Amended by Ordinance Nos. 184046 and 188177, effective January 1, 2018.) The Bureau of Planning and Sustainability is responsible for planning, implementing, and managing complex programs and projects related to sustainability, urban design, land use, and long range planning.

The Bureau of Planning and Sustainability:

- A.** Works with the City Council, Planning and Sustainability Commission, and the community to define shared values and develop a cohesive vision for the future of Portland;
- B.** Maintains, modifies, and updates a Comprehensive Plan to guide the development and redevelopment of the city;
- C.** Ensures that City policies, implementation tools, and zoning designations are consistent with the Comprehensive Plan, the Metro Functional Plan, Statewide Planning Goals, and other requirements. Implementation tools include Title 33, Planning and Zoning, portions of other City Titles, and a range of programs and policies;
- D.** Maintains, modifies, and updates Title 33, Planning and Zoning, and the City Zoning Map;

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- E.** Develops, modifies and updates city sustainability principles, climate protection strategies, and green building and other sustainability policies and programs including sustainable government, renewable energy, energy efficiency, sustainable industries, and sustainable food systems; and evaluates the implementation and effectiveness of these policies and programs;
- F.** Develops, modifies and updates economic, environmental, housing, historic preservation, and community development policies and programs; updates demographic data; advocates for and advances quality sustainable urban design; works to ensure natural resource enhancement; and supports thriving neighborhoods and business communities; and evaluates the implementation and effectiveness of these policies and programs;
- G.** Convenes meetings of the Planning and Development Directors to coordinate planning and development activities of the City of Portland;
- H.** Provides City input into and coordination with regional and statewide planning and development activities;
- I.** Administers the City's solid waste and recycling rules and programs;
- J.** Provides support for:
 - 1.** The activities of the Planning and Sustainability Commission;
 - 2.** The legislative activities of the Portland Historic Landmarks Commission and the Portland Design Commission.
 - 3.** The activities of the Community Involvement Committee.
- K.** Carries out other tasks and functions as required by the City Council or Commissioner in Charge.

**CHAPTER 3.34 - BUREAU OF PURCHASES
AND STORES**

(Chapter repealed by Ordinance No. 174410,
effective May 3, 2000.)

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CHAPTER 3.36 - PORTLAND HOUSING BUREAU

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

Sections:

- 3.36.010 Purpose.
- 3.36.020 Organization.
- 3.36.030 Functions.

3.36.010 Purpose.

The purpose of this Chapter is to describe the duties and responsibilities of the Portland Housing Bureau.

3.36.020 Organization.

The Portland Housing Bureau is administered by the Commissioner-in-Charge and led by the Director of the Portland Housing Bureau. The organization is structured to carry out its functions.

3.36.030 Functions.

The Portland Housing Bureau is responsible for housing policy, its implementation, and the distribution and oversight of public and other funds that address the housing interests of the City, and related programs and services.

A. The Portland Housing Bureau:

1. Works with the City Council, other bureaus, and the community to develop a vision for housing in the City of Portland;
2. Convenes government, community and stakeholders to coordinate planning for addressing homelessness, housing, and related activities;
3. Develops, modifies, evaluates and updates City policy in accordance with planning priorities;
4. Develops, modifies and updates community programs related to housing;
5. Distributes funds in accordance with planning, policy and program priorities to advance the City's interests in housing;
6. Monitors the City's investment in Portland's affordable housing infrastructure for compliance with funding goals and the proactive management of the assets;

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7. Monitors programs funded through the Bureau for compliance with funding goals;
8. Identifies the resources required to support the City's housing policies, programs, and priorities;
9. Provides support for the Portland Housing Advisory Commission (Chapter 3.38);
10. Carries out other tasks and functions as required by the City Council or Commissioner-in -Charge.

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CHAPTER 3.38 - PORTLAND HOUSING ADVISORY COMMISSION (PHAC)

(Chapter replaced by Ordinance No. 184329,
effective December 15, 2010.)

Sections:

- 3.38.010 PHAC Established.
- 3.38.020 PHAC Mission.
- 3.38.030 Duties.
- 3.38.040 Membership.
- 3.38.050 Staffing.
- 3.38.060 Consolidated Plan Consortium.
- 3.38.070 Cooperation.

3.38.010 PHAC Established.

Upon adoption of this ordinance by the City of Portland, the Portland Housing Advisory Commission (PHAC) is established. The PHAC is designated as the primary public forum for discussion of housing policy, strategy, and resources in the City of Portland.

3.38.020 PHAC Mission.

The mission of the PHAC is to advise the Director of the Portland Housing Bureau (PHB), the Housing Commissioner, and the Portland City Council on housing and homelessness policy, strategy, and resource issues, promote improvements within the Portland Housing Bureau and the larger housing system, highlight opportunities for influence between the City housing system and other systems, as well as provide a forum for public input on housing and homelessness issues.

3.38.030 Duties.

The PHAC is delegated to carry out the following functions:

A. Housing Policy and Planning.

1. Provide a sounding board on Portland housing policy issues.
2. Promote improvements within PHB.
3. Identify opportunities where PHB might influence the larger housing system to become more streamlined and to better align system resources, to support PHB's mission.
4. Advise PHB on City priorities for affordable housing development.
5. Monitor and periodically recommend updates to PHB's Strategic Plan.

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6. Monitor and annually recommend updates to the Consolidated Plan Priorities for allocation of federal housing and community development resources.
 7. Recommend annual production and performance goals to carry out PHB's Strategic Plan and the Consolidated Plan.
 8. Press PHB to implement its commitment to equity in all facets of its work.
- B. Budget Review and Recommendations.**
1. Function as the Budget Advisory Committee for the Portland Housing Bureau.
 2. Assist PHB to align its resources from all sources to its mission and priorities.
 3. Identify opportunities for PHB to influence other public agency budgets and proposed work programs in furtherance of its mission.
- C. Resource Development.** Assist PHB to identify and recommend ways to increase the resources available to maintain and expand the supply and availability of affordable housing and necessary support services through new initiatives and programs.
- D. Program Development and Evaluation.**
1. Advise PHB on the effectiveness of housing programs at meeting PHB's mission.
 2. Advise on strategies for investment of public resources in furtherance of the PHB's mission.
- E. Public-Private Partnerships.**
1. Advise PHB on strategies to improve access to public and private sources of financing for affordable housing initiatives. Sources of financing include banks, philanthropic institutions and other socially-motivated investors, the State Housing Trust Fund, Block Grant and entitlement funders, and bond issuing agencies.
 2. Foster housing production by identifying opportunities to streamline the regulatory process.

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3. Actively encourage the support, personal commitment, and participation of highly respected community leaders in furthering the City's affordable housing agenda.

F. Community and Intergovernmental Relations.

1. Provide a forum for members of the community to provide comment about community needs and priorities.
2. Advise PHB on its legislative agenda to increase federal and state support for housing and supportive services.
3. Advise PHB on opportunities to coordinate regional housing policy with the Metropolitan Service District and other local governments.
4. Advise PHB on opportunities to coordinate policy development with local housing and social service groups.
5. Assist PHB to extend and deepen its community partnerships.
6. Assist PHB to integrate the perspectives of Urban Renewal Advisory Committees (URACs), and advise it on other ways it can engage the URACs to inform its broader agenda.
7. Periodically review PHB's broader public involvement strategy and implementation to make sure that community members and stakeholders have many opportunities to participate in PHB's work.
8. Advise PHB on its external communications strategy to make sure that it supports PHB's mission.
9. Periodically review PHB's information and referral strategy to make sure that it operates effectively and recommend changes.

3.38.040 Membership.

- A. The PHAC shall consist of at least twelve and no more than fifteen members.
- B. The City of Portland shall appoint all members.
- C. Membership appointment shall achieve a balanced citizen-based perspective embracing a high level of knowledge of and expertise in market-rate and rent-restricted housing development and finance, asset management, homeownership, and housing access and stabilization services.

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- D.** Membership appointment shall take into account the income, racial, ethnic, cultural, and geographic diversity of the community.
- E.** Members will be expected to transcend their individual interests and affiliations to focus on the big picture.
- F.** For the initial appointments to PHAC, the following terms will apply: six members shall be appointed for a term of two years; and six for a term of three years.
- G.** All subsequent appointments to the PHAC shall be for terms of two years.
- H.** Members appointed for one two-year term shall be eligible to renew for one additional two-year term.
- I.** Members shall serve without compensation. However, the City may authorize reimbursement of the reasonable expenses of the members for carrying out the work of the PHAC.
- J.** The PHAC shall adopt rules of procedure (bylaws) as necessary for the governance of its proceedings.

3.38.050 Staffing.

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

3.38.060 Consolidated Plan Consortium.

The Portland Housing Bureau shall continue to lead the Portland Consortium that includes the City of Gresham and Multnomah County, for the purpose of applying for federal housing and community development entitlement funds, and funding for homeless programs and services. PHB shall also continue to lead the same Consortium in preparing the Analysis of Impediments to Fair Housing and its periodic updates. PHB shall continue to provide staffing for these efforts, according to funding agreements reached among the participating jurisdictions.

3.38.070 Cooperation.

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

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**CHAPTER 3.40 - BUREAU OF GENERAL
SERVICES**

(Chapter repealed by Ordinance No. 174410,
effective May 3, 2000.)

**CHAPTER 3.44 - BUREAU OF CIVIC
AUDITORIUM**

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

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**CHAPTER 3.46 - BUREAU OF INSECT
CONTROL**

Section:

3.46.010 County to Perform Duties.

3.46.010 County to Perform Duties.

During the terms of a contract presently existing between the City and Multnomah County whereby functions of the City's Bureau of Insect Control are being performed by the County and all Bureau of Insect Control employees are now County employees, the Multnomah County Department of Medical Services shall perform the functions heretofore performed by the Bureau of Insect Control.

**CHAPTER 3.52 - BUREAU OF COMPUTER
SERVICES**

(Chapter repealed by Ordinance No. 174410,
effective May 3, 2000.)

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**CHAPTER 3.53 - BUREAU OF RISK
MANAGEMENT**

(Chapter repealed by Ordinance No. 174410,
effective May 3, 2000.)

**CHAPTER 3.54 - LOSS CONTROL AND
PREVENTION**

(Chapter added by Ordinance No. 156028, effective
May 31, 1984.)

Sections:

- 3.54.010 Definitions.
- 3.54.020 OMF Risk Management Division Responsibility and Authority.
- 3.54.030 Bureau Responsibility and Authority.
- 3.54.040 Loss Control and Prevention Advisory Committee - Responsibility and Authority.

3.54.010 Definitions.

(Amended by Ordinance No. 158966, effective October 6, 1986.) Unless the context indicates otherwise, words used in this Chapter shall have the following meanings:

- A. **“Bureau”** means any City bureau, office, commission, or committee.
- B. **“Committee”** means the Loss Control Advisory Committee, consisting of the Risk Manager as Chairperson, the Mayor and each Commissioner, the City Auditor, the City Attorney, the Director of the Office of Fiscal Administration, and the Personnel Director, or their designees.
- C. **“Loss Control Program”** and **“Program”** mean a Citywide program consisting of the loss control components of the City’s bureaus. “Loss control component” and “component” mean the written rules, regulations, and plan developed by each bureau and reviewed by the Committee, providing for both procedural and physical risk identification, measurement, and control in the bureau’s activities. Components may address any methods for loss prevention and control, including without limitation, accident reporting, accident review, hearing conservation, eye safety, respiratory protection, vehicular safety, industrial injuries and return to work, personal protective equipment, volunteer coverage, property loss management, and tort early warning.

3.54.020 OMF Risk Management Division Responsibility and Authority.

(Amended by Ordinance Nos. 158966 and 181483, effective January 18, 2008.) The OMF Risk Management Division shall have the following responsibility and authority in the area of City loss control and prevention:

- A. Develop guidelines, instructions, and a model plan to assist bureaus in developing loss prevention and control components;
- B. On final review by the Committee of components submitted by the bureaus, file the City-wide program with the City Auditor and issue the program for implementation by affected bureaus;

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- C.** Advise and assist affected bureaus in the implementation of components or parts thereof;
- D.** Monitor the effectiveness of components, and collect, analyze, and report annually to the Committee and City Council data showing the status of the components and the performance of bureaus implementing the components.

3.54.030 Bureau Responsibility and Authority.

(Amended by Ordinance Nos. 158966 and 181483, effective January 18, 2008.) Each City bureau shall have the following responsibility and authority:

- A.** Develop a written loss control component which shall include detailed and specific objectives, methods, and techniques for preventing injuries, illnesses, and other events leading to workers' compensation, liability, and property loss claims;
- B.** Include in the component specific performance objectives to permit monitoring and reporting on the Bureau's performance in reducing claims;
- C.** Submit the proposed component to the Committee for review;
- D.** On completion of review by the Committee and approval by the OMF Risk Management Division, implement the component;
- E.** Annually review its component, make any appropriate revisions, and submit any revisions of the component to the Committee for its review.

3.54.040 Loss Control and Prevention Advisory Committee - Responsibility and Authority.

(Added by Ordinance Nos. 158966 and 181483, effective January 18, 2008.) The Loss Control and Prevention Advisory Committee shall have the following responsibility and authority:

- A.** In conjunction with bureau managers, develop and propose for approval by the City Council goals for each bureau or appropriate groups of bureaus for the frequency and severity of workers' compensation and liability losses.
- B.** Obtain from each bureau its proposed written loss control component;
- C.** Review each component to ensure that it is appropriate, adequate, thorough, and consistent with components developed by other bureaus;
- D.** Suggest revisions, if appropriate, and return the component to the bureau for consideration or revisions;
- E.** Upon final review of components, provide them to the OMF Risk Management Division for approval and implementation by bureaus.

CHAPTER 3.57 - INDUSTRIAL INJURY
RETURN TO WORK POLICY

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

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**CHAPTER 3.58 - VEHICLE LOSS CONTROL
POLICY**

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

CHAPTER 3.60 - ZOO COMMISSION

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

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CHAPTER 3.62 - BOXING COMMISSION

Section:

3.62.010 Certain City Officials to Render Certain Services.

3.62.010 Certain City Officials to Render Certain Services.

(Amended by Ordinance No. 173369, effective May 12, 1999.) The Council finds that by the provisions of ORS Chapter 463 certain functions are to be performed by the Council and certain City officers; now, therefore, the City officials are hereby permitted and authorized to exercise the functions therein stated for and on behalf of the State as herein provided.

CHAPTER 3.64 - ART COMMISSION

(Chapter repealed by Ordinance No. 136980,
effective July 13, 1973.)

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**CHAPTER 3.66 - CIVIC AUDITORIUM
ADVISORY COMMITTEE**

(Chapter repealed by Ordinance No. 160034,
effective August 13, 1987.)

**CHAPTER 3.67 - PERFORMING ARTS
ADVISORY COMMITTEE**

(Chapter added by Ordinance No. 152285, effective
September 17, 1981.)

Sections:

- 3.67.010 Creation and Organization.
- 3.67.020 Procedure and Rules of Committee.
- 3.67.030 Duties.

3.67.010 Creation and Organization.

(Amended by Ordinance No. 153332, effective June 9, 1982.) There hereby is created an Advisory Committee to the Commissioner In Charge of the Portland Center for the Performing Arts to be known as the Performing Arts Center Advisory Committee. The Committee shall consist of 13 voting members who shall serve without compensation. The Commissioner In Charge shall appoint the members and shall designate the Chairman. Each member shall serve at the pleasure of the Commissioner In Charge. Upon completion for occupancy of all the facilities composing the Portland Center for the Performing Arts, the Performing Arts Center Advisory Committee shall be disbanded. In case of vacancy by death, incapacity to serve, or resignation, the Commissioner In Charge shall appoint a successor to serve the remainder of the vacant term. The Commissioner In Charge, or that person's representative, shall be an ex officio member of the Committee, but shall not be entitled to vote.

3.67.020 Procedure and Rules of Committee.

The Performing Arts Center Advisory Committee shall establish its own rules, bylaws and provide the procedure for all matters for consideration or action by the Committee. The Committee shall hold meetings at the call of the Chairman.

3.67.030 Duties.

The Performing Arts Center Advisory Committee shall be responsible for raising funds and advising the Commissioner In Charge in the planning, programming, design and construction phases of the Portland Center for the Performing Arts.

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CHAPTER 3.68 - FORMAL JAPANESE GARDEN COMMISSION

Sections:

- 3.68.010 Created.
- 3.68.020 Powers and Duties.
- 3.68.030 Meetings.
- 3.68.040 Officers.
- 3.68.050 Rules - Quorum.
- 3.68.060 Vacancy - Removal.

3.68.010 Created.

There hereby is created a Formal Japanese Garden Commission for the City. The Commission shall consist of the Mayor, the Commissioner In Charge of the Bureau of Parks, the President of the Japan Society of Oregon, the President of the Japanese Ancestral Society, the Japanese Consul, and 12 persons appointed by the Mayor. All appointments shall be by the Mayor for 3-year terms, provided, when an interim vacancy occurs the appointment shall be to fill the unexpired term of the position vacated. All members shall serve without compensation.

3.68.020 Powers and Duties.

It shall be the duty of the Commission to formulate and submit to the City Council plans for the establishment, maintenance, improvement and promotion of a formal Japanese garden. The Commission shall submit to the Council, not less than every 6 months, a report of its progress and recommendations. The Commission may form subcommittees, appoint unpaid advisors, hold public hearings, encourage the interest of other organizations in its objectives, and engage in similar activities which in its judgment may assist it in making recommendations and promoting the plan, establishment, maintenance and improvement of a formal Japanese garden that will be an attraction enjoyed by the people of Portland and their guests.

3.68.030 Meetings.

Each year an annual meeting shall be held. Each Commission member shall serve until the annual meeting of the year in which his term expires, or thereafter until his successor is appointed and qualified. Not less than three interim meetings shall be held each year in addition to the annual meeting. The Chairman of the Commission shall designate the time and place of the annual and interim meetings and the Secretary of the Commission shall give not less than 5 days advance notice thereof to each Commission member.

3.68.040 Officers.

A Chairman, Vice Chairman and Secretary shall be elected at each annual meeting of the Commission from among its members. All Commission officers shall serve until the annual meeting next following their election, or thereafter until a successor is elected.

3.68.050 Rules - Quorum.

Rules of procedures may be adopted and amended only upon an affirmative vote of eight or more Commission members. Election of officers, removal of members, and regular business of the Commission shall be passed upon by the majority of a quorum. Not less than eight members shall constitute a quorum. Each member shall be entitled to one vote.

3.68.060 Vacancy - Removal.

Death, resignation, removal or inability to serve shall constitute a vacancy in the Commission. The Commission may remove any member for cause. Unexcused absence from four consecutive Commission meetings shall constitute cause for removal.

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CHAPTER 3.70 - PITTOCK MANSION ADVISORY COMMISSION

Sections:

- 3.70.010 Created - Terms.
- 3.70.030 Special Committees and Services.
- 3.70.050 Officers.
- 3.70.060 Rules - Quorum.
- 3.70.070 Vacancy.

3.70.010 Created - Terms.

There hereby is created a Pittock Mansion Advisory Commission for the City, to which the Mayor, Commissioner In Charge of the Bureau of Parks, and Superintendent of Parks shall be ex officio members. The Commission shall otherwise consist of nine members appointed by the Mayor. The Mayor shall initially appoint two members for 1 year, three members for 2 years, two members for 3 years, and two members for 4 years. Thereafter all appointments shall be by the Mayor for 4-year terms, provided, when an interim vacancy occurs the appointment shall be to fill the unexpired term of the position vacated. All members shall serve without compensation. The term of each such appointment shall be extended as necessary so that the term ends November 1.

3.70.020 Powers and Duties.

(Amended by Ordinance No. 154194; repealed by Ordinance No. 167733, effective June 1, 1994.)

3.70.030 Special Committees and Services.

Upon request of the Commission, the Mayor may appoint one or more special committees to serve the Commission in an advisory capacity. Secretarial services and office requirements shall be furnished to the Commission by the Bureau of Parks.

3.70.040 Meetings.

(Amended by Ordinance No. 154194; repealed by Ordinance No. 167733, effective June 1, 1994.)

3.70.050 Officers.

Officers of the Commission shall consist of a Chairman, Vice Chairman, Secretary and Treasurer, elected from its membership at the organizational meeting and at each annual meeting thereafter. All Commission officers shall serve until the annual meeting next following their election or thereafter until a successor is elected.

3.70.060 Rules - Quorum.

Rules of procedure may be adopted and amended only upon an affirmative vote of six or more Commission members. Election of officers, removal of members, and regular business of the Commission shall be passed upon by the majority of a quorum. Not less than five members shall constitute a quorum. Each member shall be entitled to one vote.

3.70.070 Vacancy.

Death, resignation, removal or inability to serve shall constitute a vacancy in the Commission. The Commission may remove any member for cause. Unexcused absence from four consecutive Commission meetings shall constitute cause for removal.

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**CHAPTER 3.71 - ENVIRONMENTAL
COMMISSION**

(Chapter added by Ordinance No. 164432; repealed
by Ordinance No. 167239, effective December 29,
1993.)

CHAPTER 3.72 - COMMITTEE ON CLAIMS

Sections:

- 3.72.010 Created - Members - Meetings.
- 3.72.020 Presentation of Claims.
- 3.72.030 Consideration of Claims Not Covered by Insurance.

3.72.010 Created - Members - Meetings.

(Amended by Ordinance Nos. 132014 and 163439, effective September 5, 1990.)

- A.** Created. A Committee to be known as the “Committee on Claims” is hereby created for the purpose of considering fair and moral claims against the City not covered by insurance and making recommendations concerning the claims to the City Council.
- B.** Members. This Committee shall consist of two members of the City Council appointed by the Mayor, one of whom shall be designated Chairman, and the City Auditor. The Risk Manager shall meet with the Committee, without power of vote, and serve as Secretary.
- C.** Meetings. The Committee shall meet at times designated by the Chairman.

3.72.020 Presentation of Claims.

(Amended by Ordinance No. 163439, effective September 5, 1990.) All fair and moral claims against the City shall be presented to the Risk Manager. Presentation to the Risk Manager shall for all legal purposes be regarded as presentment to the Council of the City. Nothing contained herein shall be construed as repealing or modifying any of the provisions of Sections 1-106 and 1-107 of the Charter.

3.72.030 Consideration of Claims Not Covered by Insurance.

(Amended by Ordinance No. 163439, effective September 5, 1990.) The Risk Manager shall investigate and process all fair and moral claims against the City. The Risk manager shall present to the meeting of the Committee on Claims all facts and evidence gathered. The Committee shall make a recommendation on all claims presented and the same shall be transmitted to the Council for their consideration and final decision.

3.72.040 Claims Covered by Insurance.

(Repealed by Ordinance No. 163439, effective September 5, 1990.)

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CHAPTER 3.74 - OATHS OF OFFICE

Sections:

- 3.74.010 Persons Required to Take Oath.
3.74.020 Form of Oath for Mayor, Commissioner and Auditor.
3.74.030 Form of Oath for Other Officer or Employee.

3.74.010 Persons Required to Take Oath.

(Amended by Ordinance No. 180917, effective May 26, 2007.) Each of the following employees shall be required to take an oath of office before entering upon the discharge of his duties, which oath shall be subscribed by the person taking it and shall be filed and preserved in the office of the Auditor;

- A. Every officer and member of the Bureau of Police, including private, special, temporary, and substitute policemen;
- B. Each officer and member of Portland Fire & Rescue serving on full time and devoting his labor exclusively to the interests of the City; and
- C. Each elected or appointed officer or deputy of the City, including members of boards and commissions.

3.74.020 Form of Oath for Mayor, Commissioner, and Auditor.

(Amended by Ordinance No. 168343, effective January 7, 1995.) The form of oath to be taken by the elected officials of the City before entering upon the discharge of their duties shall be substantially as follows:

State of Oregon)
County of Multnomah) ss.
City of Portland)

I , (name), do solemnly (affirm or swear) I will support the Constitutions of the United States and the State of Oregon; Charter of the City of Portland and its laws; I will faithfully, honestly and ethically perform my duties as (Mayor/Commissioner/Auditor); I have no undisclosed financial interest in any business located in Portland or having contracts with the City; I hold no other office or position of profit; and I am not a member of any partisan political committee (; so help me God).

Subscribed and sworn to before me this ____ day of _____, 20____.

Auditor of the City
of Portland, Oregon

Deputy

The oath of the Auditor shall be administered by a person having statutory authority under the laws of Oregon to administer oaths.

3.74.030 Form of Oath for Other Officer or Employee.

(Amended by Ordinance Nos. 139501 and 168343, effective January 7, 1995.) The form of oath to be taken by appointed City officials shall be substantially as follows:

I, (name), do solemnly affirm I will support the Constitutions of the United States and of the State of Oregon, the Charter of the City of Portland and its laws; I will faithfully, honestly and ethically perform my duties as (office) during my continuance therein.

The wording of the oath may vary, as officials are sworn according to the ceremonies of their own religion or in such manner as each deems binding on his or her conscience.

The oath may be administered by the Auditor, deputy auditor, a notary public, or a magistrate of any court of record in the United States, within their respective jurisdictions. Whenever the oath is administered by a person other than the Auditor or deputy, the credentials of the person administering the oath shall appear thereon, and the oath shall be sent immediately to the Auditor, who shall attest to receipt of the oath.

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CHAPTER 3.76 - PUBLIC RECORDS

(Chapter replaced by Ordinance No. 182637,
effective May 1, 2009.)

Sections:

- 3.76.010 Definitions.
- 3.76.020 Purpose.
- 3.76.030 Archives and Records Management Program Creation and Administration.
- 3.76.040 Authority and Duties of the Archives and Records Management Program.
- 3.76.050 Duties of Elected Officials and the Managers of City Agencies.
- 3.76.060 Care of Records.
- 3.76.070 Destruction of Records.
- 3.76.080 Use of Copies.
- 3.76.090 Public Access to Records.

3.76.010 Definitions.

In this Chapter, unless the context otherwise requires:

- A. “**Agency**” means a department, bureau, office, commission, board, public corporation or other organizational unit created by the Council of the City of Portland.
- B. “**Record**” or “**City record**” means any recorded information, regardless of physical form or characteristic, prepared, owned, used or retained in connection with the transaction of official business and preserved or appropriate for preservation by an agency as evidence of the organization, function, policies, decisions, procedures, operations or other activities of the City of Portland or because of the informational value in it. The term does not include library and museum material developed or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved solely for convenience of reference, or stocks of publications. These records are public property, subject to Oregon Public Records Law and to the records management requirements established by this Code.

3.76.020 Purpose.

The purpose of this Chapter is to provide for the orderly management and care of current City records and to preserve non-current City records of permanent value for administrative, legal, and research purposes.

3.76.030 Archives and Records Management Program Creation and Administration.

The City Auditor shall maintain a professional Archives and Records Management Program for the City, and shall be responsible for the maintenance of all City records. The City Auditor shall be the custodian for all permanent records for which an agency has transferred ownership to the Auditor and for all historical records.

3.76.040 Authority and Duties of the Archives and Records Management Program.

The Archives and Records Management Program shall:

- A.** Operate the program and the Archives and Records Center facility in accordance with currently accepted archives and records management professional standards;
- B.** Acquire, receive, appraise and secure records of permanent value from agencies of the City of Portland when those records are no longer necessary for conducting current business;
- C.** Acquire, receive, appraise, and secure all records for areas annexed by the City from a county or special district or from a defunct agency of the City of Portland;
- D.** Negotiate for the acquisition and return of City records which have been removed from its possession;
- E.** Secure transfer of records to the Archives when it has been determined that the records are stored under conditions that do not meet the standards established by Archives and Records Management;
- F.** Maintain inventories, indexes, catalogs, and other finding aids or guides to facilitate access to the City Archives;
- G.** Analyze, develop and provide written standards and procedures for the care and maintenance of City records, including those created and/or maintained in electronic format;
- H.** Establish minimum recordkeeping requirements for business systems or applications that maintain official City records;
- I.** Provide access, as defined by State law and City policies, to the records within Archives and Records Management's custodianship;
- J.** Establish procedures for City agencies regarding the identification, segregation, and protection of records vital to continuing operations to comply with the City's emergency preparedness policies;
- K.** Establish standards for City agencies with regard to the appropriate use of record media, accounting for cost, access and preservation;
- L.** Establish procedures for the preparation of records inventories and descriptions; develop records retention schedules for review by the City Auditor and City Attorney and which meet the requirements of Oregon Administrative Rules;

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- M.** Establish procedures for the prompt and orderly disposition of City records for which the state archivist has granted authority to destroy because they no longer possess administrative, legal, or research value to warrant their retention;
- N.** Provide training to City agencies and employees on all aspects of records management.

3.76.050 Duties of Elected Officials and the Managers of City Agencies.

Each City elected official and agency manager shall:

- A.** Make and preserve records containing adequate documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency which are designed to furnish the information necessary to protect the legal and financial rights of the City and of persons directly affected by the agency's activities;
- B.** Ensure staff compliance with City records policies and procedures established by Archives and Records Management;
- C.** Work with Archives and Records Management to develop and review records retention schedules for records maintained by the agency;
- D.** Inform Archives and Records Management of any regulatory changes affecting record retention, maintenance or access requirements;
- E.** Notify Archives and Records Management of any program changes that may affect the management of City records, including but not limited to: new agency responsibilities; records that are no longer being created; changes to records maintenance practices;
- F.** Follow established procedures to identify, segregate and protect records vital to the continuing operation of an agency in the event of natural or man-made disaster;
- G.** Ensure that at least one copy of each report, document, study, publication or consultant report prepared at City expense be deposited with the Archives;
- H.** Notify the Archives of records older than 25 years in the agency's possession; transfer control of original records upon notification from the Archives;
- I.** Establish safeguards against unauthorized or unlawful removal, loss or destruction of City records;
- J.** Ensure that City records are maintained in a manner that meets guidelines set by Archives and Records Management for security and environment;

- K.** Designate a management level employee to act as a liaison between the agency and Archives and Records Management on all matters relating to the archives and records management program.

3.76.060 Care of Records.

Records of the City of Portland shall be managed according to the provisions of Oregon Revised Statutes, Oregon Administrative Rules and of this Chapter.

3.76.070 Destruction of Records.

City records covered by a records retention schedule shall be destroyed according to the parameters set forth in the retention schedule. In general, records shall not be retained beyond their prescribed retention.

3.76.080 Use of Copies.

- A.** A public officer performing duties under this Chapter is authorized to copy in any manner which produces a permanent, clear, accurate and durable reproduction of the original record. An original City record which is worn or damaged may be replaced by a reproduction made in accordance with this Chapter. Certification by the City Auditor, City Attorney, Archives and Records Management, or by the agency having custody of the record that the replacement is a true and correct copy of the original shall appear at the end of the reproduction. When original City records are reproduced and placed in conveniently accessible files and provisions are made for preserving and using them for the duration of their legally mandated retention, the originals from which they were made may be destroyed.
- B.** Reproduction or replacement of City records made under this Chapter are admissible in evidence as primary evidence of the original writing.

3.76.090 Public Access to Records.

All City records, except for those exempted by law, are available for inspection and copying by the public. The City may require that records use occur during certain business hours and at specified locations, and may charge fees to recover the cost of retrieval and copying.

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CHAPTER 3.77 - OFFICE OF THE OMBUDSMAN

(Chapter added by Ordinance No. 175568, effective
July 1, 2001.)

Sections:

3.77.010	Purpose.
3.77.020	Definitions.
3.77.030	Office of the Ombudsman.
3.77.040	Ombudsman Selection.
3.77.050	Qualifications and Prohibitions.
3.77.060	Reserved.
3.77.070	Removal.
3.77.080	Staff and delegation.
3.77.090	Reserved.
3.77.100	Office Facilities and Administration.
3.77.110	Powers and Duties.
3.77.120	Investigations of Complaints.
3.77.130	Communications with Agency.
3.77.140	Communications with Complainant.
3.77.150	Procedure after Investigation.
3.77.160	Informing Community Members.
3.77.170	Reports.
3.77.180	Reserved.
3.77.190	Duty to Cooperate.
3.77.200	Ombudsman Immunities.
3.77.210	Reprisals Prohibited.
3.77.220	Relationship to Other Laws.
3.77.230	Effective Date.

3.77.010 Purpose.

(Amended by Ordinance No. 188842, effective March 30, 2018.) The Office of the Ombudsman is an independent, impartial office, readily available to the public, responsible to the City Auditor, empowered to investigate the administrative acts of City departments, bureaus and other administrative agencies, issue reports and recommend appropriate changes toward the goals of safeguarding the rights of persons and of promoting higher standards of fairness, competency, efficiency and justice in the provision of city services.

3.77.020 Definitions.

(Amended by Ordinance No. 188842, effective March 30, 2018.) In this chapter:

- A. "Administrative act" means an action, failure to act, omission, decision, recommendation, practice, policy or procedure.

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- B.** “Agent or agency” includes any department, bureau, office, institution, corporation, authority, board, commission, committee of the city, and any officer, employee, or member of the foregoing entities acting or purporting to act in the exercise of their official duties. EXCEPTING: elected officials and their personal staff.
- C.** “City Auditor” refers to the elected City Auditor.
- D.** “City” refers to the City of Portland.
- E.** “City Council” refers to the City’s legislative body comprised of five elected officials, the Mayor, and four City Commissioners.
- F.** “Ombudsman” means the public official appointed by the City Auditor to receive and investigate the public’s complaints against administrative acts of City government.
- G.** “Person” means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, and/or the manager, lessee, agent, servant, officer, or employee of any of them;
- H.** "Record" means all records, documents, books, papers, files, photographs, microfilms, sound recordings, video recordings, magnetic storage media, computer data and all other materials, regardless of physical form or characteristics, created, generated, recorded, received, possessed or controlled by or on behalf of any agency.
- I.** “State” refers to the State of Oregon.

3.77.030 Office of the Ombudsman.

(Amended by Ordinance No. 188842, effective March 30, 2018.) There is established in accordance with City Charter Section 2-509 the Office of the Ombudsman.

3.77.040 Ombudsman Selection.

(Amended by Ordinance No. 188842, effective March 30, 2018.) The City Auditor shall select the Ombudsman in accordance with the Auditor’s human resource policies and rules and other applicable laws.

3.77.050 Qualifications and Prohibitions.

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

- A.** The Ombudsman shall be a person of recognized judgment, objectivity and integrity who is well-equipped to analyze problems pertaining to City regulations, administration, and public policy, and shall have a working knowledge in local government commensurate to the powers and duties of the office. The Ombudsman shall be a registered voter of the United States, and shall hold a degree from an accredited college/university, or its equivalent in service to local government.

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- B.** No person may serve as Ombudsman while engaged in any other occupation, business, or profession likely to detract from the full-time performance of their duties as Ombudsman or to result in a conflict of interest or an appearance of impropriety or partiality. All laws and requirements generally applicable to public employees are applicable to the Ombudsman.

3.77.060 Reserved.

3.77.070 Removal.

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

- A.** The Ombudsman is an at-will employee and may be removed from office by the City Auditor.
- B.** If the position becomes vacant for any reason, the Deputy Ombudsman shall serve as acting Ombudsman until a new Ombudsman has been appointed.

3.77.080 Staff and Delegation.

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

- A.** The Ombudsman may appoint a deputy who is accountable to the Ombudsman and other personnel necessary to carry out the provisions of this chapter, when in keeping within the adopted budget for the Ombudsman's Office.
- B.** The Ombudsman may delegate to staff members any of the Ombudsman's duties, unless otherwise specified in this chapter.
- C.** The deputy shall succeed to all duties and responsibilities of the Ombudsman, including those specified by ordinance, when serving as the acting Ombudsman.

3.77.090 Reserved.

3.77.100 Office Facilities and Administration.

- A.** The City shall provide suitable office facilities for the Ombudsman and staff in a location convenient for the public.
- B.** The Ombudsman shall annually recommend a budget proposal for submission to the City Auditor, who shall in turn include it in the Auditor's budget submission to the Mayor and City Council.
- C.** The Ombudsman shall be located within the City Auditor's office, and be accountable to the City Auditor. The Ombudsman shall have sole discretion in choosing consultants to assist with investigations, and in hiring staff. All administrators shall retain the authority to deny any request which is otherwise

contrary to ordinance or which exceeds the city council-adopted budget for the office.

3.77.110 Powers and Duties.

(Amended by Ordinance No. 188842, effective March 30, 2018.) The Ombudsman's powers and duties include, but are not limited to the following:

- A.** To investigate, on complaint or on the Ombudsman's own initiative, any administrative act of an agency, without regard to the finality of the administrative act, if the Ombudsman reasonably believes that it is an appropriate subject for review;
- B.** To undertake, participate in or cooperate with persons and agencies in such general studies, conferences, inquiries, meetings, or studies which might improve the functioning of agencies or lessen the risks that objectionable administrative acts will occur;
- C.** To make such inquiries and obtain such reasonable assistance and information from any agency or person as the Ombudsman shall require for the discharge of the Ombudsman's duties; and may without prior notice enter and inspect the premises of any agency. Agencies shall not restrict the Ombudsman's access to agency employees, subject to collective bargaining obligations to the City's recognized bargaining units;
- D.** In accordance with City Charter, subject to collective bargaining obligations to the City's recognized bargaining units, to have timely access to and to examine and copy, without payment of a fee, any agency information and records, including confidential and legally privileged information and records so long as privilege is not waived as to third parties, subject to any applicable state or federal laws. The Ombudsman shall not disclose confidential or legally privileged information or records and shall be subject to the same penalties as the legal custodian of the information or records for any unlawful or unauthorized disclosure;
- E.** To request any person or agency to give sworn testimony or to timely produce documentary or other evidence that is reasonably relevant to the matters under investigation;
- F.** To maintain confidential any matter related to complaints and investigations to the extent allowable by law, except as the Ombudsman deems necessary to discharge the Ombudsman's duties or as directed by the District Attorney pursuant to a public records request;
- G.** To take appropriate measures to enforce the provisions of this chapter, including issuing reports, submitting recommendations, or seeking Council authorization for legal recourse if necessary to carry out the duties of the Office of the Ombudsman;

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- H.** To adopt, promulgate, amend and rescind rules and regulations required for the discharge of the Ombudsman's duties, including policies and procedures for receiving and processing complaints, conducting investigations, and reporting findings, conclusions and recommendations. However, the Ombudsman may not levy any fees for the submission or investigation of complaints;
- I.** To insure that a budget for the Office of the Ombudsman is well prepared and administered.

3.77.120 Investigations of Complaints.

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

- A.** The Ombudsman shall receive complaints from any source concerning any administrative act. The Ombudsman may conduct a suitable investigation of a complaint that is an appropriate subject for investigation. An appropriate subject for investigation by the Ombudsman includes any administrative act that the Ombudsman believes might be:
 - 1.** contrary to, law, regulation or agency practice;
 - 2.** unreasonable, unfair, oppressive, arbitrary, an abuse of discretion, or unnecessarily discriminatory even though in accordance with law;
 - 3.** based on mistaken facts or irrelevant considerations;
 - 4.** unclear or not adequately explained;
 - 5.** performed in an inefficient or discourteous manner;
 - 6.** otherwise erroneous or objectionable.
- B.** The Ombudsman, at the Ombudsman's discretion, may decide not to investigate a complaint because:
 - 1.** the complainant could reasonably be expected to use, or is using, another remedy or channel, or tort claim, for the grievance stated in the complaint;
 - 2.** the complaint relates to a matter that is outside the jurisdiction of the Ombudsman;
 - 3.** the complaint has been too long delayed to justify present examination;
 - 4.** the complainant does not have a sufficient personal interest in, or is not personally aggrieved by, the subject matter of the complaint;
 - 5.** the complaint is trivial, frivolous, vexatious or not made in good faith;

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- 6. the resources of the Ombudsman's Office are insufficient for adequate investigation;
- 7. other complaints are more worthy of attention.
- C. The Ombudsman shall not investigate matters currently in litigation; covered by collective bargaining agreement grievance procedures; or, employee or applicant discrimination complaints.
- D. The Ombudsman's declining to investigate a complaint shall not bar the Ombudsman from proceeding on their own initiative to investigate an administrative act whether or not included in the complaint.
- E. The Ombudsman shall protect the confidentiality of complainants or witnesses coming before them consistent with the requirements of the Oregon Public Records Law, except insofar as disclosures may be necessary to enable the Ombudsman to carry out their duties or the disclosure of records is directed by the District Attorney. (See Subsection 3.77.110 F.)
- F. The Ombudsman shall have the authority to pursue administrative review of responses to complaints through higher authorities within the City.

3.77.130 Communications with Agency.

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

- A. The Ombudsman may make recommendations to an agency for the resolution of complaints and inquiries in accordance with this Chapter and City Charter.
- B. In seeking a resolution to a complaint or inquiry the Ombudsman may draw the matter to the attention of any agency head or division manager, the City Auditor, Mayor, City Commissioner, or the public.
- C. Before formally issuing a report with a conclusion or recommendation that is significantly critical or adverse to an agency, the Ombudsman shall have consulted with that agency and permitted the agency reasonable opportunity to reply. The Ombudsman may require an agency to notify them within a reasonable specified time of any action taken on a conclusion or recommendation. The Ombudsman will provide the opportunity to include with a final report a brief statement by the agency.

3.77.140 Communications with Complainant.

- A. After the Ombudsman has decided whether or not to investigate a complaint, the Ombudsman shall inform the complainant.

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- B.** The Ombudsman shall, if requested by the complainant, report the status of his or her investigation to the complainant.
- C.** After investigation of a complaint, the Ombudsman shall inform the complainant of his or her conclusion or recommendation and, if appropriate, any action taken or to be taken by the agency involved.

3.77.150 Procedure after Investigation.

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

- A.** If, after investigation, the Ombudsman is of the opinion that an agency should:
 - 1.** consider the matter further,
 - 2.** modify or cancel an act,
 - 3.** alter a regulation, ruling, practice, policy or procedure;
 - 4.** explain more fully the act in question,
 - 5.** rectify an omission, or take any other action,

the Ombudsman shall state any conclusions, recommendations and reasons therefor to the agency. If the Ombudsman so requests, the agency shall, within the time specified, inform the Ombudsman about the action taken on recommendations or the reasons for not implementing them.

- B.** After a reasonable period of time has elapsed, the Ombudsman may issue final conclusions or recommendations to the Auditor, the Mayor and City Commissioners, a grand jury, the public, or any other appropriate authority. The Ombudsman shall include any brief statement the agency may provide if an opportunity to reply is required by this Chapter.
- C.** If the Ombudsman believes that an action has been dictated by laws whose results are unfair or otherwise objectionable, and could be revised by City Council action, the Ombudsman shall notify the City Council and the agency of a desirable statutory change.
- D.** If the Ombudsman believes that any agency official or employee has acted in a manner warranting criminal or disciplinary proceedings, the Ombudsman shall refer the matter to the appropriate authorities without notice to that person.

3.77.160 Informing Community Members.

(Amended by Ordinance No. 188842, effective March 30, 2018.) The Ombudsman shall post notices or use other appropriate means to inform community members of their rights, protections, and availability of services provided for under this Chapter and City Charter

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

3.77.170 Reports.

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

3.77.180 Reserved.

3.77.190 Duty to Cooperate.

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

3.77.200 Ombudsman Immunities.

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

3.77.210 Reprisals Prohibited.

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

3.77.220 Relationship to Other Laws

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

3.77.230 Effective Date

This Act shall take effect on July 1, 2001.

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CHAPTER 3.78 - ACQUISITION OF COUNTY PROPERTY FOR PARK PURPOSES

Sections:

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

3.78.010 Authorization for Payment.

(Amended by Ordinance No. 173369, effective May 12, 1999.) In all cases, past, present or future, in which an ordinance provides for the acquisition of park property from Multnomah County and where Multnomah County does not furnish an abstract or title insurance, the City Auditor is hereby authorized to draw and deliver a check in favor of Multnomah County for the amount to be paid for the deed from the county unless such ordinance indicates specifically a purpose to disregard this Chapter and thereupon the Auditor shall submit the matter to the City Attorney.

3.78.020 Title Reports.

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

3.78.030 Clearing of Title.

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

3.78.040 Retaining Property with Cloud on Title.

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

CHAPTER 3.80 - SPECIAL PERMITS

Sections:

3.80.010 Operations to Cease Upon Expiration of Permit.

3.80.020 Use of Park Property for Private Gardening Purposes.

3.80.010 Operations to Cease Upon Expiration of Permit.

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

3.80.020 Use of Park Property for Private Gardening Purposes.

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

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**CHAPTER 3.82 - OFFICER AND EMPLOYEE
BONDS**

Sections:

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

3.82.010 Exceptions.

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

3.82.020 Bond of the City Treasurer.

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

3.82.030 City Auditor's Bond.

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

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

Sections:

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

3.84.010 Filing of Accident Report.

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

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

3.84.020 Form of Report.

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

3.84.030 Repair Shop Report.

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

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

3.84.040 Repair.

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

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

3.84.050 Billing of Charges.

No request for billing of charges for repair of motor vehicles damaged as defined in this Chapter shall be forwarded to the Auditor as in Section 5.48.040 provided, until the validity thereof based upon determination of liability shall have first been approved by the City Attorney.

**CHAPTER 3.86 - GOLF ADVISORY
COMMITTEE**

(Chapter added by Ordinance No. 133195, effective
September 20, 1971.)

Sections:

- 3.86.010 Created - Organization.
- 3.86.020 Procedure and Rules.
- 3.86.030 Duties.

3.86.010 Created - Organization.

(Amended by Ordinance Nos. 169770, 178253, 178935 and 186275, effective November 1, 2013.) There hereby is created an advisory committee to the Commissioner-in-Charge and Director of Parks to be known as the Golf Advisory Committee, consisting of ten voting members who shall serve without compensation. Members will however be entitled the use of each of the City's golf facilities, up to 4 times per year at no charge. Following each committee member visit to one of the golf facilities on this basis, he/she will be required to document the business purpose of the visit on a GAC Visit Form provided by the City. The Commissioner-in-Charge shall appoint the members of the Committee, the members to serve for a term of three years and may serve two consecutive terms. The Commissioner-in-Charge shall seek, to the extent feasible, to promote socio-economic diversity in appointments to the Committee, and, in order to accomplish or promote such diversity, may authorize, in the Commissioner's sole discretion, complimentary use of the City's golf facilities in addition to that provided to Committee members under this Section. The requirement of this Section that members document the business purpose of their free use of golf facilities shall apply to such additional use authorized by the Commissioner. The Commissioner-in-Charge or his/her representative shall be an ex-officio member of the Committee.

3.86.020 Procedure and Rules.

(Amended by Ordinance No. 169770, effective March 8, 1996.) The Golf Advisory Committee shall establish operating rules, bylaws, and procedures for all matters for consideration or action by the Committee, subject to the approval of the City Attorney. The Committee shall hold meetings at such time as is set by the body and at any other time at the call of the Committee Chair.

3.86.030 Duties.

(Amended by Ordinance Nos. 169770 and 186275, effective November 1, 2013.) The Golf Advisory Committee duties shall include, but not be limited to advising the Commissioner-in-Charge and the Director of Parks regarding the following areas: Golf Program budget review, review of the golf Program's Capital Improvement Program; review of golf concession contracts and proposals; review of the development, and monitoring of, the Golf Program's Strategic Plan, the marketing of the municipal Golf System; maximization

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and use of Golf System revenue. The Golf Advisory Committee shall make an annual written report to the Commissioner-in-Charge, the Director of Parks and to the Council.

**CHAPTER 3.88 - INVESTMENT ADVISORY
COMMITTEE**

(Chapter added by Ordinance No. 135093; amended
by 143470 and 151419, effective April 16, 1981.)

Sections:

- 3.88.010 Created - Organization.
- 3.88.020 Procedure and Rules.
- 3.88.030 Duties.

3.88.010 Created - Organization.

(Amended by Ordinance Nos. 167877 and 181483, effective January 18, 2008.) There hereby is created an advisory committee to the Commissioner In Charge, the Director of the Office of Management and Finance and the city Treasurer to be known as the Investment Advisory Committee. The Committee shall consist of a minimum of three public members who shall serve without compensation. The Commissioner In Charge, with approval by the Council, shall appoint the public members of the Committee to serve for 2-year terms that are renewable. The Debt Manager shall be an ex officio member of the Committee. In case of the resignation, death or inability to serve of any member, the Commissioner may appoint a successor to serve out the unexpired term subject to approval by the Council.

3.88.020 Procedure and Rules.

(Amended by Ordinance Nos. 167877 and 181483, effective January 18, 2008.) The Investment Advisory Committee shall establish its own rules, bylaws and provide the procedure for all matters for consideration or action by the Committee. The Committee shall hold at least three meetings per year at such times as is set by the body and at any other time at the call of the Chair. The Office of Management and Finance shall provide clerical staff.

3.88.030 Duties.

(Amended by Ordinance Nos. 167877 and 181483, effective January 18, 2008.) The Investment Advisory Committee shall advise the Commissioner In Charge, the Director of the Office of Management and Finance, the City Council and the City Treasurer of the City on: investment policies and investment practices of the City; maximum bank balances to be maintained by the City; and such other investment matters as the Commissioner in Charge of the Office of Management and Finance, the City Council or the Director of the Office of Management and Finance may request.

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**CHAPTER 3.90 - OFFICE OF MANAGEMENT
SERVICES**

(Chapter repealed by Ordinance No. 174410,
effective May 3, 2000.)

**CHAPTER 3.92 - BUREAU OF HUMAN
RESOURCES**

(Chapter repealed by Ordinance No. 174410,
effective May 3, 2000.)

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**CHAPTER 3.94 - OFFICE OF PLANNING
AND DEVELOPMENT**

(Chapter amended by Ordinance No. 147789
effective June 23, 1979 through June 30, 1982.)

**CHAPTER 3.95 - BUREAU OF ECONOMIC
DEVELOPMENT**

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

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CHAPTER 3.96 - OFFICE OF COMMUNITY & CIVIC LIFE

(Chapter replaced by Ordinance No. 179418;
amended by Ordinance No. 189078 effective July
18, 2018.)

Sections:

- 3.96.010 Purpose.
- 3.96.020 Definitions.
- 3.96.030 Neighborhood Associations.
- 3.96.040 Functions of District Coalitions.
- 3.96.050 Responsibility of City Agencies.
- 3.96.060 Responsibilities of the Office of Community & Civic Life.

3.96.010 Purpose.

(Amended by Ordinance No. 189078, effective July 18, 2018.) This chapter creates a framework by which the people of the City of Portland may effectively participate in civic affairs and work to improve the livability and character of their Neighborhoods and the City. This Chapter sets out the basis for City recognition of Neighborhood Associations, District Coalitions, and the responsibilities and benefits accruing thereto. This chapter also sets out the basis for city acknowledgement of Business District Associations and the responsibilities accruing thereto. This chapter also creates the Office of Community & Civic Life and sets out its functions, duties and responsibilities. Nothing in this Chapter shall limit the right of any person or group to participate directly in the decision making processes of the City Council or of any City agency.

3.96.020 Definitions.

(Amended by Ordinance No. 189078, effective July 18, 2018.) As used in this Chapter the following terms have the meanings given them in this Section.

- A. Neighborhood:** A geographically contiguous self-selected community.
- B. Neighborhood Association:** An autonomous organization formed by people for the purpose of considering and acting on issues affecting the livability and quality of their Neighborhood, formally recognized by the Office of Community & Civic Life, and subject to Chapter 3.96.
- C. District Coalition:** An organization which supports participation services for Neighborhood Associations and everyone within a geographically defined area, and is subject to Chapter 3.96.
 - 1. Non-Profit District Coalition:** An independent non-profit corporation directed by a board which is primarily composed of representatives from its member Neighborhood Associations.

2. City--Staffed District Coalition: An office partially or fully staffed by City personnel to provide neighborhood services as advised by the participating Neighborhood Associations.
- D. **Business District Association:** An autonomous non-profit organization with membership guidelines in its bylaws formed by people in business within a defined geographic boundary for the purpose of promoting the general well-being of their business community. A Business District Association is subject to Chapter 3.96.
- E. **Office of Community & Civic Life:** An agency of the City of Portland, whose purpose is to facilitate citizen participation and improve communication among citizens, Neighborhood Associations, non-profit District Coalitions/City-staffed District Coalitions, City agencies, and other entities. The Office of Community & Civic Life is subject to these Standards.
- F. **City agency:** Includes all departments, bureaus, offices, boards and commissions of the City of Portland.
- G. **Standards:** Regulations adopted by City Council that govern Neighborhood Associations, District Coalitions, Business District Associations and the Office of Community & Civic Life.

3.96.030 Neighborhood Associations.

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

- A. **Minimum Standards for Neighborhood Associations.** To receive and maintain formal recognition, Neighborhood Associations shall meet the Standards for neighborhood public involvement.
- B. **Functions of Neighborhood Associations.** A Neighborhood Association may engage in, but is not limited to the following:
 1. Make recommendation(s) concerning a particular action, policy or other matter to any City agency on any topic affecting the livability, safety and economic vitality of the Neighborhood, including but not limited to land use, housing, community facilities, human resources, social and recreational programs, traffic and transportation, environmental quality and public safety; and,
 2. Assist City agencies in determining priority needs of the Neighborhood; and,
 3. Review items for inclusion in the City budget and make recommendations relating to budget items for Neighborhood improvement; and,

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4. Undertake projects and activities deemed appropriate by the Neighborhood Association; and,
5. Cooperate with other Neighborhood Associations and Office of Community & Civic Life to create District Coalitions.

C. Responsibilities of Neighborhood Associations.

1. Neighborhood Associations shall abide by the Standards established by the Office of Community & Civic Life.
2. Neighborhood Associations shall make a reasonable effort to include affected City agencies in planning activities which affect Neighborhood livability.

D. Benefits to Neighborhood Associations.

1. Any Neighborhood Association meeting the minimum requirements established by 3.96.030, upon request, is entitled to formal recognition and benefits from the Office of Community & Civic Life pursuant to the adopted Standards.
2. If a Neighborhood Association fails to meet the minimum requirements of 3.96.030, the Office of Community & Civic Life may, pursuant to the adopted Standards, suspend partial or all benefits to that Neighborhood Association and may ultimately revoke formal recognition of that Neighborhood Association.

3.96.040 Functions of District Coalitions.

(Amended by Ordinance No. 189078, effective July 18, 2018.) A District Coalition shall:

- A. Provide training and orientation, information and support services to Neighborhood Associations within the areas of Neighborhood Associations served;
- B. Facilitate communication between people and government;
- C. Promote public participation within the areas of Neighborhoods served on issues of livability, safety and public policy;
- D. Promote, encourage and support the participation of members of diverse communities within the areas of Neighborhoods served;
- E. Administer contracts or memorandums of understanding and operate the District Coalition in accordance with the adopted Standards; and
- F. Abide by the Standards established by the Office of Community & Civic Life.

3.96.050 Responsibility of City Agencies.

- A. City agencies shall notify all Neighborhood Associations affected by planning efforts or other actions affecting the livability of the Neighborhood(s).
- B. City agencies shall include affected Neighborhood Associations and District Coalitions in planning efforts which affect neighborhood livability.
- C. Notice of pending policy decisions affecting neighborhood livability shall be given to the Neighborhood Association(s) affected at least 30 days prior to final action on the decision by a City agency. If said 30 day period may injure or harm the public health, safety, welfare, or result in a significant financial burden to the City, this notice provision shall not apply.

3.96.060 Responsibilities of the Office of Community & Civic Life.

(Amended by Ordinance Nos. 186216, 187359 and 189078, effective July 18, 2018.) There is hereby established and created an Office of Community & Civic Life which shall consist of a Director and such other employees as the Council may from time to time provide. In order to facilitate participation and improved communication between the public, Neighborhood Associations, Business District Associations, District Coalitions and the City, the Office of Community & Civic Life shall:

- A. Assist Neighborhood Associations, District Coalitions and others in planning and developing programs for public involvement, crime prevention, dispute resolution and budget review;
- B. Act as an information clearinghouse and resource to Neighborhood and Business Associations, other groups and the public;
- C. Notify interested persons of meetings, hearings, elections and other public participation events of the Office of Community & Civic Life neighborhood system;
- D. Enter into, monitor, administer contracts, and memorandums of understanding for Neighborhood Associations through District Coalitions;
- E. Promote and facilitate open communication and notification from City agencies to Neighborhood Associations, District Coalitions, and Business District Associations, promote and facilitate communication amongst City agencies about public involvement best practices and policy;
- F. Support and promote public involvement within the Neighborhood Association framework;
- G. Adopt and revise such Standards as are deemed necessary for the implementation of this Chapter and for orderly public involvement in City government through

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Neighborhood Associations and District Coalitions. In so doing, the Office of Community & Civic Life shall seek representation from Neighborhood Associations, District Coalitions, Business District Associations, diverse community interests, city agencies that engage in considerable public involvement activities, and other interested people as necessary;

- H.** Pursuant to the adopted Standards, formally recognize a Neighborhood Association and/or acknowledge a Business District Association. If a Neighborhood Association or Business District Association fails to meet the minimum requirements of chapter 3.96, the Office of Community & Civic Life may suspend partial or all benefits and may ultimately revoke formal recognition of a Neighborhood Association or acknowledgement of a Business District Association;
- I.** Promote, encourage and support diverse and multicultural public involvement;
- J.** Establish open and fair grievance procedures for Neighborhood Associations, District Coalitions, and the Office of Community & Civic Life;
- K.** Establish open meetings and public records standards for Neighborhood Associations and District Coalitions;
- L.** Administer and enforce City Code Title 18, Noise Control; and
- M.** Other duties as assigned to the Office by Council.

**CHAPTER 3.98 - TOWING BOARD OF
REVIEW**

(Chapter added by Ordinance No. 138941, effective
October 10, 1974.)

Sections:

- 3.98.010 Created - Organization.
- 3.98.020 Procedure and Rules.
- 3.98.030 Staff.
- 3.98.040 Contracts - Rates.
- 3.98.050 Eligibility.
- 3.98.060 Powers of Board.
- 3.98.080 Appeals.

3.98.010 Created - Organization.

(Amended by Ordinance Nos. 143364, 149583, 157639, 168911, 172488 and 186746 effective August 6, 2014.)

- A.** There hereby is created a Towing Board of Review, hereinafter referred to as the Board, consisting of eight voting members and two nonvoting members. A quorum of the Board shall consist of five voting members.
- B.** The voting members of the Board shall be: the Director of the Portland Bureau of Transportation or an appropriate designee; the Executive Director of the Port of Portland or appropriate designee; the Chief of Police or an appropriate designee; the Traffic Engineer or appropriate designee; the Sheriff of Multnomah County or an appropriate designee; and three members of the general public with no affiliation with the towing industry, appointed by the Mayor, subject to confirmation by the City Council to serve for a period of 2 years. The Mayor shall designate one of the eight voting members to serve as the Chair, who shall so serve at the Mayor's pleasure.
- C.** The two nonvoting members shall be representatives of the towing industry appointed by the Mayor to serve for 1 year subject to confirmation by the Council.
- D.** All members of the Board shall serve without pay, except that they may receive their regular salary during the time spent on matters of the Board. A vacancy on the board shall be filled in accordance with the appointment procedures described above.
- E.** If any member of the Board is absent from more than three regularly scheduled meetings of the Board during a single calendar year, without having notified the Chair in advance of such absence, such member shall be deemed to have resigned

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from the Board and the position shall thereafter be vacant and subject to appointment.

3.98.020 Procedure and Rules.

The Towing Board of Review shall establish its own rules and bylaws, and provide the procedure for all matters for consideration or action by the Board.

3.98.030 Staff.

(Amended by Ordinance Nos. 153508, 157639 and 186746, effective August 6, 2014.) The Portland Bureau of Transportation shall provide staff and appropriate assistance for the Board.

3.98.040 Contracts - Rates.

- A.** The Board shall determine the terms and content of the contracts the City will abide by in contracting for dispatching and towing services.
- B.** The Board is empowered to hold public hearings to establish a fair rate of payment to be received for service performed under the various towing contracts and to determine the payment each towing company shall make to the dispatcher for services rendered.

3.98.050 Eligibility.

(Amended by Ordinance No. 153508, effective August 2, 1982.) The Towing Board of Review shall establish the terms, conditions, and contents of the City towing contracts, and the terms, conditions, and methods of selecting towing companies eligible for such contracts and able and willing to perform in accordance with the terms thereof, and shall certify to the Council the towing companies thereby eligible for a towing contract with the City.

3.98.060 Powers of Board.

The Board shall be responsible for reviewing the performance of the City's towing service contracts and to recommend to the Council any changes it feels necessary to promote the general purpose of establishing fair and equitable arrangements for the performance of tows requested by City personnel and the board shall be empowered to act on behalf of the City to:

- A.** Oversee the operation of and inspect the equipment and personnel qualifications of all parties contracting with the City for towing or dispatching service to determine if they are in compliance with their contracts; and hear and investigate complaints regarding the City's towing contracts and the performance thereof.
- B.** Establish dispatching district boundaries and lists of towing companies within each district eligible to be dispatched for tows:
 - 1.** In establishing district boundaries, the Board shall consider;

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- a.** The number and location of towing companies certified by the board as eligible for City towing contractors, and;
 - b.** That the purpose of establishing districts is to ensure that a tow truck shall be available in the minimum amount of time possible and no later than 30 minutes after request for tow is received; and a motorist whose vehicle is towed shall have to travel the minimum possible distance to recover his vehicle;
 - 2.** The Board is authorized to establish separate district boundaries if necessary for the dispatching of tows to be performed under different forms of contracts.
- C.** Cancel any towing or dispatching contract under the terms thereof.

3.98.080 Appeals.

(Replaced by Ordinance No. 170282, effective June 19, 1996.) Any towing company directly affected by an action of the Board may appeal to the Code Hearings Officer, pursuant to provisions of Chapter 22.10 of this Code under the following circumstances:

- A.** The towing company's contract with the City has been revoked or suspended by the Towing Board of Review;
- B.** The towing company has been directed by the Towing Board of Review to pay a civil penalty; or,
- C.** Against whom the Towing Board of Review has otherwise elected to impose Contract remedies.

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CHAPTER 3.99 - FAIR WAGE POLICIES

(Chapter added by Ordinance No. 174839, effective
August 24, 2000.)

Sections:

- 3.99.005 Policy.
- 3.99.010 Covered Services and Agreements.
- 3.99.015 Compliance.
- 3.99.020 Adjustments.
- 3.99.030 Documentation of Fair Wage in Contracts.

3.99.005 Policy.

(Amended by Ordinance No. 187124, effective May 13, 2015.) It is the policy of the City of Portland that employees performing certain categories of work under formal contracts for janitorial services, for security services, and for parking garage attendant services with the City of Portland be guaranteed a minimum fair wage. City bureaus and operating units have the discretion to implement this policy in a reasonable manner.

3.99.010 Covered Services and Agreements.

(Amended by Ordinance No. 187124, effective May 13, 2015.) The Fair Wage Policy applies to formal contracts entered into by the City of Portland, in accordance with Portland City Code 5.33, for janitorial services, for security services, or for parking garage attendant services. No other agreement or contract entered into by the City of Portland shall be covered by this Chapter.

Exceptions to this Section may be approved via ordinance by a vote of the Council.

3.99.015 Compliance.

(Amended by Ordinance No. 187124, effective May 13, 2015.) City of Portland bureaus or operating units entering into contracts for covered services shall include the minimum hourly wage rate established in PCC 3.99 in all procurement announcements and resulting contracts. Contractors' compliance with the minimum wage requirements shall be monitored through submission of monthly certified payroll, mandatory employee notification of minimum wage rates via on-site postings, designation of bureau staff responsible for compliance monitoring and complaint resolution, and other measures deemed appropriate by the City bureau or operating unit. Contracts entered into by the City for covered services shall also include a non-retaliation clause protecting workers who assert wage claims based on this Chapter.

3.99.020 Adjustments.

(Amended by Ordinance No. 187124, effective May 13, 2015.) The fiscal year 2015-16 minimum wage shall be \$15 per hour. The Office of Management and Finance shall provide City bureaus with a yearly minimum hourly wage rate for covered services which is anticipated to be adjusted annually by the change in the Portland-Salem OR WA CPI-W as provided by the City Economist. The adjustment shall be effective for all contracts on

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July 1 of each year. In determining the adjustment amount, the Office of Management and Finance shall take into account the City's overall financial picture, and OMF shall not interpret this Code to require any increase which is inconsistent with the City's financial health and capabilities.

3.99.030 Documentation of Fair Wage in Contracts.

(Added by Ordinance No. 187124, effective May 13, 2015.) Contracts entered into by the City for covered services shall include in the agreement the minimum hourly wage rate at the time the contract becomes effective and at the annual adjustment date of July 1. For agreements and contracts not subject to Section 3.99.010, the City shall not rely upon, nor reference, this Chapter 3.99 in those agreements.

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CHAPTER 3.100 - EQUAL OPPORTUNITY

(Chapter replaced by Ordinance No. 144724,
effective November 10, 1977.)

Sections:

- 3.100.005 City Policies Relating to Equal Employment Opportunity, Affirmative Action and Civil Rights.
- 3.100.030 Contractor Equal Employment Opportunity Program.
- 3.100.041 Contracts with City.
- 3.100.042 Certification of Contractors.
- 3.100.043 Information Required.
- 3.100.044 Compliance Review.
- 3.100.045 Denial, Suspension, Revocation.
- 3.100.050 Nondiscrimination in Contracting.
- 3.100.051 Policy regarding Benefits.
- 3.100.052 Definitions.
- 3.100.053 Discrimination in the provision of benefits prohibited.
- 3.100.054 Limitations.
- 3.100.055 Power and duties of the Director.
- 3.100.056 Severability of Provisions.
- 3.100.060 Grant Equal Opportunity Compliance Program.
- 3.100.061 Definitions.
- 3.100.062 Purpose.
- 3.100.063 Responsibility.
- 3.100.064 Compliance Monitoring.
- 3.100.065 Rules and Regulations.
- 3.100.080 Minority/Female Purchasing Program.
- 3.100.081 Definitions.
- 3.100.082 Purpose.
- 3.100.083 Liaison Officer.
- 3.100.084 Minority/Female Business Enterprise List.
- 3.100.085 Advertising.
- 3.100.086 Minority/Female Purchasing Associations.
- 3.100.087 Monitoring.
- 3.100.088 Certification.
- 3.100.089 Rules and Regulations.

3.100.005 City Policies Relating to Equal Employment Opportunity, Affirmative Action and Civil Rights.

(Substituted by Ordinance No. 165383; amended by Ordinance No. 171993, effective February 11, 1998.) The City of Portland has a compelling governmental interest in prohibiting discrimination in programs, activities, services, benefits and employment whether carried out by the City itself or through a contractor with whom the City arranges to carry out its programs and activities. In addition to provision found elsewhere in this

Code, provisions relating to equal employment opportunity, affirmative action and civil rights are specifically to be found in Chapter 4.02 and Chapter 23.01. The City of Portland's policies and programs relating to affirmative action are contained in its annual Affirmative Action Plan. Individual City bureaus may have specific programs designed to further the broad goals of equal employment opportunity, affirmative action and civil rights. It is unlawful to discriminate on the basis of race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation or source of income in programs, activities, services, benefits, and employment whether carried out by the City of Portland, directly or through a contractor or any other entity with whom the City of Portland arranges to carry out its programs and activities except as allowed by federal law, rules and regulations.

3.100.010 Affirmative Action Program.

(Repealed by Ordinance No. 165383, effective April 29, 1992.)

3.100.011 Definitions.

(Repealed by Ordinance No. 165383, effective April 29, 1992.)

3.100.012 Policy.

(Repealed by Ordinance No. 165383, effective April 29, 1992.)

3.100.013 Objectives.

(Repealed by Ordinance No. 165383, effective April. 29, 1992.)

3.100.014 Management Commitment.

(Repealed by Ordinance No. 165383, effective April. 29, 1992.)

3.100.015 Regulatory Committee.

(Repealed by Ordinance No. 165383, effective April. 29, 1992.)

3.100.016 Bureau EEO Advisory Committees.

(Repealed by Ordinance No. 165383, effective April. 29, 1992.)

3.100.017 Reports and Audits.

(Repealed by Ordinance No. 165383, effective April. 29, 1992.)

3.100.018 Complaints of Discrimination.

(Repealed by Ordinance No. 165383, effective April. 29, 1992.)

3.100.019 Sanction.

(Repealed by Ordinance No. 165383, effective April. 29, 1992.)

3.100.020 Rules and Regulations.

(Repealed by Ordinance No. 165383, effective April. 29, 1992.)

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3.100.021 Identification of Handicapped.

(Repealed by Ordinance No. 165383, effective April. 29, 1992.)

3.100.022 Management Commitment.

(Repealed by Ordinance No. 165383, effective April. 29, 1992.)

3.100.023 Objectives.

(Repealed by Ordinance No. 165383, effective April. 29, 1992.)

3.100.030 Contractor Equal Employment Opportunity Program.

3.100.031 Definitions.

(Repealed by Ordinance No. 171418, effective July 23, 1997.)

3.100.032 Contracts with the City.

(Repealed by Ordinance No. 171418, effective July 23, 1997.)

3.100.033 Franchises.

(Repealed by Ordinance No. 171418, effective July 23, 1997.)

3.100.034 Certification of Contractors.

(Repealed by Ordinance No. 171418, effective July 23, 1997.)

3.100.035 Rules and Regulations.

(Repealed by Ordinance No. 171418, effective July 23, 1997.)

3.100.036 Compliance by Contractors.

(Repealed by Ordinance No. 171418, effective July 23, 1997.)

3.100.037 Denial or Revocation of Certification.

(Repealed by Ordinance No. 171418, effective July 23, 1997.)

3.100.038 Compatibility with Other Rules.

(Repealed by Ordinance No. 171418, effective July 23, 1997.)

3.100.039 State of Emergency.

(Repealed by Ordinance No. 171418, effective July 23, 1997.)

3.100.040 Exemptions.

(Repealed by Ordinance No. 171418, effective July 23, 1997.)

3.100.041 Contracts with City.

(Added by Ordinance No. 171418, effective July 23, 1997.)

- A. Equal Opportunity Employer.** An “Equal Employment Opportunity Employer” (“EEO Employer”) is one who does not engage in the discrimination prohibited by

Section 3.100.005 of this Code and who is certified by the Bureau of Purchases as an EEO Employer.

- B. Contracts with EEO Employers.** The City has a compelling governmental interest to ensure that it is neither an active nor passive participant in legally prohibited discrimination. Therefore, the City will award contracts only to EEO Employers and will require that any subcontract to such contract be awarded to an EEO Employer. Any person, vendor, contractor, or entity of any type must be certified as an EEO Employer in order to be eligible to be awarded any contract from the City, unless the amount of all their contracts with the City total less than \$2,500 in any single fiscal year or unless the contractor has been exempted from such requirements as determined by the Bureau of Purchases. As used in the Code provisions regarding EEO Employers, the term “contractor” shall include all persons, contractors, vendors and entities who are required to obtain certification. In addition, all persons, vendors or entities that wish to be subcontractors on City awarded contracts shall be certified as EEO Employers unless the total of their subcontracts is less than \$2,500 in any single fiscal year or unless the subcontractor has been exempted from such requirements as determined by the Bureau of Purchases.
- C. Contracts Voidable.** Any contract between the City and a contractor who is not EEO certified or exempt from EEO certification requirements is voidable at the option of the City, regardless of whether the contractor was EEO certified when the contract was awarded or executed. Similarly, a contract is voidable if the contractor subcontracts a portion of the work to a subcontractor or supplier that is not EEO certified or exempt from EEO certification requirements.

3.100.042 Certification of Contractors.

(Added by Ordinance No. 171418, effective July 23, 1997.) The Bureau of Purchases is delegated the authority to adopt rules and regulations to establish criteria for certification, conditional certification, decertification, revocation, suspension and denial of EEO status to Contractors and Subcontractors, to administratively implement this program, to investigate complaints of prohibited discrimination, to conduct compliance reviews, and to establish rules of procedure it deems necessary in order to discharge its duties.

3.100.043 Information Required.

(Added by Ordinance No. 171418, effective July 23, 1997.) Contractors and Subcontractors shall provide all information requested by the Bureau to assist it in performing its duties under Section 3.100.042 of this Code.

3.100.044 Compliance Review.

(Added by Ordinance No. 171418, effective July 23, 1997.) If the Bureau of Purchases receives a complaint filed by any person or entity that alleges prohibited discrimination by a Contractor or Subcontractor, or when information comes into its possession indicating that a Contractor or Subcontractor may have engaged in prohibited discrimination, the

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Bureau may conduct a Compliance Review to determine whether the complaint or the information is correct. The purpose of the Compliance Review is to determine whether an EEO Certification should be revoked or suspended or whether a request for certification or recertification should be denied.

3.100.045 Denial, Suspension, Revocation.

(Added by Ordinance No. 171418, effective July 23, 1997)

- A.** Actions by Bureau. The Bureau may deny, suspend or revoke an EEO certification of the contractor or subcontractor if:
- 1.** Employs a workforce that shows underutilization of minorities and women, as reflected by their availability in the workforce, and thereafter fails to take positive steps to diversify its workforce after notification from the Bureau that such steps are required to maintain the EEO certification. Underutilization determinations shall be based on federal Title VII standards including the “Four-Fifths Rule” and “Manifest Imbalance” concepts;
 - 2.** Engages in discrimination prohibited by state, federal or local law;
 - 3.** Refuses to provide information to the Bureau of Purchases to determine whether it should be EEO certified or recertified;
 - 4.** Refuses to provide information when the Bureau is conducting a Compliance Review;
 - 5.** Intentionally provides false information to the Bureau in regard to its EEO certification or in response to the Bureau’s request for information; or
 - 6.** Intentionally employs subcontractors that are not EEO certified.
- B.** Appeal. EEO certification that has been denied, suspended or revoked may be appealed to the City Council by filing a written notice with the City Auditor within 10 days after the date of denial, suspension, or revocation. Action on such appeal shall be as directed by the City Council.
- C.** Enforcement. If no appeal to the City Council is filed within the time allowed, or if the appeal is denied by the City Council, the decision of the Bureau immediately shall go into effect.

3.100.050 Nondiscrimination in Contracting.

(Added by Ordinance No. 180077, effective May 19, 2006)

3.100.051 Policy regarding Benefits.

(Added by Ordinance No. 180077, effective May 19, 2006) It is the City's intent, through its contracting practices outlined herein, to spend public money through its contracts to equalize, to the extent possible, the total benefits between similarly situated employees with spouses and employees with domestic partners.

3.100.052 Definitions.

(Added by Ordinance No. 180077, effective May 19, 2006) As used in this Chapter unless the context requires otherwise:

- A. "Bureau" means the Bureau of Purchases.
- B. "Contract" means all formal solicitation contracts for Public Improvements and Construction Services authorized and executed pursuant to PCC Chapter 5.34, and all formal solicitation contracts for Goods and Services authorized and executed pursuant to PCC Chapter 5.33 and all formal solicitation contracts for Professional, Technical and Expert services (PTE) authorized and executed pursuant to PCC Chapter 5.68.
- C. "Director" or "Purchasing Agent" means the Director of the Bureau of Purchases or that person to whom those duties have been properly delegated.
- D. "Domestic Partner" means any person who is registered with his or her employer as a domestic partner, or, in the absence of an employer-provided registry, is registered as a domestic partner with a governmental body pursuant to state or local law authorizing such registration and who is in fact a current domestic partner with the person with whom that person was registered. Any internal employer registry of domestic partnership must comply with criteria for domestic partnerships specified by rule by the Bureau.
- E. "Employee benefits" means any plan, program or policy provided by an employer to its employees as part of the employer's total compensation package. This includes but is not limited to the following types of benefits: bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefits given to employees, provided that it does not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state law.

3.100.053 Discrimination in the provision of benefits prohibited.

(Added by Ordinance No. 180077, effective May 19, 2006)

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- A.** No contractor on a City contract shall discriminate by policy or practice in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse, subject to the following exceptions:
- 1.** In the event that the contractor's actual cost of providing a particular benefit for the domestic partner of an employee exceeds that of providing it for the spouse of an employee, or the contractor's actual cost of providing a particular benefit for the spouse of an employee exceeds that of providing it for the domestic partner of an employee, the contractor shall not be deemed to discriminate in the provision of employee benefits if the contractor conditions providing such benefit upon the employee agreeing to pay the excess costs.
 - 2.** The contractor shall not be deemed to discriminate in the provision of employee benefits if, despite taking reasonable measures to do so, the contractor is unable to extend a particular employee benefit to domestic partners, so long as the contractor provides the employee with a cash equivalent.
- B.** Other options for compliance allowed. Provided that a contractor does not discriminate in the provision of benefits between employees with spouses and employees with domestic partners, a contractor may:
- 1.** Elect to provide benefits to individuals in addition to employees' spouses and employees' domestic partners;
 - 2.** Elect to provide benefits in a manner unrelated to spousal or domestic partner status; or
 - 3.** Provide benefits neither to employees' spouses nor to employees' domestic partners.
- C.** Requirements inapplicable under certain conditions. The Director may waive the requirements of this chapter where it is found not to be in the best interest of the City. Examples of situations that require waiving the requirements of this chapter include but are not limited to:
- 1.** Award of a contract or amendment is necessary to respond to an emergency;
 - 2.** No compliant contractors are capable of providing goods or services that respond to the City's requirements;
 - 3.** The contractor is a public entity;
 - 4.** The requirements are inconsistent with a grant, subvention or agreement with a public agency;

- 5.** The City is purchasing through a cooperative or joint purchasing agreement;
- D.** Requests for waivers of the terms of this Chapter are to be submitted to the Bureau of Purchases in a manner prescribed by the Bureau. Decisions by the Bureau to issue or deny waivers are final.
- E.** The Director may reject an entity's bid or proposal, or terminate a contract, if the Director determines that the entity was set up, or is being used, for the purpose of evading the intent of this Chapter.
- F.** The City shall not execute a contract with a contractor unless such contractor has agreed not to discriminate in the provision of employee benefits as provided for in this chapter.
- G.** All contracts awarded by the City shall contain provisions developed by the Bureau of Purchases prohibiting discrimination in the provision of employee benefits, including provisions containing appropriate remedies for the breach thereof as prescribed by Section 3.100.054, except as exempted by this chapter or rule.

3.100.054 Limitations.

(Added by Ordinance No. 180077, effective May 19, 2006) The requirements of this Chapter only shall apply to those portions of a contractor's operations that occur:

- A.** Within the City;
- B.** On real property outside of the City if the property is owned by the City or if the City has a right to occupy the property, and if the contractor's presence at that location is connected to a contract with the City; and
- C.** Elsewhere in the United States where work related to a City contract is being performed.

The requirements of this Chapter shall not apply to subcontracts or subcontractors of any contract or contractor.

3.100.055 Powers and duties of the Director.

(Added by Ordinance No. 180077, effective May 19, 2006) The Director of the Bureau of Purchases shall have the power to:

- A.** Adopt rules and regulations, in accordance with this chapter and the Administrative Code of The City of Portland (PCC 3.02), establishing standards and procedures for effectively carrying out this chapter;
- B.** Examine contractor's benefit programs covered by this chapter;
- C.** Allow for remedial action after a finding of non-compliance, as specified by rule.

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- D.** Determine and impose appropriate sanctions and/or liquidated damages for violation of this chapter by contractors including, but are not limited to:
 - 1.** Disqualification of the contractor from bidding on or being awarded a City contract for a period of up to 3 years; and
 - 2.** Contractual remedies, including, but not limited to, termination of the contract.
- E.** Impose other appropriate contractual and civil remedies and sanctions for violations of this chapter;
- F.** Perform such other duties as may be required by ordinance or which are necessary to implement the purposes of this chapter.

3.100.056 Severability of Provisions.

(Added by Ordinance No. 180077, effective May 19, 2006) If any part or provision of this Chapter, or application thereof to any person or circumstance, is held invalid, the remainder of this Chapter and the application of the provision or part thereof, to other persons not similarly situated or to other circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Chapter are severable.

3.100.060 Grant Equal Opportunity Compliance Program.

3.100.061 Definitions.

(Amended by Ordinance No. 150738, effective December 13, 1980.) As used in this Section:

- A.** “Equal Opportunity” or “EO” means the concepts and practice of nondiscrimination on the basis of race, religion, color, national origin, sex, age or handicap in employment, purchasing, contracting, or utilization of firms or individuals on the basis of demographics as may be prescribed by grants awarded to the City of Portland by other governmental agencies.

3.100.062 Purpose.

(Amended by Ordinance No. 150738, effective December 13, 1980.) The purpose of the Grant Equal Opportunity Compliance Program is:

- A.** To provide a uniform and consistent review of all equal opportunity and labor standard requirements associated with grants from other governmental agencies to the City of Portland.
- B.** To establish guidelines, instructions, uniform reporting formats, related administrative support, and assistance necessary to comply with grant equal opportunity requirements.

- C. To provide a single, initial contact for grantor agencies and others seeking information about, or contact with, grantee bureaus or offices on EO matters.

3.100.063 Responsibility.

(Amended by Ordinance No. 150738, effective December 13, 1980.) Affected City agencies shall have responsibilities under this Section as follows:

- A. Federal Grants Coordinator shall submit all grant applications to the Contract and Grants Compliance Division for determination of equal opportunity requirements. No grant application shall be submitted to the City Council unless the Contract and Grants Compliance Division has reviewed the applicable equal opportunity requirements and obligations.

Following the award of any grant, the Federal Grants Coordinator shall provide the Contract and Grants Compliance Division with copies of the grant and applicable related documents.

- B. Contract and Grants Compliance Division shall serve as the point of contact for all communications relating to grant equal opportunity compliance, and shall review all grants as follows:

- 1. Pre-Application. Before any grant application is submitted to the grantor agency, the equal opportunity provisions shall be reviewed to determine compliance requirements. A report of such review shall be submitted to the Federal Grants Coordinator.
- 2. Post Award. Immediately after the award of any grant, the Contract and Grants Compliance Division shall advise the grantee bureau or office of applicable requirements and provide guidelines, instructions, forms, and assistance, as required to assist the bureau or office to implement compliance.

- C. Grantee Bureaus or Offices. Shall be fully responsible for compliance with all equal opportunity requirements imposed by applicable grants. In the discharge of such responsibility, grantee bureaus or offices shall cooperate fully with the Contract and Grants Compliance Division including, but not limited to, accumulation of applicable data, preparation of suitable records, and submission of such records and forms as may be required.

3.100.064 Compliance Monitoring.

(Amended by Ordinance No. 150738, effective December 13, 1980.) The Contract and Grants Compliance Division shall monitor the program at appropriate intervals to assure compliance with requirements. Where difficulties are noted, recommendations shall be made to the appropriate bureau, office supervisor or project manager.

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3.100.065 Rules and Regulations.

(Amended by Ordinance No. 150738, effective December 13, 1980.) The Contract and Grants Compliance Division shall establish and maintain suitable rules and regulations for administration of the Grant Equal Opportunity Compliance Program.

3.100.080 Minority/Female Purchasing Program.

(Amended by Ordinance No. 150738, effective December 13, 1980.)

3.100.081 Definitions.

(Amended by Ordinance No. 150738, effective December 13, 1980.) As used in this Section:

- A. “Minority” or “minorities”** means Blacks, Hispanic Americans, Pacific Islanders, Asian Americans, American Indians, Aleuts and Eskimos.
- B. “Members of Other Groups” (MOG)** means members of other groups or other individuals than those specified in A above, found to be economically and socially disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)). These MOGs shall also be eligible to participate in this program.
- C. “Minority business enterprise” (MBE)** means a business at least 50 percent of which is owned by minorities or, in the case of publicly owned business, at least 51 percent of the stock of which is owned by minorities and whose management and daily business operations are controlled by one or more such individuals.
- D. “Female business enterprise” (FBE)** means a business at least 50 percent of which is owned by females or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by females and whose management and daily business operations are controlled by one or more individuals.

3.100.082 Purpose.

(Amended by Ordinance No. 150738, effective December 13, 1980.) The purpose of the Minority/Female Purchasing Program is to encourage and promote the sale of goods and/or services by minority and female business enterprises to the City of Portland. When such services are provided by federal funds encouraging or requiring MBE/FBE participation, the City shall take necessary action to comply with federal laws, regulations and contracting requirements.

3.100.083 Liaison Officer.

(Added by Ordinance No. 150738, effective December 13, 1980.) The designated Liaison Officer shall be the Purchasing Agent, who will be responsible for the day to day management of all elements of the program.

3.100.084 Minority/Female Business Enterprise List.

(Amended by Ordinance Nos. 150738 and 155018, effective August 25, 1983.) The Contract and Grants Compliance Division of the Office of Fiscal Administration shall establish and maintain a current list of minority/female business enterprises, with indications of product and service areas. Such lists shall be consulted when requests for quotations for supply of goods and/or services are received.

3.100.085 Advertising.

(Amended by Ordinance Nos. 150738 and 155018, effective August 25, 1983.) The Purchasing Agent shall advertise periodically in local publications (including the Daily Journal of Commerce, female and minority publications) that the City encourages bidding by MBEs and FBEs and that the City will assist such firms to understand and participate in formal bidding process.

3.100.086 Minority/Female Purchasing Associations.

(Amended by Ordinance Nos. 150738 and 155018, effective August 25, 1983.) The Purchasing Grants Compliance Division shall develop and implement certification and review criteria for authorization of eligible MBE/FBE participants. Such certification shall be no less often than annually.

3.100.089 Rules and Regulations.

(Amended by Ordinance Nos. 150738 and 155018, effective August 25, 1983.) The Purchasing Agent (Bureau of Financial Affairs) shall establish and maintain rules and regulations for administration of the Minority/Female Purchasing Program.

3.100.090 Metropolitan Human Relations Commission Review and Evaluation.

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

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CHAPTER 3.101 - PROPERTY TAX EXEMPTION FOR LOW INCOME HOUSING HELD BY CHARITABLE NON-PROFIT ORGANIZATIONS

(Chapter added by Ordinance No. 157768, effective
August 29, 1985.)

Sections:

- 3.101.010 Definitions.
- 3.101.020 Eligible Organizations.
- 3.101.030 Eligible Property.
- 3.101.040 Application Procedure.
- 3.101.050 Review of Application.
- 3.101.060 Annual Application Renewal.
- 3.101.070 Assessment Exemption.
- 3.101.080 Termination.
- 3.101.090 Implementation.

3.101.010 Definitions.

(Amended by Ordinance Nos. 167356, 182671, 185043 and 187660, effective April 6, 2016.) As used in this Chapter:

A. “Low income” means:

1. For the initial year that persons occupy property for which an application for exemption is filed under ORS 307.545, income at or below 60 percent of the area median income as determined by the State Housing Council based on information from the United States Department of Housing and Urban Development; and
2. For every subsequent consecutive year that the persons occupy the property, income at or below 80 percent of the area median income as determined by the State Housing Council based on information from the United States Department of Housing and Urban Development.

B. “Eligible property” means land and improvements thereon:

1. Which are either single or multi-family residential units intended for the exclusive occupancy by low-income persons during the tax year for which approval of the application has been granted or properties which are not residential units but which will become residential units through rehabilitation improvements or new construction to be occupied by low-income persons;

2. Which are owned, being purchased, or held under leasehold interest in the property which meet the standards of Subsections 3.101.030 B. 1.-2. by a charitable organization and non-profit corporation for the purpose of occupancy by low-income persons as described in 26 U.S.C. Section 501 (c) (3) or (4) as amended before December 1, 1984, pursuant to ORS 307.540 to 307.548; and
3. Which the owner or leaseholder has met all eligibility requirements and made all required agreements described in this Chapter.

3.101.020 Eligible Organizations.

(Amended by Ordinance No. 185043, effective December 7, 2011.) “Eligible organizations” means only charitable non-profit corporations certified by the Internal Revenue Service of the federal government as a 501 (c) (3) or (4) organization which also provides housing for occupancy by low-income persons as defined by Section 3.101.010 in this Chapter. No other types of non-profit or for-profit organizations are eligible.

3.101.030 Eligible Property.

(Amended by Ordinance Nos. 167356 and 185043, effective December 7, 2011.) As used in this Chapter:

- A. “Eligible property” as defined in Subsections 3.101.010 B. 1.-3. which meets all of the following criteria, pursuant to ORS 307.541, and other conditions of this Chapter shall be exempt from taxation:
 1. The property is owned or being purchased by a corporation that is exempt from income taxes under 26 U.S.C. Section 501 (c) (3) or (4) as amended before December 1, 1984, pursuant to ORS 307.541(a);
 2. Upon liquidation, the assets of the corporation are required to be applied first in payment of all outstanding obligations, and the balance remaining, in cash and in kind, to be distributed to corporations exempt from taxation and operated exclusively for religious, charitable, scientific, literary, or educational purposes or to the State of Oregon;
 3. The property is occupied by low-income persons as defined by ORS 307.540(2) or held for future development for low income housing pursuant to ORS 307.541(1)(c)(B).
 4. The property or portion of the property receiving the exemption is actually and exclusively used for the purposes described in 26 U.S.C. Section 501 (c) (3) or (4) as amended before December 1, 1984.
 5. The exemption has been approved as provided in Section 3.101.040 and 3.101.050 of this Chapter.

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- B.** For the purposes of this Chapter, pursuant to ORS 307.541(2), a corporation that has only a leasehold interest in property is deemed to be a purchaser of that property if:
- 1.** The corporation is obligated under the terms of the lease to pay the ad valorem taxes on the real and personal property used in this activity on that property; or
 - 2.** The rent payable by the corporation has been established to reflect the savings resulting from the exemption from taxation.
- C.** Pursuant to ORS 307.541(3), a partnership shall be treated the same as a corporation if the corporation is a general partner of the partnership and responsible for the day-to-day operation of the property that is the subject of the exemption.

3.101.040 Application Procedure.

(Amended by Ordinance Nos. 167356, 182671, 185043 and 187660, effective April 6, 2016.)

- A.** To qualify for the exemption the corporation shall file an application for exemption with the Portland Housing Bureau acting on behalf of the City of Portland for each assessment the year the corporation wants the exemption. The application shall be filed on or before March 1 of the assessment year for which the exemption is applied for, except that when the property designated is acquired after March 1 and before July 1, the claim for that year shall be filed within 30 days after the date of acquisition. The application shall include the following information:
- 1.** The applicant's name, address, and telephone number;
 - 2.** The assessor's property account number for each site;
 - 3.** The number of units and the exempted amount of each property being applied for under this Chapter;
 - 4.** A description of the property for which the exemption is requested;
 - 5.** A description of the charitable purpose of the project and whether all or a portion of the property is being used for that purpose;
 - 6.** A description of how the tax exemption will benefit project residents; and
 - 7.** A description of how the benefits in the case of leasehold interest in the eligible property accrue to the non-profit and its resident tenants;
 - 8.** A certification of income levels of low-income occupants;

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9. A declaration that the corporation has been granted an exemption from income taxes under 26 U.S.C. Section 501 (c) (3) or (4) as amended before December 1, 1984;
 10. A description of the development of the property if the property is being held for future low income housing development; and
 11. Any other information required by state law or local law or otherwise which is reasonably necessary to effectuate the purposes of this Chapter at the time the application is submitted.
- B.** The application shall include the following statements:
1. That the applicant is aware of all requirements for property tax exemption imposed by this Chapter;
 2. That the applicant's property qualified or, upon completion of the rehabilitation improvements and subsequent occupancy by low income, will qualify for exemption at the time of application approval or within 30 days of the March 1 application deadline;
 3. That the applicant acknowledges responsibility for compliance with the Code of the City of Portland regardless of whether the applicant obtains the exemption provided by this Chapter.
 4. The applicant shall furnish other information which is reasonably necessary to fulfill the objectives of this Chapter.
- C.** The applicant shall verify the information in the application, in accordance with Subsections 3.101.040 B. 1. through 3. above, by oath or affirmation.
- D.** Applicants for an exemption under this Chapter shall pay fees for an initial application and any renewals as set by the Portland Housing Bureau. The Portland Housing Bureau shall pay the County Assessor any reasonable cost incurred to process the exemption onto the tax rolls. In addition to paying the basic fee, the applicant may be required to pay other reasonable costs, which are incurred by the Portland Housing Bureau or the County Assessor in processing the application. The Portland Housing Bureau shall collect the additional payment, if any, and pay itself, the County Assessor, or any other City bureau an amount equal to the additional costs incurred.

3.101.050 Review of Application.

(Amended by Ordinance Nos. 167356, 182671, 185043 and 187660, effective April 6, 2016.)

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- A.** Within 30 days after the March 1 deadline for the application and payment of the application fee, the Portland Housing Bureau shall approve or deny the application. The application shall be approved if the Portland Housing Bureau finds that the property is “eligible property” within the meaning of the paragraphs 1. through 3. of Subsection B. of Section 3.101.010 of this Chapter, and that the applicant has submitted the application and paid the fees pursuant to Section 3.101.040 of this Chapter.
- B.** If the application is approved, the Portland Housing Bureau shall send written notice of approval to the applicant.
- C.** The Portland Housing Bureau shall file a certified list of approved properties with the County Assessor on or before April 1.
- D.** If the application is denied, the Portland Housing Bureau shall state in writing the reasons for denial and send the notice to the applicant at his or her last known address within 10 days after the denial. The Portland Housing Bureau shall retain that portion of the application fee which is attributable to its own administrative costs and shall refund the balance to the applicant.
- E.** Upon denial by the Portland Housing Bureau, an applicant may appeal the denial to the City Council within 30 days after receipt of the notice of denial. Appeal from the decision of the City Council may be taken as provided by law.
- F.** The application shall be assigned an application and receipt number.

3.101.060 Annual Application Renewal.

(Amended by Ordinance Nos. 167356, 178286, 185043 and 187660, effective April 6, 2016.)

- A.** Applicants for property tax exemption must apply each year no later than April 1 in order to be qualified for property tax exemption for the upcoming tax year.
- B.** The annual application renewal fee shall be set by the Portland Housing Bureau.

3.101.070 Assessment Exemption.

(Amended by Ordinance Nos. 167356, 178286 and 185043, effective December 7, 2011.)

- A.** Property for which an application for a property tax exemption has been approved under the provisions of this Chapter shall be exempt from ad valorem taxation for 1 year beginning July 1 of the tax year immediately following approval of the exemption, or when, pursuant to ORS 307.330, the property would have gone on the tax rolls in the absence of the exemption provided for in this Chapter. The exemption provided in this Section shall be in addition to any other exemption provided by law.

- B.** Applications for property tax exemption under this Chapter shall apply to and may be approved for assessment years beginning on or after January 1, 1985, but no later than January 1, 2027.
- C.** The exemption as provided by this Chapter shall apply to the tax levy of all taxing districts in the City of Portland in which property certified for exemption is located as long as the City of Portland has achieved the approval from such taxing districts whose governing boards agree to the policy of exemption, equal to 51 percent or more of the total combined rate of taxation on the property certified for exemption.

3.101.080 Termination.

(Amended by Ordinance Nos. 167356, 182671 and 185043, effective December 7, 2011.)

- A.** If, after a certificate of qualification approving the exemption has been filed with the County Assessor, the Portland Housing Bureau finds that non-compliance has occurred or that any provision of this Chapter is not being complied with, the Portland Housing Bureau shall give notice in writing to the owner, mailed to the owner's last-known address and to every known lender, by mailing the notice to the last-known address of every known lender, of the proposed termination of the exemption. The notice shall state the reasons for the proposed termination of the exemption and require the owner to appear before City Council to show cause at a specified time, not less than 20 days after mailing of the notice, why the exemption should not be terminated.
- B.** If the owner does not appear or if he or she appears and fails to show cause why the exemption should not be terminated, the Portland Housing Bureau shall notify every known lender and shall allow any lender not less than 30 days after the date the notice of the failure to appear and show cause is mailed to cure any noncompliance or to provide adequate assurance that all noncompliance shall be remedied.
- C.** If the owner fails to appear and show cause why the exemption should not be terminated and the lender fails to cure or give adequate assurance of the cure of any noncompliance, City Council shall adopt an ordinance or resolution stating its findings that terminate the exemption. A copy of the ordinance or resolution shall be filed with the County Assessor and a copy sent to the owner at the owner's last-known address and to the lender at the last-known address of the lender, within 10 days after its adoption.
- D.** Upon final adjudication, the county officials having possession of the assessment and tax rolls shall correct the rolls in the manner provided for omitted property under ORS 311.216 to 311.232, to provide for the assessment and taxation of any value not included in the valuation of the property during the period of exemption prior to termination by City Council or by a court, in accordance with the findings of City Council or the court as the assessment year in which the exemption is to

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terminate. The County Assessor shall make the valuation of the property necessary to permit correction of the rolls, and the owner may appeal the valuation in the manner provided under ORS 311.216 to 311.232. Where there has been a failure to comply, as provided in Subsection A of this Section, the property shall be revalued beginning July 1 of the calendar year in which the non-compliance first occurred. Any additional taxes becoming due shall be payable without interest if paid in the period prior to the 16th day of the months next following the month of correction. If not paid within such period, the additional taxes shall thereafter be considered delinquent on the date they would normally have become delinquent if the time extended on the roll or rolls in the year or years for which the correction was made.

3.101.090 Implementation.

(Amended by Ordinance Nos. 167356, 182671, 185043 and 187660, effective April 6, 2016.) The Portland Housing Bureau shall establish procedures and prepare forms for immediate implementation and administration of this Chapter in order to accept applications prior to the March 1 filing deadline imposed by ORS 307.545.

**CHAPTER 3.102 - PROPERTY TAX
EXEMPTION FOR NEW CONSTRUCTION
OF SINGLE-UNIT HOUSING IN
HOMEBUYER OPPORTUNITY AREAS**

(Chapter replaced by Ordinance No. 185477,
effective August 1, 2012.)

Sections:

- 3.102.010 Purpose.
- 3.102.020 Definitions.
- 3.102.030 Benefit of the Exemption; Annual Maximum Number of Exemptions.
- 3.102.040 Exemption Requirements.
- 3.102.050 Application Review and Approval.
- 3.102.060 Compliance.
- 3.102.080 Termination of the Exemption.
- 3.102.090 Implementation.

3.102.010 Purpose.

- A. The City of Portland adopts the provisions of Oregon Revised Statutes 307.651 through 307.687, and administers a property tax exemption program for new construction of single-unit housing authorized under those provisions.
- B. In addition to meeting the legislative goals set forth in ORS 307.654, the program also seeks to accomplish the following additional core goals:
 - 1. Stimulate the construction of affordable housing and other public benefits where such housing or benefits may not otherwise be made available.
 - 2. Leverage market activities to advance housing and economic prosperity goals by aligning those activities with the goals of the Portland Plan and the Portland Housing Bureau's Strategic Plan.
 - 3. Provide transparent and accountable stewardship of public investments.

3.102.020 Definitions.

(Amended by Ordinance No. 186700, effective July 1, 2014.) As used in this Chapter:

- A. **“Administrative Rules”** means the tax exemption program administrative rules developed by the Portland Housing Bureau and approved through City Council which set forth the program requirements, processes and procedures.
- B. **“Applicant”** means the individual who or entity which owns the property and is submitting an application for the tax exemption program and is legally bound to the

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terms and conditions of an approved tax exemption, including but not limited to any compliance requirements under this Chapter.

- C. **“Single-unit housing”** has the meaning set forth in ORS 307.651(4).

3.102.030 Benefit of the Exemption; Annual Maximum Number of Exemptions.

- A. Single-unit housing that qualifies for an exemption under this Chapter is exempt from property taxes to the extent provided under ORS 307.664 and the Administrative Rules.
- B. However, the Portland Housing Bureau may, upon action by City Council on an annual basis, determine a limit on the number of applications accepted under this Chapter.

3.102.040 Exemption Requirements.

(Amended by Ordinance No. 186700, effective July 1, 2014.) In order to be considered for an exemption under this Chapter, an applicant must verify by oath or affirmation in the application that the proposed construction will meet the following requirements and public benefits upon completion of construction:

- A. Property
1. Single-unit housing must be located within the City of Portland;
 2. Each qualified dwelling unit in the single-unit housing must have a market value at the time of completion of no more than the amount determined annually by Portland Housing Bureau according to ORS 307.651(3) and 307.661;
 3. Construction of the single-unit housing must be completed according to ORS 307.681(1), except as provided in ORS 307.374;
 4. Each qualified dwelling unit must sell to the initial homebuyer within two years of activation of the exemption;
 5. Each qualified dwelling unit must have at least three bedrooms unless built within an approved transit-oriented area as determined by the Portland Bureau of Planning and Sustainability and included on the map defining eligibility areas where two bedroom homes are allowed; and
 6. The single-unit housing must comply with all other requirements under the Code of the City of Portland.
- B. Affordability

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1. Each dwelling unit of the single-unit housing must be sold to a household with an annual gross household income not greater than one hundred percent of the area median income for a family of four as determined annually for the Portland Metropolitan Area by the United States Department of Housing and Urban Development, which income may be adjusted upward for households with more than four persons.
2. For the purposes of this program, household income is the annual gross income of the titleholder who will occupy the dwelling unit.

C. Owner-Occupancy

1. Once sold to the initial buyer, the dwelling unit shall remain owner-occupied as the principal residence of the titleholder receiving the tax exemption during the tax exemption period;
2. Hardship exception to the owner-occupancy requirement may be granted by the Portland Housing Bureau in accordance with its policies. Such hardship exceptions may include, but are not limited to, the following circumstances:
 - a. Active military duty outside of the area;
 - b. Temporary relocation to care for an ill or dying family member; or
 - c. Temporary relocation caused by an employer; and
3. The single-unit housing may not be rented at any time during the exemption period.

D. Equity

1. Applicant must acknowledge familiarity with Portland Housing Bureau's Minority, Women, and Emerging Small Businesses (MWESB) guidelines and contracting opportunity goals, and report on past contracting relationships.
2. Applicant must acknowledge awareness and understanding of Portland Housing Bureau's Guiding Principles on Equity and Social Justice and Strategic Priority of Helping Portlanders from Communities of Color buy a home and agree to partner with Portland Housing Bureau to assure that communities of color are aware of properties for sale with exemptions.

- E. Green Building.** The new construction must be built to meet healthy and resource efficient environmental building standards.

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- F.** Application Fee. The applicant must pay an application fee determined by the Portland Housing Bureau as described in ORS 307.674 (5).

3.102.050 Application Review and Approval.

- A.** The Portland Housing Bureau will review and approve or deny applications consistent with ORS 307.667 through 307.674.
- B.** Applicants must apply for the tax exemption prior to issuance of the building permit for the single-unit housing.
- C.** If construction of the single-unit housing is not completed within the timeframe described in ORS 307.674, Portland Housing Bureau may extend the deadline as consistent with ORS 307.677.
- D.** The issuance of final building permits shall indicate compliance with the Code of the City of Portland and shall be sufficient to meet the design standards as described in ORS 307.651(4)(a)
- E.** Any exemption under this Chapter must be approved by City Council by resolution, and Portland Housing Bureau will deliver a list of the approved applications to Multnomah County within the timeframe set forth in ORS 307.674.

3.102.060 Compliance.

(Amended by Ordinance Nos. 186700 and 188932, effective June 8, 2018.)

- A.** Upon approval, Portland Housing Bureau will record a notice on title of the property requiring Portland Housing Bureau verification of homebuyer eligibility and owner-occupancy qualification prior to the sale of each property to an initial homebuyer, as well as to subsequent purchasers throughout the duration of the exemption for any HOLTE applications approved after July 1, 2018.
- B.** Single-unit housing which sells to homebuyers who do not meet the affordability or owner occupancy qualifications, will have the tax exemption removed as of the next tax year.
- C.** Single-unit housing not meeting the exemption requirements by selling over the established sale price at initial sale will have the tax exemption terminated according to Section 3.102.080 and require the applicant to repay any exempted taxes consistent with ORS 307.687.

3.102.070 Designation of Homebuyer Opportunity Areas.

(Repealed by Ordinance No. 186700, effective July 1, 2014.)

3.102.080 Termination of the Exemption.

If the Portland Housing Bureau determines that the single-unit housing fails to meet any of the provisions of ORS 307.651 to 307.687 or this Chapter, the Portland Housing Bureau will terminate the exemption consistent with ORS 307.681 through 307.687.

3.102.090 Implementation.

Portland Housing Bureau may adopt, amend and repeal the administrative rules, and establish procedures, and prepare forms for the implementation, administration and compliance monitoring consistent with the provisions of this Chapter.

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CHAPTER 3.103 - PROPERTY TAX EXEMPTION FOR MULTIPLE-UNIT HOUSING DEVELOPMENT

(Chapter replaced by Ordinance No. 187283,
effective August 5, 2015.)

Sections:

- 3.103.010 Purpose.
- 3.103.020 Definitions.
- 3.103.030 Benefit of the Exemption; Annual Maximum Exemption Amount.
- 3.103.040 Program Requirements.
- 3.103.050 Application Review.
- 3.103.060 Application Approval.
- 3.103.070 Rental Project Compliance.
- 3.103.080 For-Sale Unit Compliance.
- 3.103.100 Termination of the Exemption.
- 3.103.110 Implementation.

3.103.010 Purpose.

- A.** The City of Portland adopts the provisions of Oregon Revised Statutes 307.600 through 307.637, and administers a property tax exemption program for multiple-unit housing development authorized under those provisions.
- B.** In addition to meeting the legislative goals set forth in ORS 307.600, the program also seeks to accomplish the following additional core goals:
 - 1.** Stimulate the inclusion of affordable housing where it may not otherwise be made available.
 - 2.** Leverage market activities to advance housing and economic prosperity goals by aligning those activities with the goals of the Portland Plan and the Portland Housing Bureau's Strategic Plan.
 - 3.** Provide transparent and accountable stewardship of public investments.

3.103.020 Definitions.

(Amended by Ordinance No. 188163, effective February 1, 2017.) As used in this Chapter:

- A.** “**Administrative Rules**” means the tax exemption program administrative rules developed by the Portland Housing Bureau and approved through City Council which set forth the program requirements, processes, and procedures.

- B.** “**Applicant**” means the individual or entity who is either the owner or a representative of the owner who is submitting an application for the tax exemption program.
- C.** “**Regulatory Agreement**” means a low-income housing assistance contract recorded agreement between the owner and the Portland Housing Bureau stating the approval and compliance criteria of a project’s tax exemption.
- D.** “**Multiple-unit housing**” has the meaning set forth in ORS 307.603(5).
- E.** “**Owner**” means the individual or entity holding title to the exempt project and is legally bound to the terms and conditions of an approved tax exemption, including but not limited to any Regulatory Agreement and any compliance requirements under this Chapter.
- F.** “**Project**” means property on which any multiple-unit housing is located, and all buildings, structures, fixtures, equipment and other improvements now or hereafter constructed or located upon the property.

3.103.030 Benefit of the Exemption; Annual Maximum Exemption Amount.

- A.** Multiple-unit housing that qualifies for an exemption under this Chapter is exempt from property taxes to the extent provided under ORS 307.612 and the Administrative Rules.
- B.** However, the maximum amount of estimated foregone tax revenue provided as a benefit of the exemption under this Chapter may not exceed the amount approved by Council.

3.103.040 Program Requirements.

(Amended by Ordinance Nos. 188163 and 189302, effective December 12, 2018.) In order to be considered for an exemption under this Chapter, an applicant must verify by oath or affirmation in the application that the project meets the following program requirements as further described in the program Administrative Rules:

- A.** Financial need for the exemption
 - 1.** Rental projects. The project would not include low to moderate-income units because it would not be financially feasible without the benefit provided by the property tax exemption.
 - 2.** For-sale projects. The units receiving tax exemption will be sold to buyers meeting the affordability requirements contained in this Section.
- B.** Property eligibility

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1. Projects must be located within the taxing jurisdictions of the City of Portland and Multnomah County.
2. Projects must conform to City of Portland's zoning and density requirements.
3. Projects must include 20 or more units.

C. Affordability

1. For rental projects, for applications received on or before December 31, 2018, during the term of the exemption, a minimum of 15 percent of the number of units or bedrooms must be affordable to households earning 80 percent or less of the area median family income, or a minimum of 8 percent of the number of units or bedrooms must be affordable to households earning 60 percent or less of the area median family income. For applications received after December 31, 2020, during the term of the exemption, a minimum of 20 percent of the number of units or bedrooms must be affordable to households earning 80 percent or less of the area median family income, or a minimum of 10 percent of the number of units or bedrooms must be affordable to households earning 60 percent or less of the area median family income. The units meeting the affordability requirements must match the unit mix in the project as a whole in terms of number of bedrooms.
2. For projects containing for-sale units, those units receiving the exemption must not exceed the maximum price established under City Code Section 3.102.040 at initial sale and must sell to an initial homebuyer who income qualifies and occupies the unit as established under City Code Section 3.102.040. During the term of the exemption, the unit must be occupied by a homebuyer as established under City Code Section 3.102.040.

- D.** Accessibility. At least 5 percent of the affordable units in the project must be built to be Type A as defined in the Oregon Structural Specialty Code.

3.103.050 Application Review.

- A.** The Portland Housing Bureau will review and approve or deny applications consistent with ORS 307.621.
- B.** Applications for tax exemption must be submitted and approved prior to issuance of the project's building permit.
- C.** Applications must include an application processing fee, to be established annually by the Portland Housing Bureau, including the fee to be paid to Multnomah County.

3.103.060 Application Approval.

(Amended by Ordinance No. 188163, effective February 1, 2017.)

- A. Applications will be considered based on the Inclusionary Housing Program requirements as per City Code Section 30.01.120.
- B. Portland Housing Bureau will take applications to City Council for approval in the form of an ordinance and deliver a list of the approved applications to Multnomah County within the timeframe set forth in ORS 307.621.
- C. If construction of an approved project is not completed or an application for exemption is not received within the timeframe described in ORS 307.637, Portland Housing Bureau may extend the deadline consistent with ORS 307.634.

3.103.070 Rental Project Compliance.

(Amended by Ordinance No. 188163, effective February 1, 2017.)

- A. The owner of a rental project approved for exemption will be required to sign a Regulatory Agreement to be recorded on the title to the property.
- B. During the exemption period, the owner or a representative shall submit annual documentation of tenant income and rents for the affordable units in the project to the Portland Housing Bureau.

3.103.080 For-Sale Unit Compliance.

- A. Approved applicants must execute a document to be recorded on title of the project requiring Portland Housing Bureau verification of homebuyer affordability and owner-occupancy qualification prior to the sale of each for-sale unit to an initial homebuyer.
- B. For-sale units which sell to homebuyers who do not meet the affordability or owner occupancy qualifications at initial sale will have the tax exemption removed as of the next tax year.
- C. For-sale units which sell over the established sale price at initial sale will have the tax exemption terminated according to Section 3.103.100 and require the owner to repay any exempted taxes consistent with ORS 307.631.

3.103.090 Extension of the Exemption for Low Income Housing Projects.

(Repealed by Ordinance No. 188163, effective February 1, 2017.)

3.103.100 Termination of the Exemption.

If the Portland Housing Bureau determines that the project fails to meet any of the provisions of ORS 307.600 to 307.637 or this Chapter, the Portland Housing Bureau will terminate the exemption consistent with ORS 307.627.

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3.103.110 Implementation.

Portland Housing Bureau may adopt, amend and repeal the Administrative Rules, and establish procedures, and prepare forms for the implementation, administration and compliance monitoring consistent with the provisions of this Chapter.

**CHAPTER 3.104 - PROPERTY TAX
EXEMPTION FOR NEW, MULTIPLE-UNIT
HOUSING**

(Chapter repealed by Ordinance No. 185477,
effective August 1, 2012.)

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**CHAPTER 3.105 - BULL RUN ADVISORY
COMMITTEE**

(Chapter added by Ordinance No. 143520; repealed
by Ordinance No. 161853, effective May 27, 1989.)

**CHAPTER 3.106 -
EXPOSITION-RECREATION COMMISSION**

(Chapter added by Ordinance No. 143806, effective
June 15, 1977.)

Sections:

- 3.106.010 Commission Action.
- 3.106.020 Filing Copies of Resolutions with City Auditor.
- 3.106.030 Council Review.
- 3.106.040 Exposition - Recreation Commission Action Not Subject to Council Review.
- 3.106.050 Council Initiation of Exposition - Recreation Commission Action.
- 3.106.060 Amendment, Repeal or Alterations of Resolutions by Council.

3.106.010 Commission Action.

All action by the Exposition - Recreation Commission shall be by resolution adopted in accordance with the Commission's bylaws.

3.106.020 Filing Copies of Resolutions with City Auditor.

Within 5 days after the passage of any resolution, the Exposition - Recreation Commission shall file a copy of the resolution with the City Auditor, who shall maintain a special record of the Exposition - Recreation Commission's resolutions which shall be accessible to the public under like terms as ordinances of the City of Portland. Except as provided in Section 3.106.040, no resolution of the Exposition - Recreation Commission shall become effective until 5:00 p.m. on the 10th day following the filing of a copy thereof with the City Auditor.

3.106.030 Council Review.

Except as provided in Section 3.106.040, resolutions of the Commission shall not become effective, if, within 10 days after the filing by the Exposition - Recreation Commission of a copy of a resolution with the City Auditor, a member of the City Council files a request with the Auditor for City Council review of the Commission action. Upon receipt of a request for City Council review of Commission action, the City Auditor shall forthwith notify the General Manager of the Exposition - Recreation Commission of the request for review and shall deliver to him a copy of the request for review. The Auditor shall place the resolution on the Council agenda for Council review at the next regular Council meeting. In placing the resolution on the Council calendar, the Auditor shall act consistently with the regular filing deadline for Council calendar items established by this Code; provided, the Council may review any Exposition - Recreation Commission resolution as a four-fifths item, or under suspension of Council rules. At the time of requesting Council review of Exposition - Recreation Commission action, the Council member shall state the reason such review is necessary and what action the Council should take on the matters.

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3.106.040 Exposition - Recreation Commission Action Not Subject to Council Review.

(Amended by Ordinance No. 170667, effective October 23, 1997.) Resolutions of the Exposition - Recreation Commission which pertain solely to the following matters shall be effective upon adoption or at such other time as specified by the Commission.

- A.** Scheduling the use of the Exposition - Recreation Commission's buildings and facilities.
- B.** Entering into agreements for the use of the Exposition - Recreation Commission's buildings and facilities, including all of the terms and conditions of such agreements, provided such agreements do not transfer operation, management or control of the Memorial Coliseum.
- C.** Personnel policy or matters of employment, dismissal or disciplining of employees.
- D.** Purchasing supplies, consumables, and services and equipment, in accordance with a budget approved by City Council and in accordance with City Council purchasing procedures.

3.106.050 Council Initiation of Exposition - Recreation Commission Action.

The Council may, by regularly adopted ordinance, take action on behalf of the Commission. A Council member introducing an ordinance pertaining to the Exposition - Recreation Commission on the Council calendar shall, at the time of filing the proposed ordinance with the City Auditor, have a copy of the ordinance delivered to the General Manager of the Exposition - Recreation Commission.

3.106.060 Amendment, Repeal or Alterations of Resolutions by Council.

- A.** Contracts and agreements entered into by the Exposition - Recreation Commission or on behalf of the Commission by employees or agents, within the scope of their authority, shall be binding and effective from the times designated in sections 3.106.030 or 3.106.040, whichever is applicable.
- B.** The Council may, by regularly adopted ordinance, repeal, amend or alter any resolution adopted by the Exposition - Recreation Commission. Any such repeal, amendment or alteration may be made retroactive or prospective in effect but shall not be construed to invalidate any contract or agreements made in accordance with Subsection A of this Section.

3.106.070 Special Services Personnel as Special Police.

(Repealed by Ordinance No. 185569, effective September 28, 2012.)

**CHAPTER 3.107 - WATER QUALITY
ADVISORY COMMITTEE**

(Chapter added by Ordinance No. 161853, effective
May 27, 1989.)

Sections:

- 3.107.010 Created - Appointments.
- 3.107.020 Duties.
- 3.107.030 Meetings.
- 3.107.040 Chairperson.
- 3.107.050 Rules - Quorum.
- 3.107.060 Staff.

3.107.010 Created - Appointment.

(Amended by Ordinance No. 168939, effective June 14, 1995.) There hereby is created the Water Quality Advisory Committee. The Committee shall consist of nine members, appointed by the Commissioner In Charge of the Bureau of Water Works and confirmed by the Council. Appointments shall be for terms of 3 years except that 4 of the initial appointments shall be for terms of 2 years. When a vacancy occurs, the Commissioner In Charge shall appoint and the Council shall confirm a member to fill a new 3-year term. The Commissioner In Charge of the Bureau of Water Works may remove a member from the Committee at any time, subject to approval by the Council. The Commissioner In Charge of the Bureau of Water Works shall appoint members to the Committee with expertise or association in areas such as water quality, water treatment, public health policy, the environmental community, civic and business organizations, major industrial or commercial users, neighborhood associations and the public at large of which at least 3 members shall have relevant technical expertise. Committee members may serve a maximum of two 3-year terms, with the 4 appointees serving the initial terms of 2 years to serve a total maximum of 5 years. Within the maximum service limit of 6 years the Council may extend, for a period of less than 3 years, the terms of committee members who were appointed to serve or who have served the balance of a retiring committee member's term. All members shall serve without compensation from the City.

3.107.020 Duties.

The Committee shall act in an advisory capacity to the City Council through the Commissioner In Charge of the Bureau of Water Works as follows:

- A. The Committee shall have the authority to offer policy advice to the Council and the Bureau of Water Works on issues such as management of the Bull Run Watershed, protection of groundwater quality, and other related water quality issues.
- B. The Committee shall have the authority to issue periodic reports to the Council and the Bureau of Water Works.

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- C.** The Committee shall have the authority to inform the public at large and take public testimony before offering policy advice to the Council and the Bureau of Water Works.

3.107.030 Meetings.

The Committee shall have the authority to conduct public meetings to gather input; the Committee shall provide for notification no less than 5 days prior to the meeting to the general public.

3.107.040 Chairperson.

A chairperson shall be elected annually from among the Committee members by a majority vote of a quorum. The Chairperson shall serve for a period of 1 year. A vacancy in the Chairperson's position shall be filled from among Committee members by majority vote of a quorum as soon as practical after the vacancy occurs.

3.107.050 Rules - Quorum.

The Committee shall establish its own rules and provide procedures for consideration or action on all matters before the Committee. Such rules and procedures may be adopted and amended only upon an affirmative vote of five or more Committee members. Election of officers and regular business shall be passed upon by the majority of a quorum. Not less than five members shall constitute a quorum. Each member shall be entitled to one vote. Provisions shall be made for public participation in Committee meetings.

3.107.060 Staff.

The Committee shall be staffed by personnel from the Bureau of Water Works and such additional staff or consultants as may be deemed necessary by the City Council for the committee to fulfill its responsibilities.

**CHAPTER 3.110 - BUREAU OF
HYDROELECTRIC POWER**

(Chapter added by Ordinance No. 147822, effective
July 9, 1979.)

Sections:

- 3.110.010 Creation and Function.
- 3.110.020 Jurisdiction.

3.110.010 Creation and Function.

(Amended by Ordinance No. 161850, effective May 27, 1989.) There is hereby established a Bureau of Hydroelectric Power. The Bureau shall be administered by a Bureau Manager and shall have such other employees as the Council may provide. The Bureau shall supervise the construction and administer the operation of hydroelectric generating facilities owned by the City. It shall perform the duties and responsibilities required by any Federal Energy Regulatory Commission license and any agreements for the disposition of energy. The Bureau of Hydroelectric Power shall report to the Administrator of the Bureau of Water Works.

3.110.020 Jurisdiction.

The Bureau shall supervise the construction and administer the operation of the City owned hydroelectric power generating facilities.

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**CHAPTER 3.111 - OFFICE OF SUSTAINABLE
DEVELOPMENT**

(Chapter repealed by Ordinance No. 182671,
effective May 15, 2009.)

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**CHAPTER 3.112 - SUSTAINABLE
DEVELOPMENT COMMISSION**

(Chapter repealed by Ordinance No. 184046,
effective September 10, 2010.)

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CHAPTER 3.114 - OFFICE FOR COMMUNITY TECHNOLOGY

(Chapter added by Ordinance No. 149053; amended
by Ordinance Nos. 151338, 160424 and 184882,
effective September 21, 2011.)

Sections:

- 3.114.010 Creation.
- 3.114.020 Functions.
- 3.114.030 Jurisdiction.
- 3.114.040 Policy.
- 3.114.050 Administration.

3.114.010 Creation.

(Amended by Ordinance Nos. 185568 and 186746, effective August 6, 2014.) There is hereby established an Office for Community Technology. The Office shall be supervised by a manager who shall report to the Director of the Revenue Division, as provided under Subsection 3.15.040 E., or the Director's designee. As used in this Chapter and elsewhere in the City Code when referring to the Office for Community Technology, the term "Director" shall mean the Director of the Revenue Division or the Director's designee. The Office shall have such other employees as the Council may provide.

3.114.020 Functions.

(Amended by Ordinance No. 181155, effective August 17, 2007.)

- A. The Office shall be responsible for coordinating Citywide broadband planning, communications policy advocacy, technology grants and related consumer protection activities.
- B. The Office shall be responsible for supervising and coordinating all franchising processes engaged in by the City, for monitoring the performance of all franchisees for franchise compliance and for performing all other necessary work relating to franchises in the City.
- C. The Office shall be responsible for promoting the orderly development of City-owned or City-partnered broadband and cable communication systems, for providing staff support needed by the Mt. Hood Cable Regulatory Commission and for performing all other necessary work related to broadband planning, communications policy advocacy, related technology grants and cable communications in the City.
- D. The Office shall be responsible for overseeing franchise and utility audits and revenues in coordination with the City Auditor's Office, the Office of Management and Finance and other City agencies and bureaus.

3.114.030 Jurisdiction.

- A.** The Office shall have jurisdiction over all franchisees and utility licensees. The Office shall have jurisdiction over all public or private utilities or other entities seeking similar rights to use City rights-of-way.
- B.** The Office shall have jurisdiction over all cable communications and broadband policy matters affecting the City of Portland.

3.114.040 Policy.

In order to establish and ensure a stable, predictable basis for long-term relations, it is the policy of the City of Portland that public or private utilities and other entities seeking similar rights to utilize City rights-of-way should be subject to franchise agreements with the City.

3.114.050 Administration.

(Added by Ordinance No. 185059, effective December 7, 2011.)

- A.** In exercising the Office's jurisdiction under Subsection 3.114.030 A. over the use of City rights-of-way by franchisees, licensees and permittees, the Director may adopt procedures, forms, written policies, and rules to ensure orderly administration.
 - 1.** Before adopting a new rule, the Director must hold a public hearing. Prior to the hearing, the Director will notify the public and affected franchisees, licensees, and permittees under the jurisdiction of the Office. Such notice, which may be provided by mail or electronic means, must be distributed not less than ten or 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 Office. Copies of all current rules will be posted on the Office's website and made available to the public upon request.

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3. Notwithstanding Subsections 3.114.050 A.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.

**CHAPTER 3.115 - MT. HOOD CABLE
REGULATORY COMMISSION**

(Chapter replaced by Ordinance No. 181155,
effective August 17, 2007.)

Sections:

- 3.115.010 Definitions.
- 3.115.020 Cable Regulatory Commission.
- 3.115.030 General Powers & Duties.
- 3.115.040 Portland Community Media.
- 3.115.060 Annexations.
- 3.115.070 Cable Television Consumer Protection.
- 3.115.080 Definitions.
- 3.115.090 Local Office and Office Hours.
- 3.115.100 Telephone Answering Standard.
- 3.115.110 Installations, Disconnections, Outages And Service Calls.
- 3.115.120 Notice Requirements.
- 3.115.130 Billing.
- 3.115.140 Reporting.

3.115.010 Definitions.

Unless the context indicates otherwise, words used in this Chapter have the following meanings:

- A. "Agreement"** means the Intergovernmental Agreement creating the Mt. Hood Cable Regulatory Commission among and between the various Jurisdictions, dated December 24, 1992, including later amendments approved by the City Council.
- B. "Commission"** means the Mt. Hood Cable Regulatory Commission.
- C. "Franchise"** means an ordinance approved by the City Council authorizing use of the City's public right-of-way for operation of a cable communications system.
- D. "Grantee"** means any person authorized by a franchise agreement to construct, operate and maintain a cable communications system within the City of Portland.

3.115.020 Cable Regulatory Commission.

(Amended by Ordinance No. 184882, effective September 21, 2011.)

- A.** The City is a party to the Intergovernmental Agreement dated December 24, 1992, as modified by subsequent amendments, creating the Mt. Hood Cable Regulatory Commission. The Intergovernmental Agreement establishes the responsibilities and powers of the Commission, as delegated by the various participating

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jurisdictions. The City Council approved the City of Portland's participation in the MHCRC by Ordinance No. 166168, enacted on January 20, 1993.

- B.** As provided in the Agreement, the City is represented by three members on the Commission, appointed by the Commissioner in Charge of the Office for Community Technology and confirmed by the Council. Appointments are for staggered terms of 3 years. When an interim vacancy occurs, the Commissioner in Charge appoints, and the Council confirms, a member to fill the balance of the unexpired term. All members representing the City must be residents of the City. The Commissioner in Charge shall appoint members to the Commission so as to provide for an appropriate level of expertise taking into account the powers and duties of the Commission and in making appointments shall take into consideration the desirability of diverse representation, including without limitation, of racial and ethnic minorities, gender, different geographic areas, and different socioeconomic groups. All members shall serve without compensation from the City or from any grantee. No member may have an ownership interest in any grantee. The Commissioner in Charge may remove a member appointed by the City from the Commission at any time, subject to approval by the Council.

3.115.030 General Powers & Duties.

(Amended by Ordinance No. 184882, effective September 21, 2011.)

- A.** To the extent provided in the Agreement and in this Chapter, the Commission may exercise all cable communications system regulatory powers of the City over grantees operating within the City, whether such powers are granted to the City by law or under franchises issued to grantees.
- B.** The Commission shall act in an advisory capacity to the City Council through the Commissioner in Charge of the Office for Community Technology on all other matters pertaining to franchise agreements to construct, maintain and operate cable communications systems or proposed franchise agreements for such systems.
- C.** All powers granted to the Commission by the Agreement shall be subject to the provisions of franchises issued to grantees.. In the event of any conflict between the Agreement and a grantee franchise, the provisions of the franchise shall prevail.
- D.** The Commission may adopt such regulations as it deems necessary or desirable in order to exercise its powers and carry out its duties under the Agreement and this Chapter.

3.115.040 Portland Community Media.

(Amended by Ordinance No. 184882, effective September 21, 2011.) The Mayor and the Commissioner in Charge of the Office for Community Technology shall each appoint one member of the board of directors of Portland Community Media, for staggered terms of two years. All appointments shall be confirmed by the Council. In appointing these

directors, consideration shall be given to representation on the board of directors of the fields of arts, education, government, and community media; and of diverse representation including, without limitation, racial and ethnic minorities, non-English speaking people, gender, and low-income people. In addition, the Commission shall appoint one non-voting ex-officio director of the Portland Community Media board of directors.

3.115.060 Annexations.

- A.** In the event the City annexes territory for which another public body having jurisdiction to issue a franchise has issued a franchise to construct, operate and maintain a cable communications system, then franchisee's rights and obligations shall continue after annexation as they existed before annexation until expiration of that franchise, except that:
 - 1.** After annexation the City shall have all rights under the franchise of the issuing public body, including without limitation all rights to regulate, to collect and use franchise fees, regulation of system construction and operation within the annexed area, and rights to insurance, indemnification and other protections; and
 - 2.** After annexation the franchisee's obligations under the franchise regarding system construction and operation and other franchise requirements within the annexed area shall be to the City rather than to the issuing public body.
- B.** Nothing in this Section shall be deemed to modify the rights or obligations of the City or grantees under other franchises.

3.115.070 Cable Television Consumer Protection.

On behalf of the City, the Commission shall enforce the cable television consumer protection standards set forth in Sections 3.115.080 through 3.115.140.

3.115.080 Definitions.

Unless the context indicates otherwise, words used in Sections 3.115.080 through 3.115.140 have the following meanings:

- A. "Normal Business Hours"** means those hours during which most similar businesses in the City are open to serve customers. In all cases, Normal Business Hours must include some evening hours at least one night per week and some weekend hours.
- B. "Normal Operating Conditions"** means those service conditions which are within grantee's control. Conditions which are not within grantee's include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Conditions which are ordinarily within the grantee's control include, but are not limited to, special promotions, pay-

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per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system. Grantees must adjust staffing and operations to maintain compliance with the service standards in anticipation of events and conditions within grantee's control.

- C. **“Service Interruption”** means the loss of picture or sound on one or more cable channels.

3.115.090 Local Office and Office Hours.

Grantees shall have customer service center and bill payment locations open at least during Normal Business Hours. Grantees shall locate customer service center and bill payment offices at locations that are convenient to subscribers and the public. Grantee customer service centers must be adequately staffed and able to respond to subscribers and the public not less than 50 hours per week, with a minimum of nine hours per day on weekdays and five hours on weekends excluding legal holidays. As used herein, "adequately staffed" means customer service representatives are available to respond to customers who come to the service center in at least the following ways:

- A. To accept payments;
- B. To exchange or accept returned converters or other company equipment;
- C. To respond to inquiries; and
- D. To schedule and conduct service or repair calls.

3.115.100 Telephone Answering Standard.

- A. Cable system office hours and telephone availability. Grantees shall maintain a local, toll-free or collect call telephone access line which shall be available to its subscribers 24 hours a day, seven days a week. Grantees shall provide, in at least one prominent location, an easily identifiable telephone number for local customer service on all bills, account statements or statements of service to grantee subscribers. Toll-free telephone lines, either staffed or with answering capability, providing at least emergency referral information, must be operational 24 hours a day, including weekends and holidays. Grantee must have trained representatives available to respond to customer telephone inquiries during Normal Business Hours. After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received by grantee after Normal Business Hours must be responded to by a trained representative on the next business day.
- B. Telephone Answering Time. Under Normal Operating Conditions, telephone answer time by grantee's customer representatives including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be

transferred, transfer time shall not exceed thirty (30) seconds. Grantees shall meet these standards no less than ninety (90) percent of the time under Normal Operating Conditions, measured on a calendar quarterly basis.

- C. Busy Phones. Under Normal Operating Conditions, the customer shall receive a busy signal less than three (3) percent of the time.

3.115.110 Installations, Disconnections, Outages And Service Calls.

Under Normal Operating Conditions, grantees shall meet each of the following standards shall be met no less than ninety five (95) percent of the time measured on a quarterly basis:

- A. Standard installations shall be performed within seven (7) business days after an order has been placed.
- B. Under Normal Operating Conditions, grantee shall begin work on Service Interruptions promptly and no later than 24 hours after the interruption becomes known. Grantee must begin working on other service problems the next business day after notification of the service problem. Working on Service Interruptions must be more than merely acknowledging that a service interruption has occurred.
- C. The appointment alternatives for installations, service calls and other installation activities shall be either a specific time or, at maximum, a four-hour time block during Normal Business Hours. Grantee may schedule service calls and other installation activities outside of Normal Business Hours for the express convenience of the customer.
- D. Grantee shall be deemed to have honored a scheduled appointment under the provisions of this section when a technician arrives within the agreed upon time and, if the subscriber is absent when the technician arrives, the technician leaves written notification of arrival and return time, and a copy of that notification is kept by the grantee.
- E. Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. Rescheduling an appointment is an independent obligation and does not necessarily excuse the missed appointment.
- F. If grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer shall be contacted. The appointment shall be rescheduled, as necessary, at a time which is convenient for the customer.

3.115.120 Notice Requirements.

(Amended by Ordinance No. 184882, effective September 21, 2011.)

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- A.** Notifications to subscribers. Grantee shall provide written information on each of the following areas at the time of service installation, at least annually to all subscribers, and at any time upon request:
 - 1.** Products and services offered;
 - 2.** Prices and options for programming services and conditions of subscription to programming and other services;
 - 3.** Installation and service maintenance policies;
 - 4.** Instructions on how to use the cable service;
 - 5.** Channel positions programming carried on the system; and,
 - 6.** Billing and complaint procedures, including the address and telephone number of the City's Office for Community Technology.
- B.** Grantee shall notify customers of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the grantee. In addition, grantee shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by this Section. Grantees are not required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.

3.115.130 Billing.

- A.** Bill Statements. Grantee bills shall be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills shall also clearly delineate all activity during the billing period, including optional charges, rebates and credits. In case of a billing dispute, grantee must respond to a written complaint from a subscriber within seven (7) calendar days.
- B.** Refunds. Grantee shall issue refund checks promptly to customers, but no later than either the customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier. Grantee may withhold a refund pending the customer returning the equipment supplied by grantee if service is terminated.
- C.** Credits. Grantee shall issue credits for service no later than the customer's next billing cycle following the determination that a credit is warranted.

3.115.140 Reporting.

Grantees shall file reports to the Commission on a quarterly basis showing the performance of grantee customer service standard obligations under Sections 3.115.080 through 3.115.140. The quarterly reports shall cover the periods January 1 through March 31; April 1 through June 31; July 1 through September 31; and October 1 through December 31. The reports shall be due no later than 30 days following the end of a quarter. The reports shall include, at a minimum, figures and narrative indicating performance of the following standards for:

Local office hours

Telephone call center hours

Telephone answering

Busy signal statistics

Standard installations

Service interruptions

Appointment windows: made, cancelled, and rescheduled

Notice requirements

Billing (refunds and credits)

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CHAPTER 3.116 - WATERWAYS ADVISORY COMMITTEE

(Chapter added by Ordinance No. 150413, effective
September 17, 1980.)

Sections:

- 3.116.010 Created - Organization.
- 3.116.020 Procedures and Rules.
- 3.116.030 Duties.

3.116.010 Created - Organization.

(Amended by Ordinance Nos. 182671 and 184046, effective September 10, 2010.) There hereby is created an advisory committee to the Commissioner In Charge of the Bureau of Planning and Sustainability to be known as the Waterways Advisory Committee, consisting of not less than 7 nor more than 11 voting members who shall serve without compensation. The Commissioner In Charge shall appoint the members of the Committee, the members to serve for a term of 2 years at the pleasure of the Commissioner In Charge. The president of the Planning and Sustainability Commission or his or her representative shall be a member of the Committee.

3.116.020 Procedures and Rules.

The Waterways Advisory Committee shall establish its own rules, bylaws, and provide the procedure for all matters for consideration or action by the Committee. The Committee shall hold meetings at such time as is set by the body at any other time at the call of the Chairman.

3.116.030 Duties.

(Amended by Ordinance No. 184046, effective September 10, 2010.) Members of the Waterways Advisory Committee shall:

- A. Review any zoning Code amendment relating to waterways before it is presented to the Planning and Sustainability Commission, make its finds available to the Planning Commission and City Council;
- B. Review and comment to the Planning and Sustainability Commission and City Council on public or private riverfront development proposals that are potentially in conflict with the City's Greenway Plan.
- C. Identify opportunities for City encouragement of commercial, residential, recreational, transportation and educational development that fulfills public goals.
- D. Review the status of plans for publicly constructed segments of the Greenway path and suggest priorities for those segments.

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- E.** Make recommendations to the Planning and Sustainability Commission and City Council for the development of City procedure to facilitate applicants' needs for a speedy and certain regulatory process and City policies consistent with such a goal.
- F.** Make recommendations to the Planning and Sustainability Commission and City Council on City policies governing use and development of the City's waterways.

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**CHAPTER 3.120 - METROPOLITAN ARTS
COMMISSION**

(Chapter added by Ordinance No. 157240; repealed
by Ordinance No. 168592, effective March 8,
1995.)

**CHAPTER 3.122 - ECONOMIC
IMPROVEMENT DISTRICTS**

(Chapter replaced by Ordinance No. 164665,
effective September 18, 1991.)

Sections:

3.122.010	Purpose.
3.122.020	Definitions.
3.122.030	Council Control.
3.122.040	Statutory Provisions Applicable.
3.122.050	Preliminary Institution of Economic Improvement District
3.122.060	Final Plan and Ordinance Preparation.
3.122.070	Consideration of Final Plan and Ordinance.
3.122.080	Notice to Owners.
3.122.090	Exemption Process.
3.122.100	Hearing and Resolution Establishing District.
3.122.110	Preparation and Notice of Assessments.
3.122.120	Hearing on Assessments.
3.122.130	Amendments to Ordinance.
3.122.140	Limitation on Assessments.
3.122.150	Limitation on Boundaries.
3.122.160	Continuation of Assessments.
3.122.170	Expenditure of Moneys.
3.122.180	Cost of Administration.
3.122.190	Limitation on Expenditures.
3.122.200	Administration
3.122.210	Early Termination.
3.122.220	Surplus.
3.122.230	Entry and Collection of Assessments.

3.122.010 Purpose.

The purpose of this Chapter is to establish procedures for the creation of two types of Economic Improvement Districts, one in which the assessment is mandatory and applied to all properties except Exempt Properties, the second type in which the property owner can decide whether to be assessed, a voluntary assessment, as authorized by state law. The City will be ultimately responsible for administering and operating any Economic Improvement District, although the administration and operation may be carried out by others under contract with the City. All costs of administering and operating any Economic Improvement District will be paid entirely from assessments and fees actually received from the District; the City will not pledge its credit on behalf of the District; and the City will not loan funds to the District.

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3.122.020 Definitions.

(Amended by Ordinance No. 189413, effective March 6, 2019.) The following words and phrases when used in this Chapter shall have the following meanings, except where the context requires a different meaning:

- A. “Advisory Committee”** means a committee of persons representative of the owners and tenants of property within an Economic Improvement District and may consist of an existing association of property owners or tenants or both.
- B. “Commissioner In Charge”** means the commissioner in charge of the lead bureau.
- C. “Economic Improvement”** means:
 - 1. The planning or management of development or improvement activities.
 - 2. Landscaping, maintenance and provision of security for public areas.
 - 3. The promotion of commercial activity or public events.
 - 4. The conduct of activities in support of business recruitment and development.
 - 5. The provision of improvements in parking systems or parking enforcement.
 - 6. Any other economic improvement activity that specially benefits property. “Economic improvement” does not include any services to be provided on private property.
- D. “Preliminary Economic Improvement Plan”** means a plan prepared by the property owners or tenants within the proposed District or their designees setting out:
 - 1. A description of economic improvements proposed to be carried out;
 - 2. The number of years, to a maximum of three, in which assessments are proposed to be levied;
 - 3. A preliminary estimate of annual cost of the proposed economic improvements;
 - 4. The proposed boundaries designated by map or perimeter description of an Economic Improvement District within which subject properties would be assessed to finance the cost of the economic improvements;
 - 5. The proposed formula for assessing the cost of the economic improvements against subject properties;

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6. A preliminary estimate of the cost of City administration of the proposed Economic Improvement District;
7. A statement whether the assessment will be a voluntary assessment or mandatory assessment, and
 - a. If voluntary, that the scope and level of improvements could be reduced depending upon the amount of money collected; or,
 - b. If mandatory, that the assessment will be considered a tax under the Oregon Constitution, Art. XI § 11b and it may be reduced to fit within the property tax limitation thereby affecting the scope and level of services described; and
8. A statement of why the proposed economic improvements are not likely to be satisfactorily and equitably accomplished except through establishment of an Economic Improvement District.

E. “Final Economic Improvement Plan” means a plan setting out:

1. A description of economic improvements to be carried out;
2. The number of years, to a maximum of three, in which assessments will be levied;
3. The annual cost of the proposed economic improvements;
4. The boundaries designated by map or perimeter description of the Economic Improvement District within which subject properties will be assessed to finance the costs of the Economic Improvement District;
5. The formula for assessing the cost of the economic improvements against subject properties;
6. A statement whether the assessment will be a voluntary assessment or mandatory assessment, and
 - a. If voluntary, that the scope and level of improvements could be reduced depending upon the amount of money collected; or,
 - b. If mandatory, that the assessment will be considered a tax under the Oregon Constitution, Art. XI § 11b and it may be reduced to fit within the property tax limitation thereby affecting the scope and level of services described; and
7. The cost of City administration of the Economic Improvement District.

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- F. “Lead bureau”** means the City office, bureau or commission determined by the Mayor to have the principal interest in a proposed Economic Improvement District.
- G. “Lot”** means a lot, block, or parcel or land.
- H. “Owner”** means the owner of the title to real property or the contract purchaser of record as shown on the last available complete assessment roll in the Office of the County Assessor.
- I. “Subject Properties”** means the real property within an Economic Improvement District except for Exempt Property.
- J. “Exempt Property”** means:

 - 1.** Residential real property and any portion of a structure used for residential purposes. In the event a structure is used for both residential and non-residential purposes, the land on which the structure is located shall not be Exempt Property. For purposes of this subsection, “residential real property” and “residential purposes” shall not include hotels and hotel uses, as defined in Section 33.12.420 of this Code, and motels and motel uses, as defined in Section 33.12.560 of this Code, but shall include hotel and hotel uses if, for the entire hotel or entire hotel use:

 - a.** The average rent per unit is less than \$2 per day, or
 - b.** A majority of the units regularly are occupied by the same tenants for more than 30 consecutive days, or
 - c.** A majority of the units regularly are occupied by occupants who pay for lodging on a monthly basis.
 - 2.** Property owned or being purchased by religious organizations including:

 - a.** All houses of public worship; and other additional buildings and property used solely for administration, education, literary, benevolent, charitable, entertainment, and recreational purposes by religious organizations, the lots on which they are situated, and the pews, slips, and furniture therein. However, any part of any house of public worship or other additional buildings or property which is kept or used as a store or shop or for any purpose other than those stated in this Section shall not be exempt property.
 - b.** Parking lots used for parking or any other use as long as that parking or other use is permitted without charge.

- c. Land and the buildings thereon held or used solely for cemetery or crematory purposes, including any buildings solely used to store machinery or equipment used exclusively for maintenance of such lands.

K. “**Task Force**” means a committee whose membership consists of representatives of those City offices, bureaus, and commissions that have a significant interest in a proposed Economic Improvement District and a representative appointed by the Advisory Committee. A representative designated by the Director of the Revenue Division shall be a member of each Task Force.

3.122.030 Council Control.

Whenever the Council determines that economic improvements would be appropriate and would afford a special benefit to subject properties within a particular District, the Council, subject to the provisions of this Chapter, may establish an Economic Improvement District and provide for payment of all or a portion of the cost by collection of assessments on either a mandatory or voluntary basis. The Council may decline for any reason within its sole discretion to establish a proposed Economic Improvement District. This Chapter shall not give to any person the right to have an Economic Improvement District established.

3.122.040 Statutory Provisions Applicable.

Statutory provisions applicable to Economic Improvement Districts shall be followed by the City and by owners in all cases. The provisions of this Chapter are intended to supplement and to implement the statutory provisions.

3.122.050 Preliminary Institution of Economic Improvement District.

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

- A.** The Council shall consider creation of an Economic Improvement District whenever owners of Subject Properties file with the Revenue Division a petition for the establishment of a District containing the signatures of the owners of 33 percent or more of the area or of the assessed value of subject properties within the proposed District or whenever a City Commissioner or the Mayor files a report recommending the establishment of a District. A petition or report shall contain a Preliminary Economic Improvement Plan.
- B.** The Council may adopt a resolution directing the lead bureau to begin the Economic Improvement District formation process if the Council finds that:
 - 1.** The costs of administering the proposed Economic Improvement District would not be substantial in relationship to the cost of the economic improvements;

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2. It is not likely that the economic improvements would be satisfactorily and equitably accomplished except through establishment of the Economic Improvement District;
 3. Establishment of the Economic Improvement District would be in the public interest;
 4. In the case of a District intended to impose a mandatory assessment, that the assessment can be accommodated within the property tax limitation and City budget; and
 5. The economic improvements would afford a special and peculiar benefit to subject properties within the Economic Improvement District different in kind or degree from that afforded to the general public.
- C. The resolution may contain such revisions to the preliminary economic improvement plan as the Council deems appropriate based on the criteria set out in Paragraphs 1 through 5 of this Subsection and shall designate those City offices, bureaus, and commissions to be represented on the task force for the proposed District.
- D. Upon adoption by the Council of a resolution under Subsection B of this Section, the Mayor shall designate a lead bureau for the proposed Economic Improvement District from among those designated to be represented on the task force and shall refer the matter to the Commissioner In Charge.
- E. Immediately following the referral under Subsection D of this Section, the Commissioner In Charge shall appoint an advisory committee to assist the task force in development of the final economic improvement plan. The Commissioner shall strongly consider appointment of owners of property within the Economic Improvement District to the advisory committee. The Commissioner may appoint as the advisory committee an existing association of property owners or tenants or both. The task force shall encourage participation of the advisory committee in the plan development and administration process. The advisory committee shall appoint a representative to the task force.

3.122.060 Final Plan and Ordinance Preparation.

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

- A. Immediately following Council adoption of a resolution under Section 3.122.050 B, the head of each office, bureau and commission to be represented on the task force shall appoint its representative and notify the head of the lead bureau of the appointment.

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- B.** The Revenue Division's representative shall provide to the task force a report setting out:
 - 1.** Whether the petitioners under Section 3.122.050 A are owners of subject property in the proposed District;
 - 2.** Delinquencies in taxes or City liens on subject properties in the proposed District;
 - 3.** The true cash value of all real property located within the proposed District; and
 - 4.** The zoning of land within the District, including verification that only land zoned for commercial or industrial use is included within the District.
- C.** The lead bureau shall be responsible for preparing the documents referred to in Subsection D.
- D.** The task force shall prepare for the Commissioner In Charge a report recommending whether the owners of property within the proposed Economic Improvement District shall be formally notified of the proposal to establish the District, taking into consideration the criteria set out in Section 3.122.050 B. If the report recommends formal notification, the report shall include a proposed Final Economic Improvement Plan and the report of the Revenue Division's representative provided under Subsection B. The report also shall include a proposed ordinance that:
 - 1.** States the Council's intention to proceed with formal notification regarding the proposed Economic Improvement District;
 - 2.** States whether the assessments will be mandatory or voluntary;
 - 3.** Contains the information in the Final Economic Improvement Plan, which may be included by attachment of the Plan as an exhibit; and
 - 4.** Directs notice to be given in the manner provided by PCC 3.122.080.

3.122.070 Consideration of Final Plan and Ordinance.

- A.** If the Commissioner in Charge deems it appropriate, the Commissioner shall file for Council consideration the report and ordinance prepared under Section 3.122.060 D.
- B.** On consideration of the report and ordinance, the Council may approve, modify, or reject the report including any aspect of the Final Economic Improvement Plan, and the ordinance. If the Council determines that the proceedings for the proposed

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Economic Improvement District should go forward, the Council shall adopt the ordinance including any modifications.

3.122.080 Notice to Owners.

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

- A.** Following adoption of the ordinance under Section 3.122.070 B, the Revenue Division shall mail notice to the property owners within the proposed Economic Improvement District which contains the following information:
- 1.** The Council's intent to form an Economic Improvement District.
 - 2.** Benefitted properties will be assessed unless it is a voluntary assessment in which case only property owners who specifically request to be assessed will be assessed. An owner who fails to submit a written objection before or at the public hearing on assessment shall be deemed to have made a specific request to be assessed.
 - 3.** The formula for determining the amount of the assessment.
 - 4.** The scope of the improvements and that the description of the boundaries of the proposed District and the full scope of the project are on file with the Revenue Division and where the file can be viewed. It should state that:
 - a.** In the case of a voluntary assessment the scope and level of the improvements may be reduced depending on the amount of money collected; or
 - b.** In the case of a mandatory assessment the scope and level of the improvements may be reduced if the amount of the assessment is compressed to fit within the property tax limitation imposed by the Oregon Constitution, Art. XI § 11b.
 - 5.** The estimated cost of the proposal, and that it may be reduced to the amount of money actually received.
 - 6.** The date, time and place of the hearing and that the proposal could be modified as a result of public testimony.
 - 7.** The classification or types of properties which are exempt and that a request for an exemption on an enclosed form must be filed not later than 21 days after the notice is mailed.
 - 8.** In the case of a voluntary assessment that it is an incurred charge and is not a tax and is a charge outside the property tax limitations in the Oregon Constitution, Art. XI, §11b.

3.122.090 Exemption Process.

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

- A.** Property within the proposed District is conclusively presumed subject to assessment unless the owner files with the Revenue Division a claim for exemption not later than 21 days after the date of mailing or personal delivery of the notice.
- B.** The Revenue Division, in its discretion, may examine a claim or claims for exemption to determine whether property claimed to be exempt from assessment is exempt property. The examination may include review of such evidence as the Revenue Division deems appropriate and may include a viewing of the property. In the event the Revenue Division determines that the property for which an exemption is claimed is not exempt, the Revenue Division shall give the owner written notice of the determination and the reasons, by mail or personal delivery. The notice shall give the owner 10 days time within which to provide written evidence as to why the property is exempt. In the event the owner provides no written evidence within the time allowed, the property conclusively shall be presumed not to be exempt property. In the event the owner submits written evidence, the Revenue Division shall review the evidence and either approve or disapprove the claim for exemption and provide written notice to the owner, including a statement of the reasons for the Revenue Division's decision. The Revenue Division's approval or disapproval following review of the evidence shall be final.

3.122.100 Hearing and Resolution Establishing District.

- A.** The Council shall hold a public hearing on the proposed Economic Improvement District at the time and place stated in the notice to owners of properties. The public hearing shall be held no sooner than 30 days after mailing the notice. The Council may continue the hearing to such other time and place as it may deem appropriate. At the hearing, persons supporting or objecting to the proposed improvement and assessment shall be entitled to be heard.
- B.** If the Council, at the conclusion of the hearing, finds that the economic improvements will afford a special and peculiar benefit to subject properties within the Economic Improvement District different in kind or degree from that afforded to the general public and that the Economic Improvement District should be established, then the Council may adopt a resolution stating those findings and establishing the District.

3.122.110 Preparation and Notice of Assessments.

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

- A.** Following Council adoption of a resolution establishing an Economic Improvement District based on the final Economic Improvement Plan, the Revenue Division shall

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prepare the proposed assessment for each lot in the District that is a subject property and shall file a proposed assessment ordinance, with a list of proposed assessments attached, with the City Council. The amount of assessment shall be based on the cost of the economic improvements and the cost of City administration of the Economic Improvement District.

- B.** Following preparation of the proposed assessments, the Revenue Division shall mail to the owner of each lot to be assessed a notice containing the following information:
- 1.** The description of the property being assessed.
 - 2.** The name of the District and whether it is a voluntary or mandatory assessment. In the case of a voluntary assessment a statement that the property will be assessed unless the property owner specifically requests in writing not to be assessed.
 - 3.** The length of the District and the total cost of the project, the assessment formula, and the amount of the assessment on the property.
 - 4.** The assessment will not change unless the Council finds it exceeds the benefit of the improvements, but the total amount and scope of the improvements and level of services could change to correspond to the amount of money collected. Further, the scope of the improvements and level of services could change as a result of the testimony.
 - 5.** The time, date and place of the hearing and that the following forms of objection may be filed:
 - a.** A written objection to being assessed in which case no assessment will be placed on the property if it is a voluntary assessment. An owner who fails to submit a written objection before or at the public hearing shall be deemed to have made a specific request for the economic improvement service to be provided during the time specified in the assessment ordinance;
 - b.** An objection to the amount of the assessment on the grounds it is incorrect or exceeds the amount of benefit; and
 - c.** An objection to the formation of the District.
 - 6.** A written objection may be filed with the Revenue Division prior to the hearing or made orally at the hearing. An objection to the assessment must explain the reasons the assessment is incorrect or exceeds the amount of benefit.

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7. The assessment is due and payable immediately, and whether it may be paid in installments. The amount of interest if any and the fact there will be billing charges. The unpaid balance will become a lien on the property and failure to pay could result in foreclosure.
8. A voluntary assessment is an incurred charge and is a charge outside the property tax limitation imposed by the Oregon Constitution, Art. XI, §11b.
9. Property included in the District and assessed cannot be withdrawn from the District and the assessment will continue through the life of the District.
10. The name and phone number of a City staff person who can answer questions.

3.122.120 Hearing on Assessments.

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

- A. The Council shall hold a public hearing on the proposed assessment ordinance. The public hearing shall be held no sooner than 30 days after mailing the notice. The Council may continue the hearing to a date and time certain. At the hearing, property owners supporting or objecting to being assessed, to the amount of the assessment or to the formation of the District, shall be entitled to be heard.
- B. Written objections shall be considered to have been received by the Council at the hearing if actually received at the hearing or if received by the Revenue Division prior to commencement of the hearing. A written objection signed by a person purporting to have authority as agent or attorney to sign an objection on behalf of an owner shall be considered received from the owner only if there is included with the objection a copy in writing of the authority to act on behalf of the owner.
- C. If the Council at the hearing receives written objections to the formation of the District from owners of property upon which more than 33 percent of the total value of assessments are levied, then the Economic Improvement District shall not be established and assessments shall not be made.
- D. At the hearing, the Council shall consider any objections and may adopt, correct, modify, revise the proposed assessment ordinance. In the case of a voluntary assessment, the Council shall exclude from assessment property which the owner has requested be omitted from assessment. The request shall be made in writing and submitted prior to the close of the hearing.

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3.122.130 Amendments to Ordinance.

- A.** At the hearing under Section 3.122.100, the Council may amend by ordinance the initial ordinance adopted under Section 3.122.070. The procedures required by Sections 3.122.080 and 3.122.100 shall be repeated if the amendment:
 - 1.** Changes the economic improvements to be carried out except this provision shall not apply to a voluntary assessment;
 - 2.** Increases the likely assessment upon one or more properties; or
 - 3.** Enlarges the Economic Improvement District;
- B.** At the hearing under Section 3.122.120, the Council may amend by ordinance the initial ordinance adopted under Section 3.122.070 as subsequently amended. If the amendment increases the likely assessment upon one or more properties, then the procedures required by Sections 3.122.110 and 3.122.120 shall be repeated. The procedures required by Section 3.122.080 through 3.122.120 shall be repeated if the amendment:
 - 1.** Changes the economic improvements to be carried out except this provision shall not apply to a voluntary assessment; or
 - 2.** Enlarges the Economic Improvement District.

3.122.140 Assessments.

- A.** The Council shall not levy assessments in an Economic Improvement District in any year that exceed one percent of the true cash value of all the real property located within the District.
- B.** Any new owner of benefitted property or any owner of benefitted property who excluded the property from assessment by submitting written objections may subsequently agree to the assessment of the property. The Council shall apply the assessment formula to the property and apportion the costs to the property for the remaining time in which the assessment is levied.
- C.** The assessed property may not be relieved from liability for that assessment for any reason including change of ownership.

3.122.150 Limitation on Boundaries.

The Council shall not include within an Economic Improvement District any area of the City that is not zoned for commercial or industrial use.

3.122.160 Continuation of Assessments.

If the Council has established an Economic Improvement District and thereafter determines that it is necessary to levy assessments upon subject property in the District for longer than the period of time specified in the assessment ordinance that created the District, the Council shall enact an ordinance that provides for continued assessments for a specified number of years, to a maximum of three. The assessment of lots under such an ordinance shall be subject to the procedures required by Sections 3.122.110 and 3.122.120.

3.122.170 Expenditure of Moneys.

Money derived from assessments levied under this Chapter and from interest earned on that money shall be spent only for the economic improvements and for the cost of City administration of the Economic Improvement District described in the final Economic Improvement Plan. Subject to the requirements of any labor agreements to which the City is a party and to any applicable requirements of state law, the Council in its discretion may authorize an agreement or agreements with the advisory committee appointed under Section 3.122.050 D for the committee to provide all or part of the economic improvements described in the final economic improvement plan.

3.122.180 Cost of Administration.

The cost of City administration of an Economic Improvement District shall include the actual cost of administrative services provided by the City related to the District.

3.122.190 Limitation on Expenditures.

Money spent for carrying out a final Economic Improvement Plan shall be limited to money actually received from assessments or from other public or private contributions to assist in carrying out the Plan.

3.122.200 Administration.

The task force for an Economic Improvement District shall be responsible for administration of the economic improvements to be carried out. With the concurrence of the head of the lead bureau, the task force may designate an employee of the lead bureau as the person responsible for day to day administration of the economic improvements. In the event the task force determines that the economic improvements should be performed by a contractor or contractors, the task force shall prepare for Council consideration contracts for the work. In each case, the contract for work shall include not less than the following:

- A. A description of the work to be done;
- B. A description of the method of compensation for the work;
- C. A description of records to be kept by the contractor to evidence performance of the work and of the documentation to be provided to the City to justify payment for work;

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- D.** A description of any liability to be born and insurance to be provided by the contractor; and
- E.** A description of the rights of the City to terminate the contract prior to its completion.

3.122.210 Early Termination.

The City Council may terminate the activities of an Economic Improvement District in whole or in part prior to the normally scheduled termination date for the District by an ordinance. However, all applicable contract issues shall be resolved before activities are terminated. In the event of early termination, those funds remaining from assessments for the District, following payment of all obligations and costs of administration incurred on behalf of the District, shall be returned to the owners of subject properties in amounts proportionate to the amounts of the assessments they paid for the District. In the event of early termination of only a part of the activities of an Economic Improvement District, the City Council, in the termination ordinance, may elect to apply remaining funds on a similarly proportionate basis as a credit against future District assessments against subject properties, with any funds remaining being returned to the owners as otherwise provided herein.

3.122.220 Surplus.

In the event, following the normally scheduled termination of an Economic Improvement District, including the payment of all obligations and costs of administration incurred on behalf of the District, there remain excess funds from assessments paid by owners of subject properties, then the City Council, by ordinance, shall provide for either:

- A.** The return of the excess funds to the owners of subject properties in amounts proportionate to the amounts of the assessments they paid for the District;
- B.** Use of the excess funds for continued provision of the economic improvements until the excess funds are fully spent; or
- C.** Use of part of the excess funds as provided in B and return of the balance of the excess funds as provided in A.

3.122.230 Entry and Collection of Assessments.

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

- A.** On adoption of an assessment ordinance under Section 3.122.120 D, the Revenue Division shall enter each assessment in the docket of City liens. All such assessments shall be collected in the same manner as local improvement assessments and failure to pay may result in foreclosure in the same manner as provided for other assessments.

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- B.** The assessments may be paid in semi-annual payments, however the City may charge a billing fee.

3.122.240 Economic Improvement Fund.
(Repealed by Ordinance No. 170223, effective July 1, 1996.)

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CHAPTER 3.123 - PORTLAND UTILITY BOARD

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

Sections:

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

3.123.010 Created - Purpose.

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

3.123.020 Scope.

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

throughout the fiscal year. The Board will participate in evaluating the performance of the bureaus. The bureaus will engage with the Board throughout the fiscal year when developing budgets. The Board may serve, at the Mayor's pleasure, as an advisor in the development of Mayor's budgets for the Portland Water Bureau and the Bureau of Environmental Services.

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

3.123.030 Membership.

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

3.123.040 Appointments - Composition.

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

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

3.123.050 Terms.

- A.** Board members will be appointed to serve for a term of 3 years. The terms of each member shall run from the date of the City Council's confirmation of the member's appointment, or such other date as the Council may establish.
- B.** The Board may make recommendations to the Mayor regarding the reappointment of existing members. Notwithstanding the limitations of this Section, a Board member may continue to serve until his or her replacement is appointed.
- C.** If any member of the Board is absent more than three regularly scheduled meetings of the Board during any 12 month period, without having notified the Chair in advance of such absence, such member shall be deemed to have resigned from the

Board. The member's position shall thereafter be vacant and subject to appointment by the Mayor.

- D.** The Mayor may remove any member of the Board at his or her discretion for due cause, including but not limited to malfeasance or neglect of duties.

3.123.060 Standing Committees.

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

3.123.070 Staffing.

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

3.123.080 Meeting Schedule.

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

3.123.090 By-Laws.

- A.** The Board shall adopt by-laws to govern its procedures within the purposes of this Chapter that shall not conflict with any portion of this Chapter and which are subject to the prior review and approval of the Mayor, with approval as to legal sufficiency by the City Attorney. These by-laws shall include specifications concerning selection and tenure of standing committee chairs, division of responsibilities, attendance policies, meeting schedules, as well as communications between the Board and City agencies, the media and the general public, and any other appropriate matters. As an initial action, the PUB will establish operating procedures that define expectations for member participation and roles and address transparency in its deliberations, public information and participation, and equity.

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- B.** The by-laws shall specify procedures for public testimony, including opportunities for public comments at each Board meeting.

3.123.100 Annual Report and Work Session.

- A.** Annually, the Board shall prepare and submit to the Council a report summarizing the work performed by the Board during the previous year. The Board shall submit the annual report within the first 3 months following the beginning of each fiscal year for the utility bureaus. The annual report shall include, but need not be limited to, a summary of issues reviewed and analyzed; a list of briefings and reports received from staff, outside experts and other informed parties; a summary of recommendations forwarded to the Council; and a summary of Council action on the recommendations.
- B.** The Board's report will be presented to the Council in a work session. In addition, the Board will present a work plan outline for the next year and seek input from the Council on potential next steps.

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

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

Sections:

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

3.124.010 Definitions.

(Amended by Ordinance No. 185304, effective June 1, 2012.) The following definitions apply to Chapters 3.124 through 3.126:

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

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

3.124.020 Portland Bureau of Emergency Management.

(Amended by Ordinance No. 185304, effective June 1, 2012.) There is established by the City Council the Portland Bureau of Emergency Management (PBEM) as a part of the Mayor’s portfolio.

3.124.030 Purpose.

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

3.124.040 Organization.

(Amended by Ordinance No. 185304, effective June 1, 2012.) The Portland Bureau of Emergency Management shall consist of the Director and such other employees as the Council may provide. The Director shall be immediately responsible to the Mayor and, thereafter, to the City Council.

3.124.050 Director's Powers and Duties.

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

- A.** Overall administrative authority for the Office;
- B.** Serve as principal strategic advisor to the Mayor concerning emergency management;
- C.** Implement policy directives of the City Council and the Disaster Policy Council and enforce the schedules and plans approved by them;
- D.** Manage the Emergency Coordination Center (ECC), establishing the overall structure, roles, responsibilities and direction for the operation of the ECC and

ensuring that the ECC is appropriately sited, staffed, equipped, and maintained. The Director may reassign employees to ECC duties as required;

- E.** Maintain written emergency plans, including all chapters, annexes and appendices of the Comprehensive Emergency Management Plan (CEMP) and annually submit a report with any recommendations for revisions;
- F.** Maintain records documenting compliance with requirements of federal and state emergency management programs, including NIMS. When a bureau other than PBEM possesses such records, the bureau shall immediately produce them upon the request of the Director;
- G.** Develop and implement training and exercise programs for responders that test the effectiveness of the CEMP and other emergency management plans;
- H.** Develop and implement processes, procedures, and systems for communicating emergency notices to the public and responders about incidents;
- I.** Develop and implement programs to educate the public about emergency preparedness, including volunteer programs, and train citizens to assist in emergencies;
- J.** Evaluate the effectiveness of the City's response to an emergency event.

3.124.060 Staff and Delegation.

(Amended by Ordinance No. 185304, effective June 1, 2012.)

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

3.124.070 Neighborhood Emergency Team Program.

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

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3.124.080 Neighborhood Emergency Teams.

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

3.124.090 Neighborhood Emergency Team Leaders.

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

**CHAPTER 3.125 - DISASTER POLICY
COUNCIL**

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

Sections:

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

3.125.010 Disaster Policy Council.

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

3.125.020 Duties.

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

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

3.125.030 Membership.

(Amended by Ordinance Nos. 185304 and 186729, effective September 1, 2014.) The DPC shall consist of the following members:

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

3.125.040 Procedures.

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

3.125.050 Staff Support to Disaster Policy Council.

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

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CHAPTER 3.126 - EMERGENCY MANAGEMENT STEERING COMMITTEE

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

Sections:

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

3.126.010 Emergency Management Steering Committee.

The Emergency Management Steering Committee (EMSC) is hereby created for the purpose of assisting the Portland Office of Emergency Management in developing emergency management policies and procedures for incidents requiring significant interbureau coordination.

3.126.020 Duties.

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

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

3.126.030 Membership.

(Amended by Ordinance Nos. 185304 and 189078, effective July 18, 2018.) The EMSC shall consist of qualified staff from the following Bureaus:

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- A.** Water Bureau;
- B.** Portland Fire & Rescue;
- C.** Portland Police Bureau;
- D.** Bureau of Environmental Services;
- E.** Portland Parks & Recreation;
- F.** Bureau of Transportation;
- G.** Bureau of Emergency Communications;
- H.** Portland Bureau of Emergency Management;
- I.** Bureau of Development Services; and
- J.** Bureau of Technology Services.
- K.** Office of Community & Civic Life.

3.126.040 Staff Support to the Emergency Management Steering Committee.

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

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

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

Sections:

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

3.127.010 Bureau of Portland Fire and Police Disability and Retirement.

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

3.127.020 Purpose.

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

3.127.030 Organization.

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

3.127.040 Administrator's Powers and Duties.

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

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

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

3.127.050 Staff and Delegation.

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

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CHAPTER 3.128 - OFFICE OF EQUITY AND HUMAN RIGHTS

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

Sections:

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

3.128.010 Creation and Organization.

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

3.128.020 Purpose.

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

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

3.128.030 Director's Powers and Duties.

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

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

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

3.128.040 Administrative Rulemaking Procedures.

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

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

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

**CHAPTER 3.129 - HUMAN RIGHTS
COMMISSION**

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

Sections:

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

3.129.010 Staffing and Membership.

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

3.129.020 Mission.

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

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3.129.030 Jurisdiction.

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

**CHAPTER 3.130 - ADMINISTRATIVE
APPEALS**

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

Sections:

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

3.130.010 Definitions.

For the purpose of this Chapter:

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

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

3.130.020 Timely and Adequate Notification of Right to Appeal Required.

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

**CHAPTER 3.131 - NEW PORTLANDERS
POLICY COMMISSION**

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

Sections:

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

3.131.010 Mission.

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

3.131.020 Membership and Staffing.

The Commission shall consist of 25 voting members. All members shall serve without compensation from the City. Appointments to serve on the Commission are for staggered terms of three years. No member may serve more than two 3-year terms. The Commissioner(s)-in-Charge of the New Portlanders Policy Commission recommends, the Mayor nominates, and the Council approves members to the Commission. Members shall be appointed to provide representation from a reasonably broad spectrum of immigrant and refugee communities, striving to include a range of areas of expertise, advocacy experience, community involvement, profession, education, race, ethnicity, gender, gender identity, sexual orientation, national origin, age, religion and geographic identification. Members must live, work, worship or be enrolled in school within the city of Portland and/or volunteer for a nonprofit within the city of Portland. If any member of the Commission is absent more than three regularly scheduled meetings of the Commission during any 12 month period, without having notified the Co-Chairs in advance of such absence, such member shall be deemed to have resigned from the Commission. The member's position shall thereafter be vacant. The Mayor may remove a member from the Commission at any time, with the recommendation of the Commissioner-in-Charge. City Elected Officials may appoint City bureau staff to the Commission as non-voting members. Staffing for the Commission shall be provided, subject to the annual City Budget process.

3.131.030 Purpose.

The purpose of the New Portlanders Policy Commission is to:

- A. Review, develop, evaluate and refine policy and practice recommendations for improving immigrant and refugee community integration in all City activities.

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

3.131.040 Organization and Meetings.

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

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

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

Sections:

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

3.132.010 Purpose.

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

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

3.132.020 Membership, Meetings, and Organization.

The Community Involvement Committee members shall be appointed by the Commissioner-in-Charge of the Bureau of Planning and Sustainability and confirmed by the City Council. The Committee will consist of at least 5 and no more than 12 members. The appointed membership shall be broadly representative of geographic areas and interests and from a reasonably broad spectrum of lived experience, particularly in under-served and under-represented communities. Members must live, work, worship or be enrolled in school within the City of Portland and/or volunteer for a nonprofit within the City of Portland.

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

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

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

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

Sections:

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

3.133.010 Rental Services Commission Established.

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

3.133.020 Mission.

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

3.133.030 Duties.

The RSC is delegated to carry out the following functions:

A. Landlord-Tenant Policy Initiatives

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

B. Landlord-Tenant Regulation and Programs

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

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3. Advise PHB on the effectiveness of landlord-tenant regulation and programs.
4. Recommend improvements to PHB's landlord-tenant regulation and programs
5. Recommend annual performance goals for PHB's landlord-tenant regulation and programs

C. Budget

1. Advise the Portland Housing Advisory Commission (PHAC), the Housing Commissioner, and City Council on the budget for PHB's landlord-tenant regulation and programs
2. Provide feedback on landlord-tenant funding priorities

D. Community Involvement

1. Provide an inclusive forum for the community's discussion of its landlord-tenant housing needs and priorities
2. Assist PHB in strengthening community partnerships

3.133.040 Membership.

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

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

3.133.050 Meetings.

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

3.133.060 Quorum.

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

3.133.070 Chairperson.

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

3.133.080 Committees.

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

3.133.090 Staffing.

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

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3.133.100 Cooperation.

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

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

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

Sections:

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

3.134.010 Creation, Organization, and Purpose.

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

3.134.020 Director's Powers and Duties.

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

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

3.134.030 Duration and Dissolution.

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

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5.04.010 Provisions Made For.

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

5.04.020 Sundry Trusts Fund.

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

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

All monies received from charges arising out of the operation of Oaks Pioneer Park Museum, under contract or otherwise, shall be deposited with the Treasurer of the City. The Treasurer shall hold all such funds so received in the Oaks Pioneer Park Museum Account. Disbursements shall be made in accordance with budgetary procedures upon requisition approved by the Commissioner In Charge of the

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Bureau of Parks and shall be limited to maintenance, operational costs, and improvement of the Oaks Pioneer Park Museum. The Mayor and Auditor are authorized to draw warrants on this account when requisitions are presented and approved by the Commissioner In Charge of the Bureau of Parks.

- H.** Drake Property Account. Until such time as the Council may determine, this account shall receive all rentals and related revenues derived from the property on the east side of the Willamette River and north of the Sellwood Bridge known as the Drake Property which was purchased by the City under Ordinance No. 128587, passed February 20, 1969, for the Willamette Parkway System. Expenditures from this account other than those required in connection with rentals derived from the property, shall be limited to the improvement and expansion of the property. This account shall be administered by the Commissioner In Charge of the Bureau of Parks.
- I.** Portland Shipbuilding Property Account. Until such time as the Council may determine, this account shall receive all rentals and related revenues derived from the property on the west side of the Willamette River at the foot of S.W. Nebraska Street known as the Portland Shipbuilding Property, which was purchased by the City under Ordinance No. 128623; passed February 26, 1969. Expenditures from this account other than those required in connection with rentals derived from the property, shall be limited to the improvement and expansion of the property. This account shall be administered by the Commissioner In Charge of the Bureau of Parks.
- J.** Officer Friendly Account. (Repealed by Ordinance No. 135666, effective December 6, 1972.)
- K.** Willamette Oaks Park Account. Until such time as the Council may determine, this account shall receive all rentals and related revenues derived from the property in Willamette Oaks Park purchased by the City from Leonard and Ruth Steele under authority of Ordinance NO. 130097; passed November 19, 1969, for the Willamette Parkway System (Lots 1,2 and 42 Willamette Oaks Park Addition). Expenditures from this account other than those required in connection with rentals derived from the property, shall be limited to the improvement and expansion of the property. This account shall be administered by the Commissioner In Charge of the Bureau of Parks.
- L.** Portland Zoo Hospitalization and Research Account. (Repealed by Ordinance No. 150375, effective September 11, 1980.)

5.04.030 Trustees' Fund.

(Amended by Ordinance No. 189413, effective March 6, 2019.) There is hereby created a Trustees' Fund which shall be credited with all cash and securities deposited with the City Treasurer to protect the City against loss on account of certain obligations, and with all

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

5.04.040 Parking Meter Fund.

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

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

5.04.050 Golf Fund.

A fund to be known and designated as the Golf Fund is hereby created. All revenues derived from the operation of the municipal golf links shall be credited to the Golf Fund, and all disbursements from the fund shall be in conformance with regular budget procedure.

5.04.070 Bonded Debt Interest and Sinking Fund.

The Bonded Debt Interest and Sinking Fund is hereby created to which shall be credited the proceeds from the tax levy of the City for interest on bonded indebtedness of the City and the tax levy to provide for the purchase of securities as an investment and/or payment of redemptions of the bonded indebtedness of the City together with such other receipts as

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may be realized in connection with the administration of the bonded debt of the City but not limited to interest on investments. Expenditures from the fund shall be for the payment of the principal and interest on bonded debt of the City to be paid from ad valorem taxes and for any other expenditures authorized to be paid from tax levies for general obligation bonds of the City.

5.04.140 Parking Facilities Fund.

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

5.04.150 Parking Facilities Bond Redemption Fund.

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

5.04.160 Sewage Disposal Fund.

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

5.04.165 Countercyclical Fund.

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

5.04.170 Revenue Sharing Fund.

(Added by Ordinance No. 135516, effective November 2, 1972.) The Revenue Sharing Fund is hereby created for the receipt and expenditure of monies received from the federal government under the State and Local Fiscal Assistance Act of 1972. Into this Fund shall be deposited all payments received from the federal government under the Act, interest earned thereon while in this Fund and any other monies which are appropriate revenues of this Fund. The monies shall be expended only for purposes authorized under the Act.

5.04.175 State Revenue Sharing Fund.

(Added by Ordinance No. 145065, effective January 19, 1978.) The State Revenue Sharing Fund is hereby created for the receipt and expenditure of monies received from the State of Oregon under Senate Bill 11 (Engrossed) effective July 27, 1977. All payments received from the State of Oregon under this Act, interest earned thereon while in this Fund and any

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other monies which are appropriate revenues of this Fund shall be deposited to this Fund. The monies shall be expended only for purposes authorized under this Act.

5.04.180 CityFleet Operating Fund.

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

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

5.04.185 Facilities Services Operating Fund.

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

- A.** The Facilities Services Operating Fund is hereby created (by Ordinance 163156, June 27, 1990) as an internal service fund within the Office of Management and Finance described in Chapter 3.15 of this Code. The major operating funds for this Fund shall be generated by Interagency Agreements with the City bureaus and others using the services. Receipts of the Fund shall include proceeds of these Interagency Agreements, service charges to users, interest earned by the Fund, and any other monies which are appropriate revenues. Fees shall be collected and deposited into this Fund for all property management related services involving leases, and for the purchase and sale of City owned real property. Expenditures from the Fund shall be in accordance with appropriations made by the Council.
- B.** The costs of repair, maintenance, taxes or any other expense incurred in providing any property management services, shall be the responsibility of the bureau or agency using or responsible for the property. All net revenues (defined as revenue, less all appropriate expenses) from rents, leases or sales shall accrue to the bureau or agency using or responsible for the property.
- C.** Any property that is not specifically used or the responsibility of any bureau or agency is defined as “unassigned property,” and shall be the responsibility of the Office of Management and Finance (General Fund). Net revenue for these

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properties shall be considered total revenue from the rent and sale of all these properties, less total expenses for all these properties. Any net revenue from these properties, shall be transferred to the General Fund at the end of each fiscal year.

- D.** Any property acquired by the City from any source shall be inventoried with the Office of Management and Finance.
- E.** Short-term loans from the General Fund to the Facilities Services Operating Fund, which are to be repaid in the same fiscal year in which the loan is made, are hereby authorized to provide temporary working capital, as needed, provided that each loan is first approved in writing by the Commissioner of Finance and Administration.

5.04.190 Communications Service Operating Fund.

(Repealed by Ordinance No. 181483, effective January 18, 2008.)

5.04.200 Printing and Distribution Services Operating Fund.

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

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

5.04.210 Improvement Warrant Sinking Fund.

(Added by Ordinance No. 139574, effective March 13, 1975.) The Improvement Warrant Sinking Fund is hereby created. Funds obtained from the issuance of general obligation improvement warrants issued pursuant to statute and authorized by the Council shall be placed in this Fund and expended only for payments duly authorized for the construction of public improvements. All proceeds from the collection of unbonded assessments, the sale of improvement bonds, and the foreclosure of improvement liens for unbonded assessments, realized from the improvement with respect to which such general obligation improvement warrants are issued, shall be placed in the fund to be applied to the call and payment of such warrants as rapidly as funds are available as provided by statute.

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5.04.220 Economic Development Trust Fund.

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

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

5.04.230 Insurance and Claims Operating Fund.

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

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

5.04.240 Workers' Compensation Self Insurance Operating Fund.

(Added by Ordinance No. 144762; amended by Ordinance Nos. 150375, 176003 and 181483, effective January 18, 2008.) The Workers' Compensation Self Insurance Operating Fund is hereby created as an internal service fund under the Office of Management and Finance described in Chapter 3.15 of this Code. Receipts of the Fund shall include service charges to user funds for administrative and legal expenses, insurance premiums, expected and unanticipated loss reserves, interest earned by the Fund and any other monies which are appropriate revenues. Expenditures from the Fund shall be made in accordance with appropriations made by the Council. Expenditures and encumbrances shall be limited to the balance in the Fund at the time and to purposes for which there is an appropriation or other source of reimbursement authorized at the time.

5.04.250 System Development Charge Sinking Fund.

(Added by Ordinance No. 147298, effective February 28, 1979.) The System Development Charge Sinking Fund is hereby created. Funds obtained from the issuance of General

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Obligation Bancroft Bonds issued pursuant to statute and authorized by the City Council for this purpose shall be placed in this Fund and expended only for payments duly authorized for construction or expansion of systems development. All proceeds from the collection of Bonded Assessments, realized from System Development Charge Assessments with respect to such General Obligation Bancroft Bonds are issued, shall be placed in the fund to be applied to the call and payment of General Obligation Bancroft Bonds pursuant to the call schedule set forth in the offer and as provided by statute.

5.04.270 Washington County Water Supply Construction Fund.

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

5.04.280 Washington County Water Supply Bonded Debt Service Sinking Fund.

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

5.04.290 Water Growth Impact Charge Trust Fund.

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

5.04.300 Bull Run Fund.

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

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become unnecessary for any reason, any remaining money remaining in this Fund at the time it is discontinued shall be paid to the Water Fund.

5.04.310 St. Johns Landfill End Use Plan Fund.

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

5.04.320 Sewer Revolving Loan Fund.

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

5.04.330 Environmental Remediation Fund.

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

5.04.400 Sewer System Operating Fund.

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

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Construction Fund, or the Sewer System Rate Stabilization Fund. Money in the Sewer System Operating fund may be commingled with other City money for investment purposes.

5.04.410 Sewer System Construction Fund.

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

5.04.420 Sewer System Debt Redemption Fund.

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

5.04.430 Sewer System Debt Proceeds Fund.

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

5.04.440 Sewer System Rate Stabilization Fund.

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

5.04.450 Sewer System Safety Net Fund.

(Added by Ordinance No. 160515, effective March 28, 1988.) The Sewer System Safety Net Fund is hereby made a part of the Code of the City of Portland, Oregon, for the receipt of monies derived from loans made to the Fund from the State Assessment Deferral Revolving Loan Fund, and monies derived from the payment of deferred assessments by properties participating in the Sewer Safety Net Program. Monies in the Sewer System Safety Net Fund shall be paid to the Local Improvement District Construction Fund for payment of sewer assessments for properties participating in the Sewer Safety Net

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Program, and shall be used to retire loans received from the State Assessment Deferral Revolving Loan Fund.

5.04.460 Use of Sewage Disposal Fund.

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

5.04.470 Portland Police Fitness Room Trustee Account.

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

5.04.480 Property Management License Fund.

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

5.04.490 Graffiti Nuisance Abatement Trust Fund.

(Added by Ordinance No. 172612; amended by Ordinance Nos. 172810 and 189078, effective July 18, 2018.) There is hereby created a City of Portland graffiti nuisance abatement trust fund. Any donations in support of graffiti abatement will be placed into the fund, together with any monies received in connection with voluntary nuisance abatement consent forms. Expenditures from this fund may occur upon the approval of

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any two of the following: (1) the Mayor; (2) the Commissioner-in-Charge of the Office of Community & Civic Life; and (3) the Graffiti Abatement Manager. Such expenditures shall be limited to: the payment of the cost of removal of graffiti; the purchase, acquisition, operation and maintenance of graffiti removal equipment and supplies; the costs of administering the graffiti nuisance abatement ordinance; and such other public purposes as may be approved by the City Council.

5.04.500 Technology Services Fund.

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

5.04.510 Arts Education and Access Fund.

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

5.04.515 Recreational Cannabis Tax Fund.

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

5.04.520 Mt. Hood Cable Regulatory Commission Agency Fund.

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

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authorized under the Intergovernmental Agreement, and the Commission's approved budget.

5.04.530 Inclusionary Housing Fund.

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

5.04.540 Housing Property Fund.

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

5.04.550 Housing Capital Fund.

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

5.04.560 Portland Clean Energy Community Benefits Fund.

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

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

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

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

Sections:

- 5.24.010 Permanent Records to be Kept by Revenue Division.
- 5.24.020 Revenue Division to Report on Balance in Appropriation.

5.24.010 Permanent Records to be Kept by Revenue Division.

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

5.24.020 Revenue Division to Report on Balance in Appropriation.

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

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CHAPTER 5.30 - COLLECTIONS AND FORECLOSURE PROCESS

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

Sections:

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

5.30.010 Purpose.

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

5.30.020 Definitions.

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

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

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foreclosed property by payment of the redemption price during the redemption period.

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

5.30.030 Applicability and Foreclosure Options.

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

5.30.040 Authorities and Responsibilities.

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

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

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- B.** The City Treasurer shall administer the foreclosure sale process; withhold or withdraw property from foreclosure sale for purchase by the City; administer the redemption process; and execute deeds conveying the property sold. As provided under Section 3.08.030, the City Treasurer may delegate this authority or such other authority as may be assigned under this Chapter.
- C.** Unless otherwise specifically directed by Council, the Division of Asset Management shall manage, maintain, rent or market for sale properties purchased by the City under this Chapter.

5.30.050 Collection Process.

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

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

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2. For a delinquent bonded lien, interest shall be calculated daily based on the amount of the unpaid principal balance and the interest rate set by the installment payment contract.
- D.** As liens become delinquent, the Revenue Division shall provide notice of the delinquency to the property owner. Notice(s) shall be sent by registered or certified mail. Notice(s) shall identify the property, the amount owing (principal, interest, penalties and collection costs) and estimate the sales costs that will be charged to the account. In addition, the notices shall identify the type of the delinquent lien account and the fact that the property will be placed on the foreclosure list unless the property owner elects to pay under the Catch-up Payment Program or brings the account current.
- E.** The Revenue Division may waive interest, penalties and collection costs on delinquent liens under the following conditions:
1. A delay in receiving payment or installment payment contract which is caused by a documented oversight, omission or error by City staff;
 2. A one-time failure in making a payment by the property owner which is caused by a documented financial emergency; or
 3. The sale or transfer of a property that is subject to a delinquent lien to a non-profit organization or government program satisfying the goals of an expressed public purpose.

5.30.060 Adjustment of Open Lien Amounts.

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

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

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listed in Subsection 5.30.060 D. The Revenue Division shall notify the property owner in writing of the Collections Committee's determination.

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

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- F.** If the property owner rejects the Collection Committee's determination, the owner may appeal the determination on adjusting the delinquent open lien amount and payment terms to the Code Hearings Officer as provided for in Chapter 22.10. However, if the owner has previously appealed the lien or the related code violations to the Code Hearings Officer, there shall be no right of appeal.

5.30.070 Catch-up Payment Program.

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

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

5.30.080 Hardship Payment Program.

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

- A.** Under the Hardship Payment Program, a property owner may pay only interest and billing charges for a period not to exceed 12 months.
- B.** Qualifications. A property owner may qualify for the Hardship Payment Program if they meet all of the following criteria:
 - 1.** The property must be a single-family residence, occupied by the owner;
 - 2.** The property must be subject to a delinquent lien; and
 - 3.** The property owner is temporarily unable to make monthly payments due to catastrophic financial circumstances. These circumstances may include illness, loss of income or a temporary disability.
- C.** Administration.
 - 1.** The Revenue Division shall administer the Hardship Payment Program.
 - 2.** Applicants must complete a written request form and provide sufficient written documentation to support a determination that the applicant is experiencing catastrophic financial circumstances. Documentation may consist of records such as a lay-off-notice, proof of unemployment or other evidence of loss of income.
 - 3.** The Revenue Division shall review and approve or deny applications for individual payment plans under the Hardship Payment Program.
 - 4.** If the Revenue Division determines that a property owner is qualified to participate in the Program, the Revenue Division shall allow the qualified property owner to make a minimum monthly payment equal to the monthly interest accruing to the delinquent lien, plus the monthly billing charge. Interest shall be calculated at the prime interest rate set by the City's bank on December 31st of the previous year plus 200 base points (2%) per annum. The recalculated interest rate shall be applied to each individual payment plan on the first billing date following December 31st of each year.
 - 5.** The Revenue Division shall periodically review each individual payment plan to verify the qualifications of the participant.
 - 6.** At the conclusion of an individual payment plan, the Revenue Division shall bill any property owner who has complied with the individual payment plan, but has not paid the account in full, according to the Revenue Division's standard billing procedures.

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

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

5.30.090 Negotiation of Bonded Lien Payment Contracts.

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

5.30.100 Preparation of Foreclosure List.

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

- A. The Revenue Division shall be responsible for preparing the proposed foreclosure list. No property shall be placed on the proposed foreclosure list unless:
 1. It is an open lien which is at least 60 days past the due date; or
 2. It is a bonded lien which is at least one year past the installment due date.
 3. The City has provided the property owner or their predecessor in interest at least two written delinquency notices within a three-month period prior to the sale.
- B. The Revenue Division shall prioritize which delinquent liens to include on the proposed foreclosure list. Priority shall be given to properties that have the potential to significantly reduce the delinquency rate or help to solve a City public health, safety or welfare objective. Priority may also be given based on factors including, but not limited to, the total amount of delinquency; property owners with multiple delinquencies for one or more properties; or multiple nuisance abatement action by the City.
- C. The Revenue Division may determine the number of properties to be placed on the proposed foreclosure list based on current City staffing resources, complexity of accounts, and time and resources necessary to complete timely processing of foreclosing the delinquent liens.

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D. The Revenue Division shall:

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

5.30.110 Council Action on Foreclosure List.

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

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

5.30.120 Purchase of Property by the City.

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

- A. Money for purchase has been transferred to the proper City fund for payment of the delinquent lien amount;
- B. In the case of property purchased before the sale, any person having an interest in the property is given an opportunity to pay the lien in full including collection and sales costs, and thereby remove the property from the foreclosure list as provided by Section 5.30.150; and
- C. Any person having an interest in the property may redeem the property as provided by Section 5.30.210.

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5.30.130 Recording Notice of Foreclosure Sale.

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

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

5.30.140 Notice to Persons on Foreclosure List of Foreclosure Action.

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

- A.** Individual Notice.
 - 1.** The City Treasurer shall mail a notice of foreclosure sale to all persons known to have a recorded interest in the property and to all persons having recorded a request for copy of notice of sale. Notice shall be sent at least 60 days prior to the sale by registered or certified mail.
 - 2.** The mailed notice shall state that a foreclosure sale will be held and it shall specify the date, time and place. It shall contain the following information: the names of the owners of the property; the legal description of the property; the street address; the amount of the delinquent lien stating both the principal and interest due as well as any penalties and collection costs; the type of the delinquent account; and, the name of the City Treasurer and contact information. The notice shall also state that there shall be an additional charge for sales costs to date.
- B.** Newspaper Notice.
 - 1.** The City Treasurer shall have printed in a daily or weekly newspaper of general circulation a notice of foreclosure sale once a week for four successive weeks.
 - 2.** The notice shall contain the information required in Subsection 5.30.140 A.2.

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3. A copy of the first of the four published newspaper notices shall be sent to the owner and to the occupant by registered or certified mail.

C. Posted Notice.

1. The City Treasurer shall have notice of foreclosure sale posted on the property at least once, no less than four weeks before the sale.
2. The posted notice shall contain the information required in Subsection 5.30.140 A.2.

- D. Other notice.** Notice shall be given to the Internal Revenue Service by registered or certified mail, at least 25 days prior to the sale if a federal tax lien was recorded more than 30 days of the scheduled date of the foreclosure sale.

5.30.150 Payment of Lien.

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

5.30.160 Presale and Sale Conditions.

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

5.30.170 Conduct of Foreclosure Sale.

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

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

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3. To any persons with recorded interest in the property, in order of their priority.
 4. To the debtor or the debtor's heirs or assigns.
- E. Property which is not sold may again be offered for sale. The steps in Sections 5.30.130 through 5.30.240 shall be followed.

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

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

5.30.190 Certificate of Sale and Notice of Sale to Property Owner. (Amended by Ordinance Nos. 187833, 187983, 188121 and 189413, effective March 6, 2019)

- A. After a foreclosure sale, the City Treasurer shall promptly deliver a certificate of sale to the purchaser. The certificate of sale embodies the right to own the property at the end of the redemption period. The holder of a certificate of sale holds the certificate of sale subject to the rights of all persons having an interest in the property to redeem it, the right of the City to place additional liens on the property and the right of another unit of government to foreclose upon the property. All liability remains with the persons having an interest in the property until the City issues a deed at the end of the redemption period.
- B. The certificate of sale shall include the following information: a description of the delinquent account for which the property was sold; a description of the property; a statement of the amount for which it was sold; the redemption interest rate and the amount of the redemption penalty; the name of the purchaser; and, a statement

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that the property is being sold subject to the right of redemption within one year from the date of the certificate of sale.

- C.** The City Treasurer shall send to the property owner and all persons known to have a recorded interest in the property a notice of the sale by registered or certified mail, within 10 business days after the sale. The notice shall contain the following information: the name of the purchaser; the right of redemption; the date the redemption period expires; the redemption price; and, the basis for calculating interest and penalties during the redemption period.
- D.** It shall be the responsibility of the purchaser to maintain a current address on file with the Revenue Division.

5.30.200 Entry of Collections and Sales.

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

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

5.30.210 Redemption.

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

- A.** Only persons having a recorded interest in the property, or their legal representative, may redeem the property within the redemption period. Purchasers have no redemption rights.
- B.** Property which has been sold at a foreclosure sale is not eligible for installment payments or a payment plan. Property may be redeemed only by payment in full. Redemption shall be subject to the payment to the City Treasurer of the redemption price. The only acceptable form of payment shall be United States legal currency or cashier's check.
- C.** The City Treasurer shall issue a receipt to the person redeeming the property and shall report the redemption to the Revenue Division. Redemption discharges the property from the effect of the sale.
- D.** If redemption is made by a lien creditor, the amount paid for redemption shall thereafter be deemed a part of the judgment, decree, mortgage or tax lien and shall bear like interest and may be enforced and collected as a part thereof.

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- E.** Upon receipt of the redemption price, the City Treasurer shall issue a check for the sales price amount paid by the holder of the certificate of sale as shown on the lien docket plus any accrued redemption interest and all or a portion of the redemption penalty. The check shall be delivered to the address provided to the City by the purchaser or any transferee or assignee.
- F.** The interest charged during the redemption period shall be set by ordinance. The redemption interest rate shall be set at a level which attracts bidders. The penalty charged during the redemption period shall also be set by ordinance. The redemption penalty shall be set at a rate to encourage payment by delinquent property owners.
- G.** If a property is redeemed at any time during the redemption period, the redemption period automatically terminates.

5.30.220 Issuance of Deed.

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

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

5.30.230 Payment of Taxes.

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

5.30.240 Sale of Property Purchased by City.

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

- A.** Any property purchased by the City from the foreclosure list may be sold as directed by the Council in the manner provided by Charter, Code or State law. Proceeds from the sale shall be used to reimburse the fund from which the property was purchased, any liens paid or other expenses incurred. Any remaining proceeds

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shall be placed in the assessment collection fund unless otherwise designated by Council.

- B.** In selling property as described in Subsection 5.30.240 A., except in situations where the purchaser agrees to accept a quit claim deed, the City Treasurer shall purchase title insurance as a precondition of sale and shall pay the cost of the policy.

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

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

Sections:

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

5.31.005 Purpose.

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

5.31.010 Definitions.

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

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

5.31.015 Applicability and Foreclosure Options.

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

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

5.31.020 Authorities and Responsibilities.

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

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

5.31.025 Collection Process.

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

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

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

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

5.31.027 Renegotiation of Installment Payment Contracts.

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

5.31.030 Preforeclosure Process and Review for Delinquent Tax Accounts.

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

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

5.31.035 Preparation of List.

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

5.31.045 Review of Final Foreclosure List.

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

- A.** The Revenue Division shall transmit a copy of the final foreclosure list to each Commissioner and to the Department of Environmental Quality for review. Any comments shall be transmitted to the Revenue Division within 15 working days from the date the Revenue Division sends the final foreclosure list to the Commissioners and Department.
- B.** The Council shall:
 - 1.** Review the final foreclosure list and shall make a report to the Revenue Division regarding whether each step in the preparation of the final foreclosure list, as set forth in City Code 5.31.025 B. and 5.31.035 B. has been applied correctly.
 - 2.** Review the list of properties which have been on the final foreclosure list but for which no bids were received and make a recommendation on each property to the Department of Environmental Quality regarding how the property should be handled in order to liquidate the lien; and

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3. Transmit to the Revenue Division the instructions from the Department of Environmental Quality regarding how to handle each property which has been placed on the final foreclosure list but not sold.

C. The Revenue Division shall:

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

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

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

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

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

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

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

A. Individual notice.

- 1.** The City Treasurer shall mail a “Notice of Foreclosure” to all persons having an interest in the property and to all persons requesting notice. It shall be sent at least 60 days prior to the sale by certified mail, return receipt requested.
- 2.** The notice shall state that a foreclosure sale will be held and it shall specify the date, time and place. It shall contain the following information: the names of the owners of the property, the legal description of the property, the street address, the amount of the delinquent account stating both the principal and interest due as well as any penalties and collection charges, the type of the delinquent account, and the name of the City Treasurer. It shall also state that there shall be an additional charge.
- 3.** The City Treasurer shall retain and file the returned mailing receipt.

B. Newspaper notice.

- 1.** The City Treasurer shall have printed in a daily newspaper of general circulation the notice of sale once a week for four successive weeks.
- 2.** The notice shall contain the information required in City Code 5.31.055 A 2.
- 3.** A copy of the first of the four published newspaper notices shall be sent to the owner and to the occupant by certified mail, return receipt requested and a copy of the notice shall be retained in the file.

C. Posted notice.

- 1.** The City Treasurer shall have notice posted on the property at least once, no less than four weeks before the sale. Proof of posting shall be maintained in the property foreclosure file.

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

D. Other notice.

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

5.31.060 Purchase of Property by the City.

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

5.31.065 Payment of Lien and Presale and Sale Conditions.

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

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

5.31.070 The Sale.

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

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

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

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

- A.** The City Treasurer shall immediately deliver a certificate of sale to the purchaser. The certificate of sale is a right to own the property at the end of the redemption period. The holder of a certificate of sale has no ownership rights and no possessory interest in the property prior to the completion of the redemption period and holds the certificate of sale subject to the rights of all persons having an interest in the property to redeem it, the City to place additional liens on the property and the right of the right of another unit of government to foreclose upon the property. All liability remains with the persons having an interest in the property until a deed is given to the purchaser.
- B.** The certificate of sale shall include the following information: a description of the delinquent account for which the property was sold, a description of the property, a statement of the amount for which it was sold, the interest rate and the amount of the penalty, the name of the purchaser, and a statement that the property is being sold subject to the right of redemption within one year from the date of sale.

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C. The City Treasurer shall send to the property owner and all persons known to have an interest in the property a “Notice of the Sale” by certified mail, return receipt requested and by first class mail, within 10 working days after the sale. Notice shall be sent to any persons known to have acquired an interest in the property since initial notice was given unless a notice was recorded. The notice shall contain the following information: the name of the purchaser, the right of redemption, the date the redemption period expires, the redemption price, and the basis for calculating interest and penalties during the redemption period.

D. It shall be the responsibility of the purchaser to keep the purchaser’s current address on file with the City Treasurer.

5.31.080 Lien Docket Entry.

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

A. The City Treasurer shall return to the Revenue Division the final foreclosure list with all collections and sales noted on it within three business days after the sale.

B. The Revenue Division shall make the proper entries of the collections and sales in the appropriate lien docket.

5.31.085 Redemption.

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

A. Any person having an interest in the property, or their legal representative, may redeem the property within one year from the date of sale. The one-year period is computed as follows. The date of the sale shall not be counted. The period shall begin to run the day after the sale. The last day of the one-year period shall be the 365th day at 5 p.m. on the next working day. Purchasers have no redemption rights.

B. Redemption shall be subject to the payment to the City Treasurer of the amount of the property sale price , the interest to date and the penalty to date. Property which has been sold at a foreclosure sale is not eligible for installment payments. Property may be redeemed only by payment in full.

C. The City Treasurer shall issue a receipt to the person redeeming the property and shall report the redemption to the Revenue Division. Redemption discharges the property from the effect of the sale.

D. If redemption is made by a lien creditor, the amount paid for redemption shall thereafter be deemed a part of the judgment, decree, mortgage or tax lien and shall bear like interest and may be enforced and collected as a part thereof.

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

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5.31.090 Issuance of Deed.

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

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

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

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

5.31.100 Payment of Taxes.

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

5.31.105 Sale of Property.

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

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

**CHAPTER 5.32 - PURCHASING AGENT AND
PROCEDURES**

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

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CHAPTER 5.33 - GOODS AND SERVICES

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

Sections:

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

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5.33.400	Offer Preparation.
5.33.410	Bid or Proposal Security.
5.33.420	Pre-Offer Conferences.
5.33.430	Addenda to Solicitation Document.
5.33.440	Request for Clarification or Change.
5.33.450	Offeror Submission.
5.33.460	Pre-Closing Modification or Withdrawal of Offers.
5.33.470	Receipt, Opening and Recording of Offers.
5.33.480	Late Offers, Late Withdrawals and Late Modifications.
5.33.490	Mistakes.
5.33.495	Time for City Acceptance.
5.33.500	Responsibility of Offerors.
5.33.505	Qualified Products Lists.
5.33.510	Prequalification of Prospective Offerors; Pre-Negotiation of Contract Terms and Conditions.
5.33.530	Debarment of Prospective Offerors.
5.33.540	Disadvantaged, Minority, Woman, Service-Disabled Veteran or Emerging Small Business Enterprise Prohibited Conduct; Sanctions; Appeals.
5.33.610	Offer Evaluation and Award.
5.33.620	Negotiation With Offerors Prohibited.
5.33.625	Contract Preferences.
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5.33.690	Performance and Payment Security; Waiver.
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5.33.700	Protests and Judicial Review of Special Procurements.
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5.33.770	Procurement Board of Appeals.
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- 5.33.920 Records Maintenance; Right to Audit Records.
- 5.33.930 Right to Inspect Plant or Place of Business.
- 5.33.940 Contract Cancellation, Contractor Termination Procedures.

5.33.010 Definitions.

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

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

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

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

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29. **Electronic Procurement System:** An information system that Persons may access through the Internet or that Persons may otherwise remotely access through a computer, that enables Persons to send Electronic Offers and the City to post Electronic Advertisements, receive Electronic Offers, and conduct other activities related to the City's procurement of goods and services or construction services.
30. **Emergency:** Circumstances that:
- a. could not have been reasonably foreseen;
 - b. create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and
 - c. require prompt execution of a Contract to remedy the condition.
31. **Equal Employment Opportunity (EEO):** An "Equal Employment Opportunity" Employer is one who does not engage in the discrimination prohibited by Federal law and who is registered as an EEO employer with the City of Portland.
32. **Equal Benefits (EB):** means the provision of the same or equivalent benefits to employees with spouses and employees with domestic partners, to spouses of employees and domestic partners of employees, and to dependents and family members of spouses and dependents and family members of domestic partners.
33. **Facsimile:** A document that has been transmitted to and received by the City in a format that is capable of being received by a device commonly known as a facsimile machine. A facsimile machine allows hard copy documents to be sent over telephone lines and be printed in another location.
34. **Goods:** Supplies, equipment, materials, personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, and combinations of any of the items identified in this definition.
35. **Goods and Services/Goods or Services:** Any combination of any of the items identified in the definitions of "goods" and "services".
36. **Invitation to Bid (ITB):** The Written document that invites offers from prospective contractors pursuant to either ORS 279B.055 or 279C.335.

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

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49. **Product Sample:** The exact goods, or a representative portion of the exact goods requested by a Solicitation Document.
50. **Proposal:** A Written response to a Request for Proposals.
51. **Proposer:** A Person who submits a Proposal in response to the City's Request for Proposals.
52. **Public Contract:** A sale or other disposal, or a purchase, lease, rental or other acquisition, by the City of personal property, services, including personal services, Public Improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement, but does not include "grants."
53. **Public Improvement:** A project for construction, reconstruction or major renovation on real property by or for the City. Public Improvements do not include projects for which no funds of the City are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection or Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement.
54. **Qualified Rehabilitation Facility (QRF):** A nonprofit community rehabilitation program or a vocational service provider whose purpose is to assist and encourage disabled individuals and which:
- a. During the fiscal year employs disabled individuals for not less than 75 percent of the hours of direct labor required for the manufacture or provision of its products or services.
 - b. Shall be either a community rehabilitation program certified through the Oregon Vocational Rehabilitation Division or a vocational service provider certified through the Oregon Mental Health Division of the Department of Human Resources;
 - c. Meets the definition given in ORS 279.835(4); and
 - d. Shall be currently certified by the Oregon Department of Administrative Services (ODAS) as a QRF; i.e., is listed as a current certificate holder in the annual QRF Directory, published by ODAS.
55. **Repair and Maintenance:** Ordinary repairs and maintenance necessary to preserve a public improvement. Typically such repairs and maintenance do not prolong the lifespan of a public improvement nor increase its value beyond what was originally constructed.

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

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

5.33.020 City Council as Local Contract Review Board.

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

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

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Rules contained in Chapter 5.34 apply to the City's Public Improvements and construction services. It is the intent of these rules to permit the City to act to the full extent permitted by State law. To the extent that the rules adopted in Chapters 5.33 and 5.34 appear to give the City less authority than State law, then State law shall prevail and the City may act to the full extent permitted by State law.

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

5.33.030 Application of Purchasing Code.

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

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

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Indian tribe, a nation other than the United States or a governmental body in a nation other than the United States.

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

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- (2) The assistance received by the City is from a grantor for the purpose of supporting or stimulating a program or activity of the City; and
 - (3) No substantial involvement by the grantor is anticipated in the program or activity other than involvements associated with monitoring compliance with grant conditions; or
 - b. An agreement under which:
 - (1) The City provides moneys, property or other assistance, including by not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets;
 - (2) The assistance is provided to a recipient for the purpose of supporting or stimulating a program or activity of the recipient; and
 - (3) No substantial involvement by the City is anticipated in the program or activity of the recipient other than involvement associated with monitoring compliance with the grant conditions.
- 7. Acquisitions or disposals of real property or interests in real property;
- 8. Sole source expenditures when rates are set by law or ordinance for purposes of these rules concerning source selection;
- 9. Revenue Generating Contracts: Contracts whose primary purpose is generating revenue and are typically Awarded to the Offeror proposing the most Advantageous or highest monetary Offer to the City, or both, except to the extent of the Chief Procurement Officer's authority as stated in Section 5.33.040. The City Council may designate a particular Contract as a revenue-generating Contract;
- 10. Contracts for Sale of Advertising in City Publications. The right to advertise in City publications may be sold without Competitive Bidding. The City may utilize this exclusion when it publishes material and wants to recoup part of the cost by selling advertising to be placed in that publication. The revenue generated from the sale of advertising shall be applied to the cost of the publication;
- 11. Contracts for Public Improvements, which are governed by Chapter 5.34, unless expressly referenced in Chapter 5.33.

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5.33.040 Authority of Chief Procurement Officer.

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

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

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

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

5.33.050 Authority for Golf Concession Contracts.

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

5.33.055 Authority of Appropriation Unit Managers.

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

5.33.060 Authority of Directors.

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

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

5.33.065 Authority for Stormwater Improvements.

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

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

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

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

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

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

5.33.076 Equal Employment Opportunity.

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

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

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

5.33.077 Equal Benefits.

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

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

5.33.080 Environmentally Preferable Procurement.

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

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A. Definitions:

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

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

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

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

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

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

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

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

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

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

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

5.33.090 Use of Price Agreements.

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

5.33.100 Overview of Source Selection and Contractor Selection.

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

- A. The City shall Award a Contract for Goods and Services covered by this Code using any method authorized by State law or City Code. Such different methods are called methods of "source selection." Source selection methods include Cooperative Procurements, Competitive Sealed Bidding, Competitive Sealed

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Proposals and small, intermediate, sole source, Emergency and Special Procurements.

- B.** State law requires the City to use the services of Qualified Rehabilitation Facilities (QRF's) in certain instances. When required, the City shall use a QRF pursuant to Section 5.33.110 before proceeding with a purchase through other methods of source selection.
- C.** Once the appropriate source selection method has been chosen, the City may consider the best process of selecting a Contractor within the source selection method it has chosen.
- D.** The City may employ methods of Contractor selection for the Procurement of Goods and Services by using any process authorized by State law, including multi-tiered processes as set forth in Subsection 5.33.210 B.6.d., including, but not limited to:

 - 1.** An Award or Awards based solely on the ranking of Proposals;
 - 2.** Discussions leading to best and final Offers in which the City may not disclose private discussions leading to best and final Offers;
 - 3.** Discussions leading to best and final Offers, in which the City may not disclose information derived from Proposals submitted by competing Proposers;
 - 4.** Serial negotiations, beginning with the highest ranked Proposer;
 - 5.** Competitive simultaneous negotiations;
 - 6.** Multiple-tiered competition designed to identify, at each level, a class of Proposers that fall within a Competitive Range or to otherwise eliminate from consideration a class of lower ranked Proposers;
 - 7.** A multi-step Request for Proposals requesting the submission of un-priced technical submittals, and then later issuing a Request for Proposals limited to the Proposers whose technical submittals the City had determined to be qualified under the criteria set forth in the initial Request for Proposals; or
 - 8.** Any combination of methods described in Subsections 5.33.100 D.1. - 7. or as otherwise adopted by the City Council by ordinance.
- E.** The methods of Contractor selection identified in Subsection 5.33.100 D. shall conform to the procedures identified in these rules.

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

5.33.105 Feasibility and Cost Analysis.

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

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

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

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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 costs under Subsection 5.33.105 E. If the Authorized Agency, in the reasonably near past, received Bids or Proposals for the performance of the Services under consideration, or reasonably comparable services, the Authorized Agency may consider the pricing offered in those Bids or Proposals in making its estimate. Similarly, the Authorized Agency may consider what it actually paid under a Contract for the same or similar services. For the purposes of these examples, the reasonably near past is limited to Contracts, Bids or Proposals entered into or received within the five (5) years preceding the date of the cost estimate. The Authorized Agency must take into account, when considering the pricing offered in previous Bids, Proposals, or Contracts, adjustments to the pricing in light of measures of market price adjustments that apply to the Services, such as the Consumer Price Indexes.
- F.** After comparing the estimate of the bureau's costs with a potential contractor's costs, a bureau may proceed with the procurement only if the contracting agency would incur more cost in performing the services with the contracting agency's own personnel and resources than the contracting agency would incur in procuring the services from a contractor.

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

5.33.110 Qualified Rehabilitation Facilities.

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

A. As used in Section 5.33.110:

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

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

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

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

D. Determination of Price/Changes to QRF Contracts

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

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

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

5.33.120 Sole-Source Procurements.

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

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

5.33.130 Emergency Procurements.

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

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

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

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

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

5.33.135 Declaration of State of Emergency or Disaster.

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

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

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

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

5.33.140 Cooperative Purchasing.

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

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

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

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

5.33.145 Rules on all types of Cooperative Procurements.

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

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

5.33.150 Joint Cooperative Procurements.

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

- A.** A Joint Cooperative Procurement is a Cooperative Procurement in which the governmental bodies or the Cooperative Procurement Group and the bodies' or Group's Contract requirements or estimated Contract requirements for Price Agreements are identified in the Solicitation Document.
- B.** A Joint Cooperative Procurement is valid only if:

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

5.33.160 Permissive Cooperative Procurements.

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

- A.** A Permissive Cooperative Procurement is a Cooperative Procurement in which the Purchasing Contracting Agencies are not identified in the Solicitation Document.
- B.** The City may enter into a Permissive Cooperative Procurement if:

 - 1.** The conditions of Subsection 5.33.140 B. are met;
 - 2.** The Administering Contracting Agency's Solicitation and Award process for the original Contract allows other governmental bodies to establish contracts or price agreements under the terms, conditions and prices of the original contract;
 - 3.** The Contractor agrees to extend the terms, conditions and prices of the original contract to the Purchasing Contractor Agency; and
 - 4.** No material change is made in the terms, conditions or prices of the contract or price agreement between the Contractor the Purchasing Contracting

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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.

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

5.33.170 Interstate Cooperative Procurements.

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

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

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

 - a.** was listed in the Solicitation of the Administering Contract Agency as a party that may establish Contracts or Price Agreements under the terms, conditions and prices of the Original Contract and the Solicitation was advertised in Oregon, or

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- b. is a member of a Cooperative Procurement Group and the Group was listed in the Solicitation of the Administering Contracting Agency as a party that may establish Contracts or Price Agreements under the terms, conditions and prices of the Original Contract and the Solicitation was advertised in Oregon; or
 - c. publishes a Notice of intent to establish a Contract or Price Agreement in the manner required by Subsection 5.33.170 C. below.
- C. Notice of Intent. If the City is required by this rule to publish a notice of intent to establish a Contract or Price Agreement through an Interstate Cooperative Procurement, the notice shall include:
 1. A description of the proposed Procurement;
 2. An estimated amount of the proposed Procurement;
 3. The name of the Administering Contracting Agency; and
 4. A time, place and date by which comments must be submitted to the City regarding its intent to establish a Contract or Price Agreement through an Interstate Cooperative Procurement.
- D. The City shall give public notice at least seven (7) Days before the deadline for submission of comments regarding its intent to establish a Contract or Price Agreement through an Interstate Cooperative Procurement.
- E. If the City receives comments within seven (7) Days after publication of its notice, the City shall make a Written determination that establishing a Contract or Price Agreement through an Interstate Cooperative Procurement is in the best interest of the City and provide a copy of the Written determination to any vendor that submitted comments before a Contract or Price Agreement may be established.

5.33.180 Small Procurements.

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

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

- C. Notwithstanding any other provisions of the City Code, small Procurements shall not be amended beyond \$10,000 without prior approval of the Chief Procurement Officer before the additional Goods or Services are provided.

5.33.190 Intermediate Procurements.

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

5.33.200 Competitive Sealed Bidding.

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

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

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- b.** The name and title of the person designated for the receipt of Bids and the person designated by the City as the contact person for the Procurement, if different;
- c.** A Procurement description;
- d.** A time, date, and place that Prequalification applications, if any, must be filed and the classes of Work, if any, for which Bidders must be prequalified in accordance with ORS 279B.100 and Section 5.33.510;
- e.** A statement that the City may cancel the Procurement or reject any or all Bids in accordance with ORS 279B.100 and Section 5.33.645;
- f.** A statement that requires the Contractor or Subcontractor to possess an asbestos abatement license, if required under ORS 468A.710;
- g.** All Contractual terms and conditions applicable to the Procurement;
- h.** Notice of any pre-Offer conference as follows:
 - (1)** The time, date and location of any pre-Offer conference; and
 - (2)** Whether attendance at the conference will be mandatory or voluntary; and
 - (3)** That statements made by the City's representatives at the conference or elsewhere are not binding upon the City unless confirmed by Written Addendum;
- i.** The form and submission of Offers and any other special information, e.g., whether Offers may be submitted by Electronic means;
- j.** The scheduled Closing;
- k.** The office where the Specifications for the Goods or Services may be reviewed;
- l.** A statement that each Bidder to an ITB must identify whether the Bidder is a "Resident Bidder," as defined in Subsection 5.33.010 A.55.;
- m.** Bidder's certification of nondiscrimination in obtaining required Subcontractors in accordance with ORS 279A.110(4). (See Section 5.33.075); and

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- n. How the City will notify Offerors of Addenda and how the City will make Addenda available. See Section 5.33.430; and
 - o. That Bidders may be required to obtain a Business License and may be required to be EEO certified.
2. City Need to Purchase. The character of the Goods or Services the City is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. The City's description of its need to purchase must:
 - a. Identify the scope of the work to be performed under the resulting contract, if the City awards one;
 - b. Outline the anticipated duties of the Contractor under any resulting contract;
 - c. Establish the expectations for the contractor's performance of any resulting contract; 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

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actual future costs, but to the extent possible, such evaluation factors shall be reasonable estimates based on information the City has available concerning future use.

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

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Cause for specification otherwise. The City will have Good Cause to specify otherwise under the following circumstances:

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

5.33.205 Multi-Step Sealed Bidding.

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

- A. General. The City may use multi-step Competitive Sealed Bidding pursuant to ORS 279B.055(12).
- B. Phased Process. Multi-step Bidding is a phased Procurement process which seeks necessary information or un-priced submittals in phase one combined with regular competitive sealed Bidding, inviting Offerors who submitted technically eligible submittals in phase one, to submit competitive sealed price Bids in phase two. The Contract must be Awarded to the lowest Responsible Bidder.
- C. Public Notice. When the City uses multi-step sealed Bids for Contracts over \$150,000, Public Notice for phase one shall be given in accordance with Section 5.33.300. Public Notice is not required for phase two. However, the City shall give notice of subsequent phases to all Bidders and inform Bidders of the right to protest Addenda issued after the initial Closing pursuant to Section 5.33.430 and inform Bidders excluded from the subsequent phases of the right, if any, to protest their exclusion pursuant to Section 5.33.720.

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- D.** Procedures Generally. In addition to the procedures set forth in Sections 5.33.300 through 5.33.340, the City shall use the procedures set forth in this rule for multi-step Bidding and in the Invitation to Bid.
- E.** Procedure for Phase One of Multi-Step Sealed Bidding.
- 1.** Form. The City shall initiate multi-step sealed Bidding by issuing an Invitation to Bid in the form required for competitive sealed Bids except as provided in this rule. In addition to the requirements of Subsection 5.33.200 B., the multi-step Invitation to Bid must state:
 - a.** That the solicitation is a multi-step sealed Bid Procurement and describe the process the City will use to conduct the Procurement;
 - b.** That the City requests un-priced submittals and that the City will consider priced Bids only in phase two and only from those Bidders whose un-priced submittals are found eligible in phase one;
 - c.** Whether Bidders must submit priced Bids at the same time as un-priced submittals and, if so, that Bidders must submit the priced Bids in a separate sealed envelope; and
 - d.** The criteria to be used in the evaluation of un-priced submittals;
 - 2.** Evaluation. The City shall evaluate un-priced submittals in accordance with the criteria set forth in the Invitation to Bid.
- F.** Revisions to Solicitation Specifications. After Closing of phase one, the City may issue Addenda that modify the Specifications for the Goods or Services being procured or that modify other terms and conditions of the Invitation to Bid. The City shall provide such Addenda to all Bidders who initially submitted un-priced technical Bids. The City may then require Bidders to submit revised un-priced technical Bids.
- G.** Procedure for Phase Two.
- 1.** After the completion of Phase One, if the City does not cancel the Solicitation, the City shall invite each eligible Bidder to submit a priced Bid.
 - 2.** Conduct. Phase Two shall be conducted as any other competitive sealed Bid Procurement except:
 - a.** as specifically set forth in this rule or the Invitation to Bid; and
 - b.** no public notice need be given of the invitation to submit priced Bids because such notice was previously given.

5.33.210 Competitive Sealed Proposals.

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

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

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

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

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terminate the resulting Contract, and to seek damages and other relief available under the resulting Contractor or applicable law.

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

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

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

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

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

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

 - 1.** Determining Competitive Range.

 - a.** The City may establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria in the Request for Proposals, the City may determine and rank the Proposers in the Competitive Range. Notwithstanding the foregoing, however, in instances in which the City determines that a single Proposer has a reasonable chance of being determined the most Advantageous Proposer, the City need not determine or rank Proposers in the Competitive Range. In addition, the City may establish a Competitive Range of all

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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

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- (3)** Conclude discussions with all remaining eligible Proposers and provide to the then-eligible Proposers, notice pursuant to Subsection 5.33.211 J. requesting best and final Offers.

H. Negotiations.

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

a. The City may negotiate:

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

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

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

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- 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.
- Best and Final Offers. If best and final Offers are required, the City shall establish a common date and time by which eligible Proposers must submit best and final Offers. If the City is dissatisfied with the best and final Offers the City may make a Written determination that it is in the City's best interest to conduct additional discussions, negotiations or change the City's requirements and require another submission of best and final Offers. The City shall inform all eligible Proposers that if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offer will be construed as their best and final Offers. The City shall evaluate Offers as modified by the best and final Offer. The City shall conduct the evaluations as described in Section 5.33.610. The City may not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.
- 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

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notice of the subsequent phases to all Proposers and inform any Proposers excluded from the subsequent phases of the right, if any, to protest exclusion pursuant to Section 5.33.720.

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

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8. Procedure for Phase Two. On the completion of phase one, the City shall invite each qualified Proposer to submit price Proposals.

a. Phase two shall be conducted as any other competitive sealed Procurement except as set forth in this rule.

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

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

5.33.217 Multi-Step Sealed Proposals.

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

5.33.220 Special Procurements.

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

A. The City may Award a Contract as a Special Procurement pursuant to the requirements of this section, which permits class Special Procurements. Such Procurements allow the City to enter into a series of Contracts over time pursuant to the authorization provided in regard to the Special Procurement and without necessarily following the requirements of Competitive Sealed Bidding, Competitive Sealed Proposals or Intermediate Procurements.

B. For purposes of Section 5.33.220 the following definitions are applicable:

1. “Class Special Procurement” means a contracting procedure that differs from the procedures described in Sections 5.33.180, 5.33.190, 5.33.200 and 5.33.210 and is for the purpose of entering into a series of contracts over time or for multiple projects.

2. “Contract-Specific Special Procurement” means a contracting procedure that differs from the procedures described in Sections 5.33.180, 5.33.190, 5.33.200 and 5.33.210 and is for the purpose of entering into a single Contract or a number of related Contracts on a one-time basis or for a single project.

3. “Special Procurement” means, unless the context requires otherwise, a class special Procurement, a contract-specific special Procurement or both.

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

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2. Is reasonably excepted to result in substantial cost savings to the City or to the public; or
3. Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with the requirements that are applicable under ORS 279B.055, 279B.060, 279B.070 or under the City Rule found in Chapter 5.33.

D. The City Council declares the following as classes of Special Procurements:

1. **Manufacturer Direct Supplies:** The City may purchase goods directly from a manufacturer if the cost from the manufacturer is the same or less than the cost the manufacturer charges to its distributor(s).
2. **Advertisements:** Except as provided by City Charter Section 8-101, the City may purchase advertising in newspapers and Written publications, web-based Internet sites and other electronic formats.
3. **Copyrighted Materials:** The City may purchase copyrighted materials where there is only one known supplier available for such goods. This includes, but is not limited to, new books, workbooks, periodicals, subscriptions, curriculum materials, reference materials, audio and visual media, and non-mass marketed software from a particular publisher or its designated distributor.
4. **Financial Products:** The City may directly purchase financial products such as bond insurance, surety bonds for City bond reserves and liquidity facilities such as letters of lines of credit. The City may pay fees associated with such transactions, including, but not limited to, registrar, paying agent, and escrow agent fees and fees associated with outstanding debt issues.
5. **Employee Benefit Contracts:** Contracts relating to employee benefits may be Awarded directly to a Contractor after the City obtains a consultant pursuant to Chapter 5.68 to conduct a competitive process to acquire such contractors. Such contracts include administrators of employee Flexible Spending Account Administration and Medical Claims Third Party Administration. The City will hire a consultant to advise it on firms available to provide the Work and the consultant is authorized to solicit 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.

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

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- a.** An original valid Contract exists between the parties;
- b.** Unit prices or “add alternates” were provided in the Solicitation Document that established the cost basis for the additional Work or product or in a lump sum Contract the Contractor has provided an estimate of the additional cost which has been verified by the Bureau seeking the amendment; and
- c.** The Solicitation Document provided for such amendments; or
- d.** Emergency: The original Contract was let pursuant to a declaration of Emergency, in accordance with Section 5.33.130; or
- e.** Unplanned Environmental Cleanup: The additional Work is required by reason of existing regulations or ordinances of federal, state or local agencies, dealing with the prevention of environmental pollution and the preservation of natural resources, that affect performance of the original Contract and such regulations or ordinances either were not cited in the original Contract or were enacted or amended after submission of the successful Bid or Proposal.

10. Renegotiations of Existing Contracts with Incumbent Contractors.

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

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Original Contract's Solicitation. For example, the City may accept functionally equivalent substitutes for any Supplies and Services in the Original Contract's Solicitation.

- (3) Optional Term or Condition. If a Contractor offered to the City during the original Solicitation a term or condition that was rejected at that time, the City may not renegotiate for a lower price based on this rejected term or condition as a mandatory term or condition in the renegotiated Contract. If, however, a Contractor offers a lower price pursuant to a rejected term or condition without additional consideration from the City and as only an option to the City, then the City may accept the option of a lower price under the rejected term or condition. For example, if the City initially rejected a Contractor's proposed condition that the price required a minimum order, any renegotiated Contract may not mandate this condition; but the City may agree to the option to order lesser amounts or receive a reduced price based upon a minimum order; and
 - (4) Market. In order to avoid encouraging favoritism or diminishing competition, the City may research the accepted competitive practices and expectations of Offerors within the market for the specific Contract(s) or Classes of Contracts to be renegotiated (Market Norm). If the City researches the Market Norm, then the City must document its results in the Procurement File. Based upon this information, the City shall confirm that, if the City follows the Market Norm, favoritism is not likely to be encouraged, competition is not likely to be diminished, and substantial cost savings may be realized. Under no condition may the City accept or follow any Market Norm that likely encourages favoritism or diminishes competition, even if it is accepted or expected in the market.
- 11. Reverse Auctions, pursuant to the process established in Section 5.33.350.
 - 12. Software and Hardware Maintenance, Licenses, Subscriptions and Upgrades. The City may directly enter into a Contract or renew existing Contracts for information technology hardware or software maintenance, licenses, subscriptions and upgrades without Competitive Solicitation where the maintenance, upgrades, subscriptions and licenses are either available from only one source or, if available from more than one provider, are obtained from the City's current provider in order to utilize the pre-existing knowledge of the vendor regarding the specifics of the City's

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hardware or software system. The City shall document in the Procurement File the facts that justify either that maintenance, license(s), subscriptions and upgrades were available from only one source or, if from more than one source, from the current vendor.

- 13.** Equipment Maintenance, Repair and Overhaul. The City may enter into a Contract for equipment maintenance, repair and/or overhaul without competitive bidding and without obtaining competitive quotations if the extent of repair services, parts, maintenance or overhaul is unknown and cost cannot be determined without preliminary dismantling or testing.
- 14.** Price-regulated goods and services, utilities and utility related services. The City may directly purchase, without a competitive solicitation process, utility services, repair, equipment and/or maintenance work, where the rate or price for such goods and services is established by federal, state, or local regulatory authority or when the services can be provided only by a specific utility.
- 15.** Goods, Services or Equipment Required by a Federal Grant Agreements. The City may directly purchase, without a competitive solicitation process, goods, services or equipment when they are required to be purchased from a specific source or when a specific brand name is required and no competition is otherwise available.
- 16.** Membership Dues. The City may directly purchase, without a competitive solicitation process, dues or memberships in professional or community organizations for the benefit of the City.
- 17.** US Postal Service. The City may directly purchase without a competitive solicitation process, permits and postage meters, pre-stamped postcards, establish on-going postage accounts, etc. from the US Postal Service.
- 18.** Services related to Legal Advice. The City may directly purchase, without a competitive solicitation process, services related to the provision of legal advice to the City:
 - 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

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will be asserted by or against the City, regardless of whether litigation has been filed.

19. Seminar, Training Registration and Conference Fees. The City may directly purchase, without a competitive solicitation process, seminar registrations and training session fees for attendance at seminars, conferences and training courses hosted by outside entities.
 20. Event Sponsorship Agreements. The City may directly pay to sponsor an event, whether or not the City receives goods or services in return for its payment.
 21. Stormwater Improvements. The City may enter into a Contract for stormwater improvements or watershed restoration, or both, without obtaining competitive solicitations if all or a significant portion of the improvements or restoration that the City is funding will be performed
 - a. on private property; and
 - b. by the property owner or a contractor hired by the property owner.
- E.** Notice. The City shall give public notice of the City Council's approval of an Individual or Class Special Procurement on its website as provided in Subsection 5.33.300 A.3. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement. The City shall give such public notice of the approval of a Special Procurement at least seven (7) Days before Award of the Contract. If the Special Procurement leads to a Solicitation Document, then the City will post a Notice of Intent to Award the contract pursuant to Section 5.33.650.
- F.** If the City plans to conduct a competitive special Procurement, it shall award the contract to the Offeror the City determines to be the most advantageous to the City and thereafter give notice of intent to Award to all prequalified Offerors who sought the Award of a Contract in the manner provided for competitive sealed Bids.
- 5.33.300 Public Notice of Solicitation for Contracts over \$150,000.**
(Amended by Ordinance Nos. 183445, 185898 and 187373, effective October 14, 2015.)
- 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

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

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- [illegible]

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

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- 3. There is only one manufacturer or seller of the product of the quality, performance or functionality required; or
 - 4. Efficient utilization of existing goods requires the acquisition of compatible Goods or Services.
- E. The City's use of a brand name specification is subject to protest and review only as provided in Section 5.33.730.

5.33.320 Bids or Proposals are Offers.

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

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

5.33.330 Facsimile Bids and Proposals.

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

- 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:

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

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- 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 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.

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

H. Receipt of Electronic Offers.

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

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

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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

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correction or erasure to its Offer prior to the Opening in accordance with the requirements for submitting an Offer under the Solicitation Document.

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

5.33.410 Bid or Proposal Security.

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

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

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- 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 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

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and the beginning of the next tier or step of competition favors or disfavors any particular Proposer or Proposers.

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

5.33.440 Request for Clarification or Change.

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

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

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

5.33.450 Offeror Submission.

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

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

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

5.33.460 Pre-Closing Modification or Withdrawal of Offers.

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

- A.** Modifications. An Offeror may modify its Offer in Writing prior to the Closing. Unless otherwise provided in the Solicitation Document, any modifications shall

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be prepared on the Offeror's letterhead, signed by an Authorized Representative of the Offeror, state that the new document supersedes or modifies the prior Offer and be submitted in a sealed envelope, appropriately marked. The City may accept modifications Electronically only if it has authorized Electronic submittal of the Offer in the Solicitation document. The Offeror shall mark the submitted modification as follows:

1. Offer Modification; and
2. Solicitation Number or other identification as specified in the Solicitation Document.

B. Withdrawals:

1. An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an Authorized Representative of the Offeror, delivered to the location specified in the Solicitation Document or to Procurement Services if no location is specified, and received by the specific location or to Procurement Services, as appropriate, prior to the time and date set for Closing.
2. The Offeror or Authorized Representative of the Offeror may withdraw its Offer in person prior to the Closing, upon presentation of appropriate identification and satisfactory evidence of authority. Because of the chance for error or misidentification, the City reserves the right to reject a purported withdrawal if in the judgment of the City, sufficient identification is not provided.
3. The City may release an unopened Offer withdrawn under Subsection 5.33.460 B.1. to the Offeror or its Authorized Representative, after voiding any date and time stamp mark or otherwise by appropriately marking the envelope in which the Offer was received.
4. The Offeror shall mark the Written request to withdraw an Offer as follows:
 - a. Offer Withdrawal; and
 - 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.)

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

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

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

5.33.480 Late Offers, Late Withdrawals and Late Modifications.

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

- A.** Any Offer received after Closing is late. An Offeror’s request for withdrawal or modification of an Offer received after Closing is late. The City shall not consider late Offers, withdrawals or modifications

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- 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.

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- E.** **Verification.** If the Offeror verifies its Offer, the City must consider the Offer as originally submitted. However, in fairness to other Offerors, verification does not preclude the City from rejecting the Offer if it is clear that a mistake has been made and the City determines the intended Offer is not evident.
- F.** **Minor Informality.** If the Offeror verifies its Offer, and the City sees no reason for rejection, the City may waive or permit the Offeror to correct a mistake that constitutes a minor informality. A minor informality is a matter of form, rather than substance, that is evident on the face of the Offer and which can be corrected or waived without prejudice to the public or other Offerors. Examples of a minor informality include a failure to:
- 1.** Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;
 - 2.** Sign the Offer in the designated block, provided, however, that a Signature appears elsewhere in the Offer that evidences the Offeror's intent to be bound; or
 - 3.** Acknowledge receipt of an Addendum to the Solicitation Document, provided it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms.
- G.** **Clerical Mistakes.** If the Offeror does not verify its Offer, but contends a clerical mistake caused a different Offer than intended to be submitted, or verifies the Offer but contends a clerical mistake should be corrected within a portion of the Offer, the City may in its discretion permit correction if the conditions of this section are met.
- 1.** Only clerical mistakes can be corrected. A clerical mistake is not a mistake of judgment. Examples of clerical mistakes include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, misplacement of a decimal point, and instances in which the intended correct price is evident by simple arithmetic calculations.
 - 2.** If correction of the Offer would result in displacement of one or more lower Offers submitted by other Offerors, the correction is permitted if, and only if, both the existence of the mistake and the Offer actually intended are ascertainable from the Solicitation Document and the Offer itself.
 - 3.** If correction of the Offer would not result in the displacement of one or more lower Offers submitted by other Offerors, correction may be permitted if the Offeror provides the City with clear and convincing supporting evidence of the mistake and intended Offer within two business days after

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the City's initial notification of the mistake. The City may extend the time for response for good cause shown.

- a.** Supporting evidence shall include all pertinent evidence, such as the Offeror's file copy of its Offer, the original worksheets and other data used in preparing the Offer, subcontractors' quotations, if any, and any other evidence that establishes the existence of a clerical mistake, the manner in which it occurred and the Offer actually intended.
- b.** The closer the corrected Offer is to the next lowest Offer the greater the need for the City to be sure that it has clear and convincing evidence that permits a correction to ensure the integrity of the competitive process.

5.33.495 Time for City Acceptance.

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

5.33.500 Responsibility of Offerors.

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

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

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deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The City may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The City shall document the record of performance of a prospective Offeror if the City finds the prospective Offeror non-Responsible under this Paragraph;

3. A satisfactory record of integrity. An Offeror may lack integrity if the City determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to the City. The City may find an Offeror non-Responsible based on lack of integrity of any Person having influence or control over the Offeror (such as key employees of the Offeror has the authority to significantly influence the Offeror's performance of the Contractor or a parent company, predecessor or successor Person.) The standards for Debarment under ORS 279B.130 may be used to determine an Offeror's integrity. The City may find an Offeror non-Responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or 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 Division of the Bureau of Revenue and Financial Services within seven (7) Days of the receipt of a Bid or Proposal, unless the City waives that requirement and decides to pursue collection through retention of Contract funds, or through other means; or
 - c. The Offeror failed to submit a signed affidavit that attests, under penalty of perjury, that the Offeror has complied with the tax laws of the State of Oregon and the City of Portland.
5. Supplied all necessary information in connection with the inquiry concerning responsibility. If a prospective Offeror fails to promptly supply information requested by the City concerning responsibility, the City shall

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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:

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

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5.33.530 Debarment of Prospective Offerors.

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

- A.** The City may Debar prospective Offerors pursuant to ORS 279B.130 and this rule.
- B.** The City may debar a prospective Offeror from consideration for City Contracts for a period up to three (3) years if:

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

 - 1.** Issue a Written decision that states the reasons for the action taken and informs the Offeror of the appeal rights under ORS 279B.435 and Section 5.33.760; and
 - 2.** Mail or immediately furnish a copy of the decision to the debarred Offeror.
- D.** Notwithstanding the limitation on the term for Debarment in ORS 279B.130(1)(b) and this rule, the City may determine that a previously Debarred Bidder or Proposer is not Responsible for a given Contract prior to Contract Award.
- E.** Imputed Knowledge. The City may attribute improper conduct of a Person or its affiliate having a Contract with a prospective Offeror to the prospective Offeror for purposes of debarment where the impropriety occurred in connection with the

Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.

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

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

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

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

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4. Aiding another person to attempt to fraudulently obtain or retain certification as a disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprise; or
 5. Knowingly making a false claim that any person is qualified for certification or is certified under ORS 200.055 (Certification of disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprises) for the purpose of gaining a contract or subcontract or other benefit.
- D.** When the City investigates a complaint that a person has violated ORS 200.065, the City may require any additional information, and through the City Attorney's Office, administer oaths, take depositions and issue subpoenas to compel witnesses to attend and to produce books, papers, records, memoranda or other information necessary for the City to complete its investigation. If a person fails to comply with any subpoena that the City issues under its investigation. If a person fails to comply with any subpoena that the City issues under ORS 200.065 or refuses to testify on any matter on which a person may lawfully be interrogated, the City shall follow the procedure provided in ORS 183.440 to compel compliance.
- E.** The City may issue the following sanctions against any person for violating ORS 200.065:
1. Withholding payment;
 2. Suspending or terminating a public contract;
 3. Impose a civil penalty not to exceed 10 percent of the contract or subcontract price or \$5,000, whichever is less, for each violation; and
 4. Disqualifying for up to 3 years from submitting a bid or proposal for, or receiving an award of, a public contract.
- F.** The City may also disqualify any person from bidding or participating in a public contract for a period of up to 3 years;
1. Who under oath during the course of an investigation admits to violating ORS 200.065(1) or (2); or
 2. Upon notice of a finding of fraudulent certification by the Oregon Business Development Department or other public contracting agency.
- G.** Any bidder, proposer, contractor or subcontractor on a City contract that knowingly commits any of the following acts shall have its right to submit a bid or proposal for, or receive an award of, a City contract in the future suspended under ORS 200.075:

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1. Entering into any agreement to represent that a disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise certified under ORS 200.055 will perform work or supply material under a public improvement contract without the knowledge and consent of the disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise.
 2. Exercising or permitting another bidder, proposer, contractor or subcontractor to exercise management and decision making control over the internal operations of a disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise other than the bidder's, proposer's, contractor's or subcontractor's own business enterprise. As used in this paragraph, "internal operations" does not include normal scheduling, coordination, execution or performance as a subcontractor on a public contract.
 3. Using a disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise to perform a public contract or subcontract or to supply material under a public contract to meet an established goal or requirement if the disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprise does not perform a Commercially Useful Function in carrying out its responsibilities and obligations under the public contract.
 4. Failing to perform a Commercially Useful Function in performing a public contract or subcontract or in supplying material to a contractor or subcontractor that is performing a public contract if the bidder, proposer, contractor or subcontractor is presented as a certified disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise to meet an established goal or requirement.
- H.** The suspension shall be one year for a first violation, 3 years for a second violation and 5 years for a third violation. Each violation must remain on record for 5 years. After 5 years the City may not consider the violation in reviewing future violations.
- I.** Prior to suspending, disqualifying or otherwise sanctioning a person under Section 5.33.540, the City shall provide written notice to the person of a proposed sanction under ORS 200.065 or ORS 200.075, served personally or by registered or certified mail, return receipt requested. This notice shall include:
1. That the City intends to sanction;
 2. The effective date and period of the sanction, if applicable;
 3. The reason(s) for the sanction; and

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- 4. That the person has the right to request a hearing before the Code Hearings Officer in accordance with Section 3.130.020.
- J. The hearing shall be conducted in accordance with Chapter 22.10 and any administrative rules governing appeals to the Code Hearings Officer.

5.33.610 Offer Evaluation and Award.

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

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

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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

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the City from seeking a clarification of an Offer, provided the clarification does not change the Offer. This rule does not prohibit negotiation with a Proposer in response to a Request for Proposals provided the requirements of these rules have been met.

5.33.625 Contract Preferences.

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

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

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quality if, after completing the Contracting procedure approved by the City if the City determines, in Writing, that two or more Proposals are equally Advantageous to the City.

4. Offers received in response to an intermediate Procurement conducted pursuant to ORS 279B.070 are identical if the Offers equally best serve the interests of the City in accordance with ORS 279B.070(4).
- C. Determining if Goods or Services are Manufactured or Produced in Oregon. In applying Subsection 5.33.625 A., the City shall determine whether a Contract is predominantly for Goods or Services are manufactured, produced or performed in Oregon. The City may request in a Solicitation Document, following Closing, or at any other time determined appropriate by the City, any information the City may need to determine if the Goods or Services are manufactured or produced in Oregon. The City may use any reasonable criteria to determine if Goods or Services are manufactured or produced in Oregon, provided that the criteria reasonably relate to that determination, and provided that the same criteria apply equally to each Offeror.
- D. Procedure for Drawing Lots. When this Rule calls for the drawing of lots, the City shall draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of selection, and that does not allow the person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.
- E. Discretionary Preference and Award. Under ORS 279A.128, the City may provide, in a Solicitation Document for Goods or Services, a specified percentage preference of not more than ten percent for Goods fabricated or processed entirely in Oregon or Services performed entirely in Oregon. When the City provides for a preference under this Section, and more than one Offeror qualifies for the preference, the City may give a further preference to a qualifying Offeror that resides in or is headquartered in Oregon. The City may establish a preference percentage higher than ten percent if the Chief Procurement Officer makes a written determination that good cause exists to establish the higher percentage and explains the City's reasons and evidence of good cause. The City may not apply the preferences described in this Paragraph in a Procurement for emergency work, minor alterations, ordinary repairs or maintenance of public improvements, or construction work that is described in ORS 279C.320.

5.33.630 Reciprocal Preferences.

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

- A. When evaluating Bids pursuant to Section 5.33.610, the City shall add a percentage increase to the Bid of a Nonresident Bidder equal to the percentage, if any, of the

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preference that would be given to that Bidder in the state in which the Bidder resides.

- B.** The City shall rely on the list prepared and maintained by the Oregon Department of Administrative Services pursuant to ORS 279A.120(4) to determine both:
 - 1.** whether the Nonresident Bidder's state gives preference to in-state Bidders, and
 - 2.** the amount of such preference.

5.33.635 Contract Preferences: Recycled Materials.

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

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

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

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

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

5.33.650 Notice of Intent to Award.

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

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

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1. Seven (7) Days after the date of notice of intent to Award, unless the Solicitation Document provided a different period for protest of Contract Award. For purposes of this section, the Day on which the Notice is posted from which the seven Days shall begin to run shall not be included, but the last Day of the period shall be included;
2. The City provides a Written response to all timely-filed protests that denies the protest and affirms the Award; or
3. Upon the conclusion of any appeal pursuant to Section 5.33.740.

5.33.660 Cancellation, delay or suspension of Solicitation.

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

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- 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;
 - 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

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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

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

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different time period as may be provided in the Notice of Intent to make a Sole Source purchase.

2. Contents:

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

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

- 1.** The City shall inform the Affected Person in Writing if the protest was not timely filed;
- 2.** The City shall inform the Affected Person if it failed to meet the requirements of Subsection 5.33.710 B.2. and the reasons for that failure;
- 3.** If the protest was timely filed and provides the information required by Subsection 5.33.710 B.2., the City shall issue a decision in Writing and provide that decision to the Affected Person within a reasonable period of time unless a Written determination is made by the City that circumstances exist that require a shorter time limit.
- 4.** If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.

D. Optional City Response: In addition to the requirements of Subsection 5.33.710 C., the Chief Procurement Officer may do any of the following:

- 1.** Agree with the protest and take any corrective action necessary;
- 2.** Issue a Written response to the protest and provide that decision to the Affected Person;
- 3.** Refer the protest and any response to the Board of Appeals for decision;

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

5.33.720 Protests and Judicial Review of Multi-Tiered Solicitations.

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

- A. Interested Offerors may file a Written protest of the Specifications, Contract terms and conditions, pursuant to Section 5.33.730.
- B. Affected Persons may protest in one of two ways:
1. If no other protest remedies are provided in the Solicitation Document, Affected Persons can file a Written protest to the Award within seven (7) Days after the issuance of the Notice of Intent to Award pursuant to Section 5.33.740 if the meet the requirements of Subsection 5.33.720 C. below.
 2. If expressly required or permitted by the Solicitation Document, Affected Persons must file a Written protest after being excluded from the Competitive Range or after being excluded from any subsequent stages of a Procurement.
- C. Basis of Protest. An Affected Person may protest its exclusion from the Competitive Range or from subsequent stages of a Procurement only if:
1. The Affected Person is Responsible and submitted a Responsive Offer;
 2. The City made a mistake that, if corrected, would have made the Affected Person eligible to participate in the next stage of the Procurement.
 3. In the case of a competitive request for proposal, the exercise of judgment used by the Evaluation Committee members in scoring written proposals and oral interviews, including the use of outside expertise, if that judgment was biased or not exercised in good faith. The unbiased, good faith judgment of Evaluation is not grounds for protest. The unbiased, good faith judgment of Evaluation Committee members will not be a basis for sustaining a protest.
- D. Method of Protest:

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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.
 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;

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

G. Judicial Review. An Affected Person may not seek judicial review unless it has complied fully with the protest requirements of this section and has exercised all administrative appeal rights. Judicial review is not available if the City elects not to make a Procurement.

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

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

A. An Affected Person may protest the Procurement process or the Solicitation Document for Offers solicited pursuant to Competitive Sealed Bidding pursuant to Section 5.33.200, Competitive Sealed Proposals pursuant to Section 5.33.210, a Special Procurement, or a Class Special Procurement pursuant to Section 5.33.220. Prior to submitting a protest, an Affected Person may seek clarification of any provision of the Solicitation Document. Any clarification by the City is binding only if the City amends the Solicitation Document by Addendum.

B. Method of Protest

1. Time: A Written protest of the City's posting of a solicitation document shall be provided to the Chief Procurement Officer within seven (7) Days after a Solicitation Document is advertised. The Chief Procurement Officer shall not consider a protest submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the Solicitation Document. A Written Protest of any Addendum shall be submitted by the close of the next business day after issuance of the Addendum.
2. Contents: The protest must include the following information:
 - a. Sufficient information to identify the Solicitation that is the subject of the protest;
 - b. A detailed statement of all the legal and factual grounds for the protest;

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- c. Evidence or supporting documentation that supports the grounds on which the protest is based;
- d. A description of the resulting harm to the Affected Person; and
- e. The relief requested.

C. Required City Response.

- 1. The City shall inform the Affected Person in Writing if the protest was not timely filed;
- 2. The City shall inform the Affected Person if it failed to meet the requirements of Subsection 5.33.730 B.2. and the reasons for that failure;
- 3. If the protest was timely filed and provides the information required by Subsection 5.33.730 B.2. above, the Chief Procurement Officer shall issue a decision in Writing and provide that decision to the Affected Person no less than three (3) business days before Offers are due, unless a Written determination is made by the City that circumstances exist that require a shorter time limit.
- 4. The Chief Procurement Officer's response shall inform the Affected Person if the decision is final or whether the Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council. When the decision is final, the Affected Person must seek judicial review before the Opening of Bids, Proposals or Offers.
- 5. If the City receives a protest from an Affected Person in accordance with this rule, the City may extend Closing if the City determines an extension is necessary to consider the protest and to issue an Addendum to the Solicitation Document.

D. Optional City Response: In addition to the requirements of Subsection 5.33.730 C. above, the Chief Procurement Officer may do any of the following:

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

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5. Any other action that is in the best interest of the City while giving full consideration to the merits of the protest.
- E.** Judicial Review. An Affected Person may not seek judicial review unless it has complied fully with the protest requirements of this section and exercised all administrative appeal rights. Judicial review is not available if the City withdraws the Solicitation Document that was the subject of the protest.

5.33.740 Protests and Judicial Review of Contract Award.

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

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

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

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- E.** Judicial Review. An Affected Person may not seek judicial review of the Intent to Award a Contract unless it has complied fully with the protest requirements of this section. Judicial review is not available if the City elects not to make an Award.

5.33.750 Protests of Other Violations.

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

- A.** A protest by an Affected Person may be made under this section only if a Contract is about to be Awarded or has been Awarded and:
- 1.** An alleged violation of ORS 279A or 279B, except 279B.400 to 279B.425, has occurred in the Procurement process and violation has resulted or will result in the unlawful Award of a Contract or the unlawful failure to Award the Contract;
 - 2.** The alleged violation deprived the Affected Person of the Award of the Contract or the opportunity to compete for the Award of the Contract;
 - 3.** The Affected Person would have been a Responsible Bidder, Proposer or Offeror qualified to receive the Award of the Contract;
 - 4.** The Affected Person gave Written notice to the City describing the alleged violation no later than ten (10) Days after the date on which the alleged violation occurred and in no event more than ten (10) Days after the date of the execution of the Contract;
 - 5.** If the alleged violation is of ORS 279A, then it is one for which no judicial review is provided by another section of ORS Chapter 279A or 279B. If the alleged violation is of 279B, except 279B.400 to 279B.425, then it is one for which no judicial review is provided by another section of ORS Chapter 279B.
- B.** Method of Protest.
- 1.** Time: A Written protest of the Chief Procurement Officer's Award shall be provided to the Chief Procurement Officer no later than ten (10) Days after the date on which the alleged violation occurred and in no event later than ten (10) Days after the date of the execution of the Contract. The Chief Procurement Officer shall not consider a protest submitted after the timeline established for submitting such protest under this rule and shall not consider a protest under this section if a right to protest is elsewhere provided by this Code.

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- 2.** Contents: The protest must include the following information:
 - a.** Sufficient information to identify the Procurement or Solicitation that is the subject of the protest;
 - b.** A detailed statement of the alleged violation and all the legal and factual grounds for the protest;
 - c.** Evidence or supporting documentation that supports the grounds on which the protest is based;
 - d.** A description of the resulting harm to the Affected Person; and
 - e.** The relief requested.
- C.** Required City Response. The City shall take the following actions, as appropriate:
 - 1.** The City shall inform the Affected Person in Writing if the protest was not timely filed;
 - 2.** The City shall inform the Affected Person if it failed to meet the requirements of Subsection 5.33.750 B.2. and the reasons for that failure;
 - 3.** If the protest was timely filed and provides the information required by Subsection 5.33.750 B.2. above, the City shall issue a decision in Writing and provide that decision to the Affected Person within a reasonable period of time unless a Written determination is made by the City that circumstances exist that require a shorter time limit.
 - 4.** If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.
- D.** Optional City Response: In addition to the requirements of Subsection 5.33.750 C., the Chief Procurement Officer may do any of the following:
 - 1.** Agree with the protest and take any corrective action necessary;
 - 2.** Issue a Written response to the protest and provide that decision to the Affected Person;
 - 3.** Refer the protest and any response to the Board of Appeals for decision;
 - 4.** Refer the protest and any response to the City Council for decision; or

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- 5.** Take any other action that is in the best interest of the City while giving full consideration to the merits of the protest
- E.** Judicial Review. An Affected Person may not seek judicial review 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:

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

5.33.780 Powers of the Board.

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

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

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- E.** Following completion of a hearing, the Board shall prepare a Written decision that shall be mailed to all parties to the hearing by certified mail, return receipt requested.

5.33.790 Appeal to Board.

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

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

- G.** Costs: The Chief Procurement Officer may impose a reasonable fee on the Affected Person requesting a hearing before the Board or Council to defray costs of the appeal. The fee shall be paid at the time the hearing is requested or the protest shall be considered waived. In the event that the Person contesting the hearing prevails in its protest, the fee shall be refunded.

5.33.900 Social Equity Contracting and Employment Programs.

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

5.33.920 Records Maintenance; Right to Audit Records.

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

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

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and copy those records. If the Contractor elects to have such records outside these boundaries, the costs paid by the Contractor to the City for inspection, auditing, examining and copying those records are not recoverable costs in any legal proceeding.

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

5.33.930 Right to Inspect Plant or Place of Business.

- A.** Time for Inspection. The City may, at reasonable times, inspect the part of the plant or place of business of a Contractor or any Subcontractor or supplier which is related to the performance of any Contract Awarded.
- B.** Access to Plant or Place of Business. As a condition of Bidding or proposing, Bidders and Proposers agree that representatives of the City may enter a Contractor's or Subcontractor's or supplier's plant, place of business, work site or construction site during normal business hours for the following purposes:
 - 1.** To inspect and/or test supplies or services for acceptance by the City pursuant to the terms of the Bid or Proposal;
 - 2.** To investigate in connection with a Bidder's or Proposer's Bid or Proposal, a minority business or EEO certification, or Bidder or Proposer qualification.

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

5.33.940 Contract Cancellation, Contractor Termination Procedures.

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

- 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;

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2. Product or service Specifications;
 3. Delivery or completion requirements; or
 4. Contracted pricing and price escalation/de-escalation clauses.
- B.** The City and the Contractor may cancel the Contract at any time by mutual Written agreement.
- C.** Termination For Convenience.
1. Reasons for Termination. The City may, in its sole discretion, by a Written order or upon Written request from the Contractor, cancel the Contract or a portion thereof if any of the following occur:
 - a. The Contractor is prevented from completing the Work for reasons beyond the control of the City; or
 - b. The Contractor is prevented from completing the Work for reasons beyond the control of the Contractor; or
 - c. For any reason considered by the City to be in the public interest, other than a labor dispute or any third party judicial proceeding relating to the Work filed in regards to a labor dispute. These reasons may include, but are not limited to, non-availability of materials, phenomena of nature of catastrophic proportions or intensity, executive orders of the President related to national defense, congressional, state or local acts related to funding; or
 - d. Any third party judicial proceeding relating to the Work other than a suit or action filed in regards to a labor dispute; or
 - e. If the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of a Public Improvement.
- D.** Payment When Contract is Canceled. When the Contract, or any portion thereof, is canceled before completion of all items of Work in the Contract, payment shall be made, based on the Contract price, for the actual items of Work completed under the Contract, or by mutual agreement, for items of Work partially completed. No claim for loss of anticipated profits or overhead shall be allowed;
- E.** Responsibility for Completed Work if Contract Canceled. Cancellation of a Contract or a portion thereof shall not relieve the Contractor of responsibility for the Work completed, nor shall it relieve the surety of its obligation for any just claims arising from the Work performed.

F. Termination of The Contractor's Performance for Default.

- 1. Declaration of Default.** The City may, after giving the Contractor and its surety seven (7) Days Written notice and an opportunity to cure deficient performance, terminate the Contractor's performance for any reasonable cause. Upon such termination, the City may immediately take possession of the premises and of all materials, tools and appliances thereon as well as all other materials, whether on the premises or not, on which the Contractor has received partial payment. The City may finish the Work by whatever method it may deem expedient;
 - a.** If the Contractor should repeatedly refuse or fail to supply an adequate number of skilled workers or proper materials to carry on the Work as required by the Contract documents, or otherwise fail to pursue the Work in a timely manner; or
 - b.** If the Contractor should repeatedly fail to make prompt payment to Subcontractors or for material or labor; or
 - c.** If the Contractor should voluntarily or involuntarily seek protection under the United States Bankruptcy Code and its Debtor in Possession or Trustee for the estate fails to assume the Contract within a reasonable time, or as provided by the Bankruptcy Court; or
 - d.** If the Contractor should make a general assignment for the benefit of the Contractor's creditors; or
 - e.** If a receiver should be appointed on account of the Contractor's insolvency; or
 - f.** If the Contractor is otherwise in material breach of any part of the Contract; or
 - g.** If the Contractor should disregard laws, rules, or the instructions of the City or its Authorized Representative.
- 2. Required Response to Declaration of Default.** If a default is declared and the Contractor's performance terminated, the Contractor or the surety shall provide the City with immediate and peaceful possession of all of the materials, tools and appliances located on the premises, as well as all other materials whether on the premises or not, on which the Contractor has received any progress payment. Further, the Contractor shall not be entitled to receive any further payment until the Work is completed. On the completion of the Work, the City shall determine the total amount of

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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.
- 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.

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- 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.

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

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

Sections:

5.34.010	Definitions.
5.34.020	Application and Authority.
5.34.040	Affirmative Action.
5.34.060	Contracts for Construction Other than Public Improvements.
5.34.100	Overview of Source Selection and Contractor Selection.
5.34.110	Emergency Contracts; Bidding and Bonding Exemptions.
5.34.120	Selection of Substitute Contractor.
5.34.130	Joint Cooperative Purchasing.
5.34.140	General Rules for Joint Cooperative Procurements; Fees.
5.34.150	Competitive Bidding Requirement.
5.34.160	Intermediate Procurements; Competitive Quotations.
5.34.300	Solicitation Documents; Required Provisions; Assignment or Transfer.
5.34.310	Notice and Advertising Requirements; Posting.
5.34.320	Specifications and Brand Names.
5.34.330	Facsimile Bids and Proposals.
5.34.340	Electronic Procurement.
5.34.410	Bid or Proposal Security.
5.34.420	Pre-Offer Conferences.
5.34.430	Addenda to Solicitation Documents.
5.34.440	Request for Clarification or Change.
5.34.450	Offer Submissions.
5.34.460	Pre-Closing Modification or Withdrawal of Offers.
5.34.470	Receipt, Opening and Recording of Offers.
5.34.480	Late Bids, Late Withdrawals and Late Modifications.
5.34.490	Mistakes.
5.34.493	First-Tier Subcontractors; Disclosure and Substitution.
5.34.500	Responsibility of Offerors.
5.34.510	Prequalification of Offerors.
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5.34.600	Bid or Proposal Evaluation Criteria.
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5.34.625	Contract Preference; Resident Bidders.
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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.
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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.
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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 Services (CM/GC Services).
5.34.900	Required Contract Clauses.
5.34.910	Waiver of Delay Damages Against Public Policy.
5.34.915	BOLI Public Works Bond.
5.34.920	Retainage.
5.34.930	Social Equity Contracting and Employment Programs.
5.34.940	Public Works Contracts.
5.34.950	City Payment for Unpaid Labor or Supplies.
5.34.960	Records Maintenance; Right to Audit Records.
5.34.970	Right to Inspect Plant or Place of Business.
5.34.980	Contract Cancellation, Contractor Termination Procedures.

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5.34.010 Definitions.

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

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

5.34.020 Application and Authority.

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

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

C. Authority and Ethics

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

5.34.040 Affirmative Action.

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

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

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

5.34.060 Contracts for Construction Other than Public Improvements.

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

5.34.100 Overview of Source Selection and Contractor Selection.

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

- A.** Emergency Procurements;
- B.** Substitution of Contractors by a Surety;
- C.** Joint Cooperative Procurements;
- D.** Competitive Quotations;
- E.** Competitive Bidding; and

- F. Alternative Contracting Methods found in Section 5.34.800 et seq. Class exemptions are located in Subsection 5.34.830 H. while individual Contracts must be authorized by the City Council by ordinance.

5.34.110 Emergency Contracts; Bidding and Bonding Exemptions.

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

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

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Commissioner has responsibility to enter into an Emergency Contract over \$500,000.

- a.** Following the declaration of an Emergency the Commissioner shall immediately prepare an ordinance for approval of the Emergency Contract by the City Council at its next regularly scheduled session or as soon as possible thereafter. That Contract shall be added to the regular agenda of the Commissioner without the need for approval for inclusion on the agenda by other Commissioners.
 - b.** If the Council adopts the ordinance, the City will pay for the Work required by the Contract. If Council disapproves the ordinance, the City only will pay for Work performed prior to the date that the Council considered the ordinance for approval. If for any reason presentation of the ordinance to the Council is delayed, the City still will only be liable for Work performed prior to the time when the ordinance first was presented to the Council.
- E.** Any Contract Awarded under this section shall be Awarded within 60 Days, unless the City Council authorizes a longer period of time.
- F.** All documentation of Emergency Contracts shall be sent to the Chief Procurement Officer for record keeping purposes.
- G.** All Emergency Contracts Awarded when there was no Emergency or reasonable perception of Emergency are void unless the Contract was otherwise valid under another portion of the City's Purchasing Rules.
- H.** After the Award of an Emergency Contract, the City shall execute a Written Contract with the Contractor as soon as possible.
- I.** All such Contracts, whether or not signed by the Contractor, shall be deemed to contain a termination for convenience clause permitting the City to immediately terminate the Contract at its discretion and, unless the Contract was void, the City shall pay the Contractor only for Work performed prior to the date of termination plus the Contractor's unavoidable costs incurred as a result of the termination. In no event will the City pay for anticipated lost profits or consequential damages as a result of the termination.
- J.** Emergency Contracts may be modified by change order or amendment to address the conditions described in the original declaration or an amended declaration that further describes additional Work necessary and appropriate for related Emergency circumstances.
- K.** Pursuant to ORS 279C.380(4) and this rule, the Emergency declaration may also state that the City waives the requirement of furnishing a performance bond and

payment bond for the Emergency Contract. After making such an Emergency declaration those bonding requirements are excused for the Procurement, but this Emergency declaration does not affect the separate Public Works bond requirement for the benefit of the Bureau of Labor and Industries (BOLI) in enforcing prevailing wage rate and overtime payment requirements. In addition, nothing herein shall prevent the Chief Procurement Officer or City Council from subsequently requesting such from bonds the Contractor after work begins.

5.34.120 Selection of Substitute Contractor.

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

5.34.130 Joint Cooperative Purchasing.

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

- A.** The City may participate in, sponsor, conduct or administer Joint Cooperative Procurements for the acquisition of Public Improvements, provided that the Administering Contracting Agency's Solicitation and Award process for the original Contract was an open and impartial Competitive process that used source selection methods substantially equivalent to those found in Chapter 5.34.
- B.** A Solicitation and Award process uses source selection methods substantially equivalent to those identified in ORS 279C and Chapter 5.34 if the Solicitation and Award process:

 - 1.** Calls for Award of a Contract on the basis of a lowest Responsible Bidder or a lowest and best Bidder determination in the case of Competitive Bids, or on the basis of a determination of the Proposer whose Proposal is most Advantageous based on evaluation factors set forth in the Request for Proposals in the case of Competitive Proposals when permitted by an exemption established by the City Council;
 - 2.** Does not permit the application of any geographic preference that is more favorable to Bidders or Proposers who reside in the jurisdiction or locality favored by the preference than the preferences provided in ORS 279A.120(2); and
 - 3.** Uses reasonably clear and precise Specifications that promote suitability for the purposes intended and that reasonably encourage competition.

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- C.** The City shall determine, in Writing, whether the Solicitation and Award process for an Original Contract arising out of a Cooperative Procurement for a Public improvement is substantially equivalent to those identified in ORS 279C and Chapter 5.34.
- D.** Protests. Protests regarding the use of all types of cooperative Procurements shall be governed by the applicable provisions of Section 5.34.700 et seq.

5.34.140 General Rules for Joint Cooperative Procurements; Fees.

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

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

5.34.150 Competitive Bidding Requirement.

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

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

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- 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

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announced selection criteria. If Award is not made to the Offeror offering the lowest price, the City shall make a Written record of the basis for Award.

- E.** Intermediate level Public Improvement Contracts obtained by competitive quotations may be increased above the original amount of Award by change order or amendment within the limitations pursuant to Subsection 5.34.020 C.3.

5.34.300 Solicitation Documents; Required Provisions; Assignment or Transfer.

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

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

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publication of the advertisement, and may, in the sole discretion of the City, direct or permit the submission and receipt of bids by electronic means. If the City is issuing an ITB that may result in a Public Improvement Contract with a value in excess of \$100,000, the City shall designate a time of Closing consistent with the first-tier Subcontractor disclosure requirements of ORS 279C.370(1)(b) and Section 5.34.493. For timing issues relating to Addenda, see Section 5.34.430;

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

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for good cause all Offers upon the City's finding that it is in the public interest to do so;

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

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4. If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2));
5. Payment of claims by public officers (ORS 279C.515(1));
6. Contractor and first-tier Subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2), including the rate of interest;
7. A Person's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract as provided in ORS 279C.515(3);
8. Hours of labor in compliance with ORS 279C.520;
9. Environmental and natural resources regulations (ORS 279C.525);
10. Payment for medical care and attention to employees (ORS 279C.530(1));
11. A Contract provision substantially as follows: "All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements." (ORS 279C.530(2));
12. Maximum hours, holidays and overtime (ORS 279C.540);
13. Time limitation on claims for overtime (ORS 279C.545);
14. Prevailing wage rates (ORS 279C.800 to 279C.870);
15. Fee paid to BOLI (ORS 279C.830);
16. BOLI Public Works Bond (ORS 279C.830(3));
17. Retainage (ORS 279C.550 to 279C.570);
18. Prompt payment policy, progress payments, rate of interest (ORS 279C.570);
19. Contractor's relations with Subcontractors (ORS 279C.580);
20. Notice of claim (ORS 279C.605);

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

5.34.310 Notice and Advertising Requirements; Posting.

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

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

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unless the City Council has exempted the Solicitation from the advertisement requirement as part of a competitive bidding exemption under ORS 279C.335 and Section 5.34.820.

1. Unless the City publishes by Electronic Advertisement as permitted by Subsection 5.34.310 B.2., the City shall publish the advertisement for Offers at least once in at least one newspaper of general circulation in the area where the Contract is to be performed and in as many additional issues and publications as the City may determine to be necessary or desirable to foster and promote competition.
2. The City Council finds that publishing Notice Electronically is likely to be cost effective. The City may publish by Electronic Advertisement if:
 - a. The City has published a Notice that it may publish future advertisements for Offers by Electronic Advertisement. The City shall publish such Notice weekly, for no less than four (4) consecutive weeks. The City Notice shall include the World Wide Web location (i.e., Uniform Resource Locator or URL) where the City will publish future Electronic Advertisements or alternatively, the Web location where the City will publish information on accessing the Electronic Advertisement via a Telnet application;
 - b. The City posts in its business office a Notice that the City will publish advertisements for Offers by Electronic Advertisement for no less than four consecutive weeks. The Notice shall include the World Wide Web location (i.e., Uniform Resource Locator or URL) where the City publishes Electronic Advertisements or alternatively, the Web location where the City publishes information on accessing the Electronic Advertisement via Telnet; and
 - c. In addition to the City's publication required under Subsection 5.34.310 B.2.a. or b., the City shall also publish an advertisement for Offers in at least one trade newspaper of general statewide circulation if the Contract is for a Public Improvement with an estimated cost in excess of \$125,000.
 - d. All advertisements for Offers shall set forth:
 - (1) The Public Improvement project;
 - (2) The office where Contract terms, conditions and Specifications may be reviewed;

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- (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:

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1. The use of a brand name Specification is unlikely to encourage favoritism in the Awarding of a Public Contract or substantially diminish competition for Public Contracts: or
 2. The use of a brand name Specification would result in a substantial cost savings to the City; or
 3. There is only one manufacturer or seller of the product of the quality, performance or functionality required; or
 4. Efficient utilization of existing equipment, or supplies requires the acquisition of compatible equipment or supplies
- E. The City's use of a brand name specification is subject to protest and review only as provided in Section 5.34.720.

5.34.330 Facsimile Bids and Proposals.

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

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

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

5.34.340 Electronic Procurement.

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

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

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

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the City, the apparently successful Bidder or Proposer agrees to promptly submit the complete original signed Bid or Proposal.

6. Transmission Information. Data and compatibility characteristics.
7. Non-Responsibility for Transmission Failure. If the Bidder or Proposer chooses to transmit an Electronic Bid or Proposal, the City shall not be responsible for any failure attributable to the transmission or receipt of the Electronic Bid or Proposal regardless of cause.

5.34.410 Bid or Proposal Security.

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

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

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

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

5.34.420 Pre-Offer Conferences.

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

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

5.34.430 Addenda to Solicitation Documents.

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

- 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.

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- 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

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the Solicitation Document, Specifications or Contract provisions shall be considered after the deadline established for submitting such request. The City shall notify the Offeror if the City entirely rejects the request. If the City agrees with the request, in whole or in part, the City shall either issue an Addendum reflecting the change or cancel the Solicitation.

- C. Extension of Closing date. If any request for change is timely received in accordance with these rules the Closing may be extended by the Chief Procurement Officer if it is determined that an extension is necessary to allow consideration of the request or issuance of any Addendum to the Solicitation Document.
- D. Identification of request for change. Envelopes containing requests for change of the Solicitation Document, Specifications or Contract provisions shall be marked with the following information:
 - 1. Solicitation Specification or Contract Provision Request for Change or Clarification; and
 - 2. Solicitation Document Number or Other Identification.
- E. A Proposer may request a change to add alternate terms and conditions for negotiation if the Solicitation Document permits negotiation. In this circumstance, request for change procedure shall be governed by the Solicitation Document and Subsections 5.34.840 E. and 5.34.850 F.
- F. Clarification. Prior to the deadline for submitting a request for change, an Offeror may request in Writing that the City clarify any provision of the Solicitation Document or Contract. The City's clarification, whether oral or in Writing, does not change the Solicitation Document or Contract and is not binding on the City unless the City amends the Solicitation Document or Contract by Written Addenda.

5.34.450 Offer Submissions.

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

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

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

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consider Facsimile or Electronic Offers unless authorized by the Solicitation Document.

- M.** Product Samples and Descriptive Literature. The City may require Product Samples or Descriptive Literature if it is necessary or desirable to evaluate the quality, features or characteristics of the offered items. The City will dispose of Product Samples, or return or make available for return Product Samples to the Offeror in accordance with the Solicitation Document.
- N.** Identification of Offers.
 - 1.** To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the City, whichever is applicable.
 - 2.** The City is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.
- O.** Receipt of Offers. The Offeror is responsible for ensuring that the City receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

5.34.460 Pre-Closing Modification or Withdrawal of Offers.

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

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

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

5.34.470 Receipt, Opening and Recording of Offers.

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

- A. Receipt. Each Offer, and modifications to Offers, shall, upon receipt, be Electronically or mechanically time-stamped by Procurement Services time clock, or marked by hand, but not opened, and shall be stored in a secure place until Bid or Proposal Opening. If Offers or modifications are opened inadvertently or opened prior to the time and date set for Bid or Proposal Opening because they were improperly identified by the Offeror, the opened Offers or modification documents shall be resealed and stored for Opening at the correct time. When this occurs, documentation of the resealing shall be placed in the file.
- B. Opening and Recording. Offers and modifications to Offers shall be opened publicly, at the time, date, and place designated in the Solicitation Document. In the case of Invitations to Bid, to the extent practicable, the name of each Bidder, the Bid price(s), and such other information as considered appropriate shall be read aloud. In the case of Requests for Proposals or on voluminous Bids, the City may advise Bidders and Proposers, as part of the Solicitation Documents, that the Bid or Proposal items and prices will not be read aloud.
- C. Availability. After Opening, the City shall make Bids available for public inspection, but pursuant to ORS 279C.410. Proposals are not subject to disclosure until after notice of intent to Award is issued. In any event, the City may withhold from disclosure those portions of an Offer that the Offeror designates trade secrets or as confidential proprietary data in accordance with the Oregon Public Records Law, ORS 192.410 et seq. Application of the Oregon Public Records Law ORS 192.410 et seq. shall determine if the information designated as confidential and

claimed to be exempt is in fact exempt from disclosure. To the extent the City determines the designated information is not in accordance with applicable law, the City shall make those portions available for public inspection. In order to facilitate public inspection of the non-confidential portion of the Bid or Proposal, material designated as confidential shall accompany the Offer, but the Offeror shall separate it, if requested, from the remainder of the Offer. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment shall be publicly available regardless of the Offeror's designation to the contrary. Copies of public records will be made available upon payment of the City's charges.

5.34.480 Late Bids, Late Withdrawals and Late Modifications.

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

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

5.34.490 Mistakes.

- A.** General. To protect the integrity of the competitive Solicitation process and to assure fair treatment of Offerors, the City should carefully consider whether to permit a waiver, correction or withdrawal of an Offer for certain mistakes.

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

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the City may in its discretion permit correction if the conditions of this section are met.

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

5.34.493 First-Tier Subcontractors; Disclosure and Substitution.

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

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

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2. \$350,000, regardless of the percentage of the total Contract Price.
- B.** Bid Closing, Disclosure Deadline and Bid Opening. For each ITB to which this rule applies, the City shall:
1. Set the Bid Closing on a Tuesday, Wednesday or Thursday, and at a time between 2 p.m. and 5 p.m., except that these Bid Closing restrictions do not apply to an ITB for maintenance or construction of highways, bridges or other transportation facilities, and provided that the two-hour disclosure deadline described by this rule would not then fall on a legal holiday;
 2. Open Bids publicly immediately after the Bid Closing; and
 3. Consider for Contract Award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by the City.
- C.** Bidder Instructions and Disclosure Form. For the purposes of this rule, the City in its Solicitation shall:
1. Prescribe the disclosure form that must be utilized, substantially in the form set forth in ORS 279C.370(2); and
 2. Provide instructions in a notice substantially similar to the following:

“Instructions for First-Tier Subcontractor Disclosure

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

 - a. 5 percent of the project Bid, but at least \$15,000; or
 - b. \$350,000 regardless of the percentage, the Bidder must disclose the following information about that subcontract either in its Bid submission, or within two hours after Bid Closing:
 - (1) The Subcontractor's name,
 - (2) The category of Work that the Subcontractor would be performing, and
 - (3) The dollar value of the subcontract.

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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;
 - 2.** Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to

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

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

5.34.510 Prequalification of Offerors.

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

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

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- E.** Prequalification Presumed. If a Bidder is currently Prequalified by either the Oregon Department of Transportation or the Oregon Department of Administrative Services to perform Contracts, the Bidder shall be rebuttably presumed qualified to perform the same Work for the City upon submission of proof of such Prequalification. If a Bidder submits proof of Prequalification, then the Bidder is rebuttably presumed qualified under ORS 279C.435. Nothing contained in this paragraph shall waive the City requirements for Prequalification, the City's authority to require additional information or detail, or prior approval as otherwise set forth in this rule.
- F.** Scope of Prequalification. The Chief Procurement Officer shall determine whether the applicant for Prequalification shall be considered Prequalified for City Bids, and the extent of Prequalification if approved or impose any other restrictions which the Chief Procurement finds appropriate under the circumstances. Thereafter, if the Bidder has Prequalified, Bids may be received from the Bidder only within the limitations and restrictions imposed by the Prequalification decision.

 - 1.** Unless otherwise specified by the Chief Procurement Officer, any Bidder whose application for Prequalification has been wholly disapproved may resubmit an application for a Prequalification no sooner than three months after the Chief Procurement Officer's notice of disapproval. A Bidder, whose application has been approved in part or who seeks a broadening of its Prequalification, or elimination of any restriction, may resubmit an application at any time provided a change of circumstances has occurred and the Bidder submits new information to support its re-application.
 - 2.** With or without a request from the Prequalified Bidder, the Prequalification standing and any limitation on class of Work or size of project may be reviewed further by the Chief Procurement Officer and broadened or restricted as determined by the Chief Procurement Officer to be appropriate.
- G.** Notice. If the City determines a Bidder's Prequalification is not approved in whole or in part, or is restricted or revoked, the City shall notify the Bidder, specify the reasons found under ORS 279C.375(3)(b) and Section 5.34.500, and inform the Bidder of the right to a hearing before the Chief Procurement Officer, per ORS 279C.450. The Chief Procurement Officer may exercise the powers of the City 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

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revision of the prequalification of the Bidder and inform the Bidder of the right to a hearing under ORS 279C.450.

- I.** Appeal. The Chief Procurement Officer may adopt rules of procedure for the hearing, shall conduct the hearing and has the authority of the City Council as provided in ORS 279C.450. The appeal shall be conducted within 30 Days or a date mutually agreed upon by both parties.
- J.** Clarification. A Bidder may seek clarification of a Prequalification decision by Written request received by the Chief Procurement Officer no later than 10 Days following issuance of a determination by the Chief Procurement Officer.

5.34.520 Eligibility to Bid or Propose; Registration or License.

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

5.34.530 Disqualification of Persons.

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

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

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- c. Conviction under state or federal antitrust statutes; or
 - d. Violation of a Contract provision that is regarded by the City to be so serious as to justify Conduct Disqualification. A violation under Subsection 5.34.530 A.1.d. may include but is not limited to material failure to perform the terms of a Contract or an unsatisfactory performance in accordance with the terms of the Contract. However, a Person's failure to perform or unsatisfactory performance caused by acts beyond the Person's control is not a basis for Disqualification.
 2. For a DBE Disqualification under ORS 279A.110, the City may disqualify a Person if the City finds that the Person discriminated against minority, women or emerging small business enterprises in Awarding a subcontract under a Contract with the City.
- B. Notice of Intent to Disqualify. The City shall notify the Person in Writing of a proposed Disqualification personally or by registered or certified mail, return receipt requested. This notice shall:
 1. State that the City intends to disqualify the Person;
 2. Set forth the reasons for the Disqualification;
 3. Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the Chief Procurement Officer does not receive the Person's Written request for a hearing within the time stated, the Person shall have waived its right to a hearing;
 4. Include a statement of the authority and jurisdiction under which the hearing will be held;
 5. Include a reference to the particular sections of the statutes and rules involved;
 6. State the proposed Disqualification period; and
 7. State that the Person may be represented by legal counsel.
- C. Hearing. The Chief Procurement Officer shall schedule a hearing upon the receipt of the Person's timely request. The Chief Procurement Officer shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing prior to hearing.

- D.** Notice of Disqualification. The Chief Procurement Officer will notify the Person in Writing of its Disqualification, personally or by registered or certified mail, return receipt requested. The notice shall contain:
1. The effective date and period of Disqualification;
 2. The grounds for Disqualification; and
 3. A statement of the Person's appeal rights and applicable appeal deadlines. For a Conduct Disqualification or a DBE Disqualification under ORS 279A.110, the disqualified Person must notify the Chief Procurement Officer in Writing within three (3) business Days after receipt of the notice of Disqualification if the Person intends to appeal the City's decision.

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

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

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

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3. Aiding another person to fraudulently obtain or retain certification as a disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprise; or
 4. Knowingly make a false claim that any person is qualified for certification or is certified under ORS 200.055 (Certification of disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprises) for the purpose of obtaining a public contract or subcontract or other benefit.
- D.** When the City investigates a complaint that a person has violated ORS 200.065, the City may require any additional information, and through the City Attorney's Office, administer oaths, take depositions, and issue subpoenas to compel witnesses to attend and to produce books, papers, records, memoranda or other information necessary for the City to complete its investigation. If a person fails to comply with any subpoena that the City issues under ORS 200.065 or refuses to testify on any matter on which a person may lawfully be interrogated, the City shall follow the procedure provided in ORS 183.440 to compel compliance.
- E.** The City may issue the following sanctions against any person for violating ORS 200.065:
1. Withhold payment;
 2. Suspend or terminate a public contract;
 3. Impose a civil penalty not to exceed 10 percent of the contract or subcontract price or \$5,000, whichever is less, for each violation; and
 4. Disqualify for up to 3 years from submitting a bid or proposal for, or receiving an award of a public contract.
- F.** The City may also disqualify any person from bidding or participating in a public contract for a period of up to 3 years:
1. Who under oath during the course of an investigation admits to violating ORS 200.065 (1) or (2); or
 2. Upon notice of a finding of fraudulent certification by the Oregon Business Development Department or other public contracting agency.
- G.** Any bidder, proposer, contractor or subcontractor on a City contract that knowingly commits any of the following acts shall have its right to submit a bid or proposal for, or receive an award of, a City contract in the future suspended under ORS 200.075:

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1. Entering into any agreement to represent that a disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise certified under ORS 200.055 will perform work or supply materials under a public contract without the knowledge and consent of the disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise.
 2. Exercising or permitting another bidder, proposer, contractor or subcontractor to exercise management and decision making control over the internal operations of a disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise other than the bidder's, proposer's, contractor's or subcontractor's own business enterprise. As used in this paragraph, "internal operations" does not include normal scheduling, coordination, execution or performance as a subcontractor on a public contract.
 3. Using a disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise to perform a public contract or subcontract or to supply material under a public contract to meet an established goal or requirement if the disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise does not perform a Commercially Useful Function in carrying out responsibilities and obligations under the public contract.
 4. Failing to perform a Commercially Useful Function in performing a public contract or subcontract or in supplying material to a contractor or subcontractor that is performing a public contract or subcontract if the bidder, proposer, contractor or subcontractor is presented as a certified disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise to meet an established goal or requirement.
- H.** The suspension shall be 1 year for a first violation, three years for a second violation and 5 years for a third violation. Each violation must remain on record for 5 years. After 5 years the City may not consider the violation in reviewing future violations.
- I.** Prior to suspending, disqualifying or otherwise sanctioning a person under Section 5.33.540 or 5.34.535, the City shall provide written notice to the person of a proposed sanction under ORS 200.065 or ORS 200.075, served personally or by registered or certified mail, return receipt requested. This notice shall include:
1. That the City intends to sanction;
 2. The effective date and period of the sanction, if applicable;
 3. The reason(s) for the sanction; and

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- 4. That the person has the right to request a hearing before the Code Hearings Officer in accordance with Section 3.130.020.
- J. The hearing shall be conducted in accordance with Chapter 22.10 and any administrative rules governing appeals to the Code Hearings Officer.

5.34.600 Bid or Proposal Evaluation Criteria.

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

- A. General. A Public Improvement Contract, if Awarded, shall be Awarded to the Responsible Bidder submitting the lowest Responsive Bid, or to the Responsible Proposer submitting the best Responsive Proposal.
- B. Bid Evaluation Criteria. Invitations to Bid may solicit lump-sum Offers, unit-price Offers or a combination of the two.
 - 1. Lump Sum. If the ITB requires a lump-sum Bid, without additive or deductive alternates, or if the City elects not to Award additive or deductive alternates, Bids shall be compared on the basis of lump-sum prices, or lump-sum base Bid prices, as applicable. If the ITB calls for a lump-sum base Bid, plus additive or deductive alternates, the total Bid price shall be calculated by adding to or deducting from the base Bid those alternates selected by the City, for the purpose of comparing Bids.
 - 2. Unit Price. If the Bid includes unit pricing for estimated quantities, the total Bid price shall be calculated by multiplying the estimated quantities by the unit prices submitted by the Bidder, and adjusting for any additive or deductive alternates selected by the City, for the purpose of comparing Bids. The City shall specify within the Solicitation Document the estimated quantity of the Procurement to be used for determination of the low Bidder. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the Bidder, the unit price shall govern.
- C. Proposal Evaluation Criteria. If the City Council has exempted a Public Improvement from the Competitive Bidding requirements of ORS 279C.335(1), and has directed the use of an Alternative Contracting Method under ORS 279C.335(3) and ORS 279C.337, evaluation criteria shall be set forth in the Solicitation Documents.

5.34.610 Offer Evaluation and Award; Determination of Responsibility.

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

- A. General. If Awarded, the City shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer or Proposers

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submitting the best, Responsive Proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract. See ORS 279C.375(2)(a), or is ineligible for Award as a Nonresident (as defined in ORS 279A.120), education service district. The City may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.

- B.** Determination of Responsibility. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the City must have information that indicates that the Offeror meets the standards of responsibility set forth in ORS 279.375C(3)(b). To be a Responsible Offeror, the City must determine that the Offeror:
1. Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to demonstrate the capability of the Offeror to meet all contractual responsibilities;
 2. Has a satisfactory record of Contract performance. The City should carefully scrutinize an Offeror's record of Contract performance if the Offeror is or recently has been materially deficient in Contract performance. In reviewing the Offeror's performance, the City should determine whether the Offeror's deficient performance was expressly excused under the terms of Contract, or whether the Offeror took appropriate corrective action. The City may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of Contract performance. The City shall make its basis for determining an Offeror not Responsible under this paragraph part of the Solicitation file;
 3. Has a satisfactory record of integrity. An Offeror may lack integrity if The City determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to the City. The City may find an Offeror not Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or 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:

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

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- 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.

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

5.34.630 Reciprocal Preferences.

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

- A.** When evaluating Bids pursuant to Section 5.34.610, the City shall add a percentage increase to the Bid of a Nonresident Bidder equal to the percentage, if any, of the preference that would be given to that Bidder in the state in which the Bidder resides.

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

5.34.640 Negotiation When Bids Exceed Cost Estimate.

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

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

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Improvement. Cost savings include those resulting from Life Cycle Costing, which may either increase or decrease absolute costs over varying time periods.

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

5.34.645 Rejection of Offers.

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

A. Rejection of an Offer.

- 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:

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- a.** Is contingent upon the City's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;
 - b.** Takes exception to terms and conditions (including Specifications);
 - c.** Attempts to prevent public disclosure of matters in contravention of the terms and conditions of Solicitation Document or in contravention of applicable law;
 - d.** Offers Work that fails to meet the Specifications of the Solicitation Document;
 - e.** Is late;
 - f.** Is not in substantial compliance with the Solicitation Documents;
 - g.** Is not in substantial compliance with all prescribed public Solicitation procedures.
 - h.** Omits, or is unclear as to, the price; or the price cannot be determined in the Solicitation Documents;
 - i.** Requires a delivery date different from that required by the Solicitation Document;
 - j.** The Offeror failed to substantially comply with any Subcontractor Equity Program Specifications;
- 3.** The City shall reject an Offer upon the City's finding that the Offeror:
 - a.** Has not been Prequalified under ORS 279C.430 and the City required mandatory Prequalification;
 - b.** Has been Disqualified or suspended;
 - c.** Has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries and the Contract is for a Public Work;
 - d.** Is listed as not qualified by the Construction Contractors Board or the Landscape Contractors Board, when required;
 - e.** Has not met the requirements of ORS 279A.105 if required by the Solicitation Document;

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- 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;
 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

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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:
 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

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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.)

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

5.34.680 Time for City Acceptance; Extension.

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

- A.** Time for Offer Acceptance. An Offer submitted as a Firm Offer is irrevocable, valid and binding on the Offeror for not less than 30 Days from Closing unless otherwise specified in the Solicitation Document. After 30 Days, or such other period of time specified in the Solicitation Document, the Offer shall lapse unless extended.
- B.** Extension of Acceptance Time. The City may request, orally or in Writing, that Offerors extend, in Writing, the time during which the City may consider and accept their Offer(s). If an Offeror agrees to such extension, the Offer shall continue as a Firm Offer, irrevocable, valid and binding on the Offeror for the agree-upon extension period. The extension may occur after the 30-Day time period referenced in Subsection 5.34.680 A.

5.34.685 Availability of Award Decisions.

- A.** Contract Documents. To the extent required, the City shall deliver to the successful Offeror, a Signed purchase order, Price Agreement, or other Contract document(s), as applicable.

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

5.34.690 Performance and Payment Security; Waiver.

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

- A. **Public Improvement Contracts.** Unless the required performance bond is waived under ORS 279C.380(1)(a), excused in cases of Emergency under ORS 279C.380(4), or unless the City Council, acting as the Local Contract Review Board, exempts a Contract or classes of Contracts from the required performance bond and payment bond pursuant to ORS 279C.390, the Contractor shall execute and deliver to the City a performance bond and a payment bond each in a sum equal to the Contract Price for all Public Improvement Contracts. Price Agreements with specific Work/Task Orders forming Contracts at a value under \$150,000 are exempted from performance and/or payment bonds. This requirement applies only to Public Improvement Contracts with a value, estimated by the City, of more than \$150,000. Notwithstanding any exemption, the Chief Procurement Officer may require a performance bond, or payment bond, or both, in the Chief Procurement Officer's sole discretion (see also, Section 5.34.915 regarding the separate public works bond).
- B. **Other Construction Contracts.** The City may require performance security for other construction Contracts that are not Public Improvement Contracts. Such requirements shall be expressly set forth in the Solicitation Document.
- C. **Requirement for Surety Bond.** The City shall accept only a performance bond and payment bond furnished by a surety company authorized to do business in Oregon and who is duly listed in the United States Treasury List as published in the Federal Register or is otherwise approved by the City Attorney each in the amount of 100 percent of the Contract price unless otherwise specified in the Solicitation Document or such substitute security is approved by the City Attorney's office.

The surety bond shall have the company's seal affixed to it, be signed by the surety's Attorney in Fact, and have attached the Power of Attorney for the Attorney in Fact. The City Attorney may waive the requirement of the corporate seal.

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

5.34.695 Notification to State of Nonresident Contractor.

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

5.34.700 Protests and Judicial Review of Individual and Class Exemptions.

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

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

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- 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:
 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;

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- b.** A detailed statement of all the legal and factual grounds for the protest;
 - c.** Evidence or supporting documentation that supports the grounds on which the protest is based;
 - d.** A description of the resulting harm to the Affected Person; and
 - e.** The relief requested.
- E.** Required City Response. The City shall take the following actions, as appropriate:
 - 1.** The City shall inform the Affected Person in Writing if the protest was not timely filed;
 - 2.** The City shall inform the Affected Person if it failed to meet the requirements of Subsection 5.34.710 D.2., and the reasons for that failure;
 - 3.** If the protest was timely filed and provides the information required by Subsection 5.34.710 D.2., the Chief Procurement Officer shall issue a decision in Writing and provide that decision to the Affected Person within seven (7) business days unless a Written determination is made by the City that circumstances exist that require a shorter time limit.
 - 4.** If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.
- F.** Optional City Response: In addition to the requirements of Subsection 5.34.710 E., the City may take any or all of the following actions:
 - 1.** Agree with the Protest, in whole or in part, and permit the Affected Person to participate in the next stage of the Solicitation process;
 - 2.** Issue a Written response to the protest and provide that determination to the Affected Person.
 - 3.** Refer the protest to the Board of Appeals.
 - 4.** Refer the protest to the City Council for consideration along with the Chief Procurement Officer's Award; or
 - 5.** Take any other action that is in the best interest of the City while giving full consideration to the merits of the protest.

- G.** Judicial Review. An Affected Person may not seek judicial review of its elimination from a preliminary stage of a multi-tiered process unless it files a protest in accordance with this rule and has exhausted all avenues of appeal provided by the Chief Procurement Officer.

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

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

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

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

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- E.** Judicial Review. An Affected Person may not seek judicial review of the City's final decision regarding its protest of the contents of a Solicitation Document or the Solicitation process unless it fully has complied with the Protest requirements of this rule and has exhausted all avenues of appeal provided by the Chief Procurement Officer.

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

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

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

5.34.730 Protest of Contractor Selection, Contract Award.

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

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- A.** An Affected Person may protest the Award or the intent to Award a Contract resulting from a Competitive Sealed Bid or Competitive Sealed Proposal, whichever occurs first, if:
- 1.** The Affected Person would be eligible to be Awarded the Public Contract in the event that the protest were successful; and
 - 2.** The reason for the protest is that:
 - a.** All other Offers are nonresponsive;
 - b.** The City failed to conduct the evaluation of Proposals in accordance with the criteria or processes described in the Solicitation Document;
 - c.** The City abused its discretion in rejecting the Affected Person's Bid or Proposal as nonresponsive; or
 - d.** The City's evaluation of Offers or the City's subsequent determination of Award is otherwise in violation of these rules, ORS Chapter 279C or ORS Chapter 279A.
- B.** Method of Protest.
- 1.** Time: A Written protest of the Notice of Intent to Award or Award itself shall be provided to the Chief Procurement Officer within seven (7) Days after the City posts a notice that it will make a Contract Award, or the Contract is Awarded, whichever occurs first, unless the Solicitation Document specified a shorter period of time. The Chief Procurement Officer shall not consider a protest submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the Solicitation Document.
 - 2.** Contents: The protest must include the following information:
 - a.** Sufficient information to identify the Contract or Notice of Intent to Award that is the subject of the protest;
 - b.** A detailed statement of all the legal and factual grounds for the protest.
 - c.** Evidence or supporting documentation that supports the grounds on which the protest is based;
 - d.** A description of the resulting harm to the Affected Person submitting the protest; and

- e. The relief requested.
- C. Required City Response. The City shall take the following actions, as appropriate:
 - 1. The City shall inform the Affected Person in Writing if the protest was not timely filed;
 - 2. The City shall inform the Affected Person if it failed to meet the requirements of Subsection 5.34.730 B.2, and the reasons for that failure;
 - 3. If the protest was timely filed and provides the information required by Subsection 5.34.730 B.2., the Chief Procurement Officer shall issue a decision in Writing and provide that decision to the Affected Person within a reasonable time of the receipt of the protest.
 - 4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.
- D. Optional City Response: In addition to the requirements of Subsection 5.34.730 C., the City may take any or all of the following:
 - 1. Agree with the Protest and issue a revised Notice of Intent to Award or take any other corrective action that may be necessary to ensure that the Contract is Awarded to the appropriate Offeror;
 - 2. Issue a Written response to the protest and provide that decision to the Affected Person.
 - 3. Refer the protest and any response to the Board of Appeals for decision;
 - 4. Refer the protest and any response to the City Council for decision; or
 - 5. Take any other action that is in the best interest of the City while giving full consideration to the merits of the protest.
- E. Judicial Review. An Affected Person may not seek judicial review unless it fully has complied with the protest requirements of this rule and has exhausted all avenues of appeal provided by the Chief Procurement Officer.

5.34.740 Protests of Other Violations.

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

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

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

5.34.750 Review of Prequalification and Disqualification Decisions.

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

- A.** A Bidder who has received notification of a Prequalification denial, revocation or revision and wishes to appeal the decision must submit Written appeal to the City within three (3) business Days after receipt of the City's notice.
- B.** The City Council delegates its authority to the Chief Procurement Officer for the purposes of receiving notice that a Person has appealed. Upon receipt of the notice the Chief Procurement Officer shall notify the Person appealing of a time and place

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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.

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- F.** Vacancies. A vacancy on the Board shall be filled as soon as possible in accordance with the procedures described above.
- G.** Procedure and Rules. The Chief Procurement Officer shall establish administrative rules of procedure for the Board and the Board shall follow that procedure for all matters heard by the Board.
- H.** Staff. Procurement Services shall provide staff and appropriate assistance for the Board.

5.34.770 Powers of the Board.

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

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

5.34.780 Appeal to Board.

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

- 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.

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

5.34.810 Definitions for Alternative Contracting Methods.

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

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

 - 1.** Include a Construction Manager/General Contractor's:

 - a.** Functioning as a member of a project team that includes the City, the architect or engineer that designs the Public Improvement under a separate contract with the City and other contractors and consultants; and
 - b.** Reviewing and analyzing a design for a Public Improvement in order to:

 - (1)** Suggest changes in the design that minimize potential errors, delays, unexpected costs and other problems during construction;

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- (2) Recommend means by which the City may achieve the functions of the Public Improvement or a component of the Public Improvement safely, reliably, efficiently and at the lowest overall cost;
 - (3) Improve the value and quality of the Public Improvement; and
 - (4) Reduce the time necessary to complete the Public Improvement.
 - 2. May include, depending on the specific terms of the Public Improvement Contract and on whether the City decides to proceed with construction, a Construction Manager/General Contractor's:
 - a. Devising a schedule for constructing the Public improvement;
 - b. Estimating construction, materials, labor and other costs for the Public Improvement;
 - c. Establishing a fixed price, a Guaranteed Maximum Price or other maximum price;
 - d. Constructing portions of the Public improvement and subcontracting portions to other contractors;
 - e. Coordinating and overseeing the construction process; or
 - f. Performing other services related to constructing a Public Improvement in accordance with the terms of the Public Improvement Contract.
- E. **Design-Build.** A form of Procurement that results in a Public Improvement Contract in which the construction Contractor also provides or obtains specified design services, participates on the project team with the City, and manages both design and construction. In this form of Contract, a single Contractor provides the City with all of the Professional, Technical and Expert Services and Work necessary to both design and construct the project.
- F. **Early Work.** Early Work means construction services, construction materials and other Work authorized by the parties to be performed under the CM/GC Contract in advance of the establishment of the GMP, fixed price or other maximum, not-to-exceed price for the project. Permissible Early Work shall be limited to early procurement of materials and supplies, early release of Bid or Proposal packages for site development and related activities, and any other advance Work related to important components of the project for which performance prior to establishment

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of the GMP will materially and positively affect the development or completion of the project.

G. Guaranteed Maximum Price (or "GMP"). GMP means the total price at which the Construction Manager/General Contractor agrees to provide Construction Manager/General Contractor services to the City in accordance with the terms and conditions and scope of work for a specific Public Improvement Contract and within which are:

1. All costs the City agrees to reimburse and all fees the City agrees to pay for completing the Work; and
2. Any contingent costs, fees, or other charges specifically identified in the Public Improvement Contract. For Alternative Contracting Methods other than the CM/GC method, "Guaranteed Maximum Price: ("GMP") means the total maximum price provided to the City by the Contractor, and accepted by the City, that includes all reimbursable costs of and fees for completion of the Contract Work and any particularly identified contingency amounts, as defined by the Public Improvement Contract.

H. Project Development Plan. A secondary phase of Personal Services and Work.

I. Savings Pertaining to CM/GC (or "Savings"). CM/GC Savings means a positive difference between a fixed price, Guaranteed Maximum Price, or other maximum price set forth in the Contract and the actual cost of the Work, including costs for which the City reimburses a Construction Manager/General Contractor and fees or profits the Construction Manager/General Contractor earns. For other Alternative Contracting Methods, "Savings" means a positive difference between a Guaranteed Maximum Price or other maximum not-to-exceed price set forth in a Public Improvement Contract and the actual costs of the Contractor's performance of the Work payable by the City under the terms of the Contract, including costs for which the City reimburses the Contractor and fees, profits, or other payments the Contractor earns.

5.34.820 Use of Alternative Contracting Methods.

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

A. Competitive Bidding Exemptions. ORS Chapter 279C requires a competitive bidding process for Public Improvement Contracts unless a statutory exception applies, a class of Contracts has been exempted from Competitive Bidding, or an individual Contract has been exempted from Competitive Bidding, in accordance with ORS 279C.335 and Section 5.34.830. Use of Alternative Contracting Methods may be directed by the City's Chief Procurement Officer as an exception to the prescribed Public Contracting practices in Oregon, and their use must be justified in accordance with City Code.

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B. Post-Project Evaluation. ORS 279C.355 requires that the City prepare a formal post-project evaluation of Public Improvement projects in excess of \$100,000 when the City does not use Competitive Bidding. The purpose of this evaluation is to determine whether it was actually in the City's best interest to use an Alternative Contracting Method instead of Competitive Bidding. The evaluation must be delivered to City Council on behalf of the City's Chief Procurement Officer within 30 Days after the date the City "accepts" the Public Improvement project, which event is typically defined in the Contract. In the absence of a definition of "acceptance", the later of the date of final payment or the date of final completion of the Work will govern. ORS 279C.355 describes the timing and content of this evaluation, with three required elements:

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

5.34.830 Findings, Notice and Hearing.

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

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

1. It is unlikely that the exemption will encourage favoritism in the Awarding of Public Improvement Contracts or substantially diminish competition for Public Improvement Contracts as further described in Subsection 5.34.830 F.; and
2. The exemption will likely result in substantial costs savings and other substantial benefits to the City in accordance with ORS 279C.335(2)(b). As set forth in ORS 279C.335(2)(b)A-N and Subsection 5.34.830 D. below, if a particular factor has no application whatsoever to the particular Public Improvement Contract or class of Public Improvement Contracts then it is not required to address the factor other than to state that the factor has no application; or
3. If the Public Improvement relate to the operation, maintenance or construction of highways, bridges and other transportation facilities, that the exemption will result in substantial cost savings to the City or to the public.
4. As an alternative to the findings regarding substantial cost savings, the City may make a finding that identifies the project as a pilot project for which

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the City intends to determine whether the use of the Alternate Contracting Method actually results in substantial cost savings to the City, or, if it is for a Public Improvement described in Subsection 5.34.830 A.3. above, to the public, provided the City has not previously used the proposed Alternate Contracting Method. Nevertheless, findings are still required in accordance with ORS 279C.335(2)(a).

- B.** The City council may consider the type, cost and amount of the Contract the number of Persons available to bid and other such factors as may be deemed appropriate in declaring the exemption.
- C.** Findings supporting a competitive bidding exemption must describe with specificity the Alternative Contracting Method to be used in lieu of competitive bidding, including, but not limited to, whether a one step (Request for Proposals) or two step (beginning with Requests for Qualifications) solicitation process will be utilized. The Findings may also describe anticipated characteristics or features of the resulting Public Improvement Contract. However, the purpose of an exemption from competitive bidding is limited to a determination of the Procurement method. Any unnecessary or incidental descriptions of the specific details of the anticipated Contract within the supporting Findings are not binding upon the City. The parameters of the Public Improvement Contract are those characteristics or specifics that are announced in the Solicitation Document. The representations in and the accuracy of the findings, including any general description of the resulting public improvement contract, are the bases for approving the findings and granting the exception. The findings may describe the anticipated features of the resulting public improvement contract, but the final parameters of the contract are those characteristics or specifics announced in the solicitation document.
- D.** The City Council shall require and approve additional findings in the following areas in order to declare the exemption:

 - 1. How many persons are available to bid;
 - 2. The construction budget and the projected operating costs for the completed Public Improvement;
 - 3. Public benefits that may result from granting the exemption;
 - 4. Whether value engineering techniques may decrease the cost of the Public Improvement;
 - 5. The cost and availability of specialized expertise that is necessary for the Public Improvement;

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6. Any likely increases in public safety;
7. Whether granting the exemption may reduce risks to the City or the public that are related to the Public Improvement
8. Whether granting the exemption will affect the sources of funding for the Public Improvement;
9. Whether granting the exemption will better enable the City to control the impact that market conditions may have on the cost of and time necessary to complete the Public Improvement;
10. Whether granting the exemption will better enable the City to address the size and technical complexity of the Public Improvement;
11. Whether the Public Improvement involves new construction or renovates or remodels an existing structure;
12. Whether the Public Improvement will be occupied or unoccupied during construction;
13. Whether the Public Improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and
14. Whether the City has, or has retained under contract, and will use City personnel, consultants and legal counsel that have necessary expertise and substantial experience in Alternative Contracting Methods to assist in developing the Alternative Contracting Methods that the City will use to award the Public Improvement contract and to help negotiate, administer and enforce the terms of the Public Improvement Contract.

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

- E.** The City shall hold a public hearing before final adoption of the findings and a declaration of the exemption. Notification of the public hearing shall be published in at least one trade newspaper of general statewide circulation a minimum of 14 Days before the hearing;
1. The Notice shall state that the public hearing is for the purpose of taking comments on the City's draft findings for an exemption from Competitive

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Bidding. At the time of the notice, copies of the draft findings shall be made available to the public.

2. At the hearing, the City shall offer an opportunity for any interested persons to appear and present comment;
3. Notice of the hearing may be published simultaneously with the City's Solicitation of contractors for the alternative public contracting method when the City is required to act promptly due to circumstances beyond the City's control that do not constitute an Emergency as long as responses to the Solicitation are due at least five (5) Days after the meeting and approval of the findings;

F. Addressing Cost Savings. Accordingly, when the Contract or class of Contracts under consideration for an exemption contemplates the use of Alternative Contracting Methods, the "substantial cost savings and other substantial benefits" requirement may be addressed by a combination of:

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

G. Favoritism and Competition. The criteria at ORS 279C.335(2)(a) that it is "unlikely" that the exemption will "encourage favoritism" or "substantially diminish competition" may be addressed in contemplating the use of Alternative Contracting Methods by specifying the manner in which an RFP process will be utilized, that the Procurement will be formally advertised, competition will be encouraged, and Award made based upon identified selection criteria.

H. Class Exemptions.

1. In making the findings supporting a class exemption the City shall clearly identify "class" with respect to its defining characteristics pursuant to the requirements of ORS 279C.335(3) as indicated below:
 - a. The class cannot be based on a single characteristic or factor, so that the City directly or indirectly creates a class (e.g., using the CM/GC

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Method for all City construction projects, unidentified future construction projects of a particular work category, or all construction projects from a particular funding source such as the sale of bonds); and

- b.** The class must include a combination of factors to be defined by the City through characteristics that reasonably relate to the exemption criteria, and must reflect a detailed evaluation of those characteristics so that the class is defined in a limited way that effectively meets the City's objectives while allowing for impartial and open competition and protecting the integrity of the exemption process (i.e., a series of renovation projects that involve renovations for a common purpose, require completion on a related schedule to avoid unnecessary disruption of operations, share common characteristics such as historic building considerations, presence of asbestos or other hazardous substances, or the presence of staff during construction, or otherwise possess characteristics that meet the requirements).

- 2.** The following classes of Contracts are hereby exempt from the Competitive low Bidding requirements of this Chapter:

- a.** Contract Amendments. Contract amendments, pursuant to the authority granted by Subsection 5.34.020 C., and provided that the original Contract was executed in accordance with this chapter;
- b.** Tenant improvements. Tenant Improvements on City owned property are exempt from the requirements of Competitive low Bidding, but may be subject to other provisions of this Chapter or ORS 279C. Tenant improvements are exempt when:
 - (1)** The improvements are paid for in part, or in whole, by the tenant;
 - (2)** The improvements are primarily for the tenant's benefit; and
 - (3)** The tenant hires the Contractor to perform the Work, whether or not a competitive process is used by the tenant.
- c.** Deficiency Corrections/Contractor on site. The City may hire a private Contractor to perform Work if:
 - (1)** The City finds that a Contractor hired by a private developer or Person is at or near the site where City Work needs to be performed and the cost proposed by the private Contractor is

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reasonable and the cost of the Work will be less than \$25,000; or

- (2) The City finds that a Contractor hired by the City is at or near the site where City Work needs to be performed; and
 - (a) The new Work is not within the Scope the original Contract and was not anticipated at the time that the original Contract was Awarded; and
 - (b) If the original Contract was less than \$25,000 the new work does not cause the total payment to the Contractor to exceed \$25,000; or
 - (c) If the original Contract was more than \$25,000, the new Work does increase the total amount paid to the Contractor by more than \$50,000.

5.34.840 Competitive Proposals; General Procedures.

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

- A. General Application: The City may utilize the RFP outlined in Subsections 5.34.840 C. through D. below for Public Improvement Contracts, allowing flexibility in both Proposal evaluation and Contract negotiation, only in accordance with ORS 279C.330 to ORS 279C.337, ORS 279C.400 to 279C.410 and Sections 5.34.800 to 5.34.890, unless other applicable statutes control the City's use of competitive Proposals for Public Improvement Contracts. Nothing in this rule shall limit the use of evaluation factors or other matters expressly permitted by those additional rules or authorized by ordinance.
- B. Proposal Evaluation. Factors in addition to price may be considered in the selection process, but only as set forth in the RFP. Evaluation factors need not be precise predictors of future costs and performance, but to the extent possible such evaluation factors shall:
 - 1. Be reasonable estimates based on information available to the City;
 - 2. Treat all Proposals equitably; and
 - 3. Recognize that public policy requires that Public Improvements be constructed at the least overall cost to the City (see ORS 279C.305).
- C. Evaluation Factors.
 - 1. In basic negotiated construction contracting, where the only reason for an RFP is to consider factors other than price, those factors may consist of firm

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and personnel experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capacity, past performance, safety records, project understanding, proposed methods of construction, proposed milestone dates, references, service, the status of its Equal Employment Opportunity (EEO) certification, its efforts to diversify its workforce in order to reach all of the City's citizens and other related matters that could affect the cost or quality of the Work.

2. In CM/GC contracting, in addition to Subsection 5.33.840 D.1., those factors may also include the ability to respond to the technical complexity or unique character of the project, analyze and propose value engineering options, analyze energy efficiency measure or alternative energy options, coordinate multiple disciplines on the project, effectively utilize the time available to commence and complete the improvement, and related matters that could affect the cost or quality of the Work.
3. In Design-Build contracting, in addition to Subsections 5.33.840 D.1. and 2., those factors may also include design professional qualifications, specialized experience, preliminary design submittals, technical merit, design-builder team experience and related matters that affect cost or quality.

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

5.34.845 Requests for Qualifications (RFQ).

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

5.34.850 Requests for Proposals (RFP).

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

- A.** Generally. The use of competitive Proposals must be specifically authorized for a Public Improvement Contract under the Competitive Bidding exception and exemption requirements of ORS 279C.335, Section 5.34.150 and Sections 5.34.800 to 5.34.890. Also see ORS 279C.337, ORS 279C.400 to 279C.410 for statutory requirements regarding competitive Proposals, and Section 5.34.840 regarding competitive Proposal procedures.
- B.** Solicitation Documents. In addition to the Solicitation Document requirements of Section 5.34.300, this rule applies to the requirements for Requests for Proposals. RFP Solicitation Documents shall conform to the following standards:

 - 1.** The City shall set forth selection criteria in the Solicitation Document. Examples of evaluation criteria include price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or physical plant, financial wherewithal, sources of supply, references and warranty provisions. See Section 5.34.840. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall be reasonable estimates based on information available to the City. Subject to ORS 279C.410(4) the Solicitation Document may provide for discussions with Proposers to be conducted for the purpose of Proposal evaluation prior to award or prior to establishing any Competitive Range;
 - 2.** When the City is willing to negotiate terms and conditions of the Contract or allow submission of revised Proposals following discussions, the City must identify the specific terms and conditions in or provisions of the Solicitation Document that are subject to negotiation or discussion and authorize Offerors to propose certain alternative terms and conditions in lieu of the terms and conditions the City has identified as authorized for negotiation. The City must describe the evaluation and discussion or negotiation process, including how the City will establish the Competitive Range;
 - 3.** The anticipated size of the Competitive Range shall be stated in the Solicitation document, but may be decreased if the number of Proposers that submit Responsive Proposals is less than the specified number, or may be increased as provided in Subsection 5.34.850 D.1.b.

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4. When the City intends to Award Contracts to more than one Proposer, the City must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award. The City shall also include the criteria it will use to determine how the City will endeavor to achieve optimal value, utility and substantial fairness when selecting a particular Contractor to provide Personal Services or Work from those Contractors Awarded Contracts.

C. Evaluation of Proposals.

1. Evaluation. The City shall evaluate Proposals only in accordance with criteria set forth in the RFP and applicable law. The City shall evaluate Proposals to determine the Responsible Proposer or Proposers submitting the best Responsive Proposal or Proposals.
 - a. Clarifications. In evaluating Proposals, The City may seek information from a Proposer to clarify the Proposer's Proposal. A Proposer must submit Written and Signed clarifications and such clarifications shall become part of the Proposer's Proposal.
 - b. Limited Negotiation. If the City did not permit negotiation in its Request for Proposals, the City may, nonetheless, negotiate with the highest-ranked Proposer, but may then only negotiate the:
 - (1) Statement of Work; and
 - (2) Contract Price as it is affected by negotiating the statement of Work.
 - (3) The process for discussions or negotiations that is outlined and explained in Subsections 5.34.850 E.2. and 5.34.850 F. does not apply to this limited negotiation.
2. Discussions; Negotiations. If the City permitted discussions or negotiations in the Request for Proposals, the City shall evaluate Proposals and establish the Competitive Range, and may then conduct discussions and negotiations in accordance with this rule.
 - a. If the Solicitation Document provided that discussions or negotiations may occur at City's discretion, the City may forego discussions and negotiations and evaluate all Proposals in accordance with this rule.
 - b. If the City proceeds with discussions or negotiations, the City shall establish a negotiation team tailored for the acquisition. The City's

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

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

D. Competitive Range; Protest; Award.

1. Determining Competitive Range.

- a. If the City does not cancel the Solicitation, after the Opening the City will evaluate all Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the City will rank the Proposers based on the City's scoring and determine the Competitive Range.
- b. The City may increase the number of Proposers in the Competitive Range if the City's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial Competitive Range are closely Competitive, or have a reasonable chance of being determined the best Proposer after the City's evaluation of revised Proposals submitted in accordance with the process described in this rule.

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

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

- a. Provide Written notice to all Proposers in the Competitive Range of its intent to Award the Contract to the highest-ranked Proposer in the Competitive Range.
 - (1) An unsuccessful Proposer may protest the City's intent to Award in accordance with Section 5.34.740.
 - (2) After the protest period provided in accordance with Section 5.34.740 expires, or after the City has provided a final response to any protest, whichever date is later, the City shall

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commence final Contract negotiations with the highest-ranked Proposer in the Competitive Range; or

- b.** Engage in Negotiations with all Proposers in the Competitive Range, as provided in Subsection 5.34.850 F. below; or
 - c.** Engage in discussions with Proposers in the Competitive Range, as provided in Subsection 5.34.850 E. below, accept revised Proposals from them, and, following such discussions and receipt and evaluation of revised Proposals, either select the highest ranking Proposer or conduct further negotiations with the Proposers in the Competitive Range;
 - d.** Otherwise proceed in any other legal manner designed to select a or as specified by the RFP or ordinance.
- E.** Discussions; Revised Proposals. If the City chooses to enter into discussions with and receive revised Proposals from the Proposers in the Competitive Range, the City shall proceed as follows:
 - 1.** Initiating Discussions. The City shall initiate oral or Written discussions with all of the Proposers in the Competitive Range regarding their Proposals with respect to the provisions of the RFP that the City identified in the RFP as the subject of discussions. The City may conduct discussions for the following purposes:
 - a.** Informing Proposers of deficiencies in their initial Proposals;
 - b.** Notifying Proposers of parts of their Proposals for which the City would like additional information; and
 - c.** Otherwise allowing Proposers to develop revised Proposals that will allow the City to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.
 - 2.** Conducting Discussions. The City may conduct discussions with each Proposer in the Competitive Range necessary to fulfill the purposes of this section, but need not conduct the same amount of discussions with each Proposer. The City may terminate discussions with any Proposer in the Competitive Range at any time. However, the City shall offer all Proposers in the Competitive Range the opportunity to discuss their Proposals with City before the City notifies Proposers of the date and time pursuant to this section that revised Proposals will be due.
 - a.** In conducting discussions, the City :

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- (1) Shall treat all Proposers fairly and shall not favor any Proposer over another;
 - (2) Shall not discuss other Proposers' Proposals;
 - (3) Shall not suggest specific revisions that a Proposer should make to its Proposal, and shall not otherwise direct the Proposer to make any specific revisions to its Proposal. Nothing in this paragraph, however, shall prevent the City from identifying deficiencies in a Proposal, as provided in Subsection 5.34.850 E.1.a. above.
 - b. At any time during the time allowed for discussions, the City may:
 - (1) Continue discussions with a particular Proposer;
 - (2) Terminate discussions with a particular Proposer and continue discussions with other Proposers in the Competitive Range; or
 - (3) Conclude discussions with all remaining Proposers in the Competitive Range and provide notice to the Proposers in the Competitive Range to submit revised Proposals.
 3. Revised Proposals. If the City does not cancel the Solicitation at the conclusion of the City's discussions with all remaining Proposers in the Competitive Range, the City shall give all remaining Proposers in the Competitive Range notice of the date and time by which they must submit revised Proposals. This notice constitutes the City's termination of discussions, and Proposers must submit revised Proposals by the date and time set forth in the City's notice.
 - 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

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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 terminate discussions or negotiations with the Proposer with whom it is

currently conducting discussions or negotiations if the City reasonably believes that;

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

5.34.860 RFP Pricing Mechanisms.

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

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

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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.
- 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

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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.

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6. Honoraria. If allowed by the RFP, honoraria or stipends may be provided for early design submittals from qualified finalists during the Solicitation process on the basis that the City is benefited from such deliverables.

5.34.880 Energy Savings Performance Contracts (ESPC).

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

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

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Energy Conservation Measures, including a Design-Build Contract, that guarantee energy savings or performance.

- a.** Measurement and Verification (or "M & V"). As used in ESPC Procurement, the examination of installed ECMs using the International Performance Measurement and Verification Protocol ("IPMVP"), or any other comparable protocol or process, to monitor and verify the operation of energy-using systems pre-installation and post-installation.
- b.** Technical Energy Audit. As used in ESPC Procurement, the initial phase of Personal Services to be performed by an ESCO that includes a detailed evaluation of an existing building or structure, an evaluation of the potential ECMs that could be effectively utilized at the facility, and preparation of a report to the City of the ESCO's Findings during this initial phase of the Work; the term "Technical Energy Audit" can also refer to the report provided by the ESCO at the conclusion of this phase of the Work.
- 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 5.34.800 related to the Solicitation, negotiation and contracting for ESPC Work. If the 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.
- ESPC Contracting Method.** The ESPC form of contracting, as defined in herein, addresses the unique technical complexities associated with the determination of what ECMs are feasible for the City, as well as the additional technical complexities associated with the Design-Build Contract. For ESPC's the RFP outlined in Subsections 5.34.800 B. through D. shall be utilized if the City desires the Procurement process to be exempt from the competitive bidding requirements of ORS 279C.335. The City shall only utilize the ESPC contracting method with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to utilize the ESPC contracting process, the City must be able to reasonably anticipate one or more of the following types of benefits:
- 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

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services and required documentation as a fully integrated function with a single point of responsibility;

2. Obtaining, through an ESCO, an Energy Savings Guarantee;
3. Integrating the Technical Energy Audit phase and the Project Development Plan phase into the design and construction phase of Work on the project;
4. Reducing the risk of design flaws, misunderstandings and conflicts inherent in the construction process, through the integration of ESPC Personal Services and Work;
5. Obtaining innovative design solutions through the collaboration of the members of the ESCO integrated ESPC services team;
6. Integrating cost-effective ECMs into an existing building or structure, so that the ECMs pay for themselves through savings realized over the useful life of the ECMs;
7. Preliminary design, development, implementation and an Energy Savings Guarantee of ECMs into an existing building or structure through an ESPC, as a distinct part of a major remodel of that building or structure that is being performed under a separate remodeling Contract; and
8. Satisfying local energy efficiency design criteria or requirements.

D. In ESPC contracting, terms that may be negotiated also include the Scope of preliminary design of DCMs to be evaluated by the parties during the Technical Energy Audit phase of the Work, the Scope of Personal Services and Work to be performed by the ESCO during the Project Development Plan phase of the Work, the detailed provisions of the Energy Savings Guarantee to be provided by the ESCO and Scope of Work, methodologies and compensation terms and conditions during the design and construction phase and M & V phase of the Work, consistent with the requirements of this Section.

E. In Energy Savings Performance Contracting (ESPC), in addition to the factors set forth in Subsections 5.33.840 C.1., 2. and 3., those factors may also include sample Technical Energy Audits from similar projects, sample M & V reports, financial statements and related information of the ESCO for a time period established in the RFP, financial statements and related information of joint ventures comprising the ESCO, the ESCO's capabilities and experience in performing energy baseline studies for facilities (independently or in cooperation with an independent third-party energy baseline consultant), past performance of the ESCO in meeting energy guarantee Contract levels, the specific Person that will provide the Energy Savings Guarantee to be offered by the ESCO, the ESCO's management plan for the project, information on the specific methods, techniques and equipment that the ESCO will

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use in the performance of the Work under the ESPC, the ESCO's team members and consultants to be assigned to the project, the ESCO's experience in the Energy Savings Performance Contracting field, the ESCO's experience acting as the prime Contractor on previous ESPC projects (as opposed to a sub-contractor or consultant to a prime ESCO), the ESCO's vendor and product neutrality related to the development of ECMs, the ESCO's project history related to removal from an ESPC project or the inability or unwillingness of the ESCO to complete an ESPC project, the ESCO's M & V capabilities and experience (independently or in cooperation with an independent third-party M & V consultant), the ESCO's ability to explain the unique risks associated with ESPC projects and the assignment of risk in the particular project between the City and the ESCO, the ESCO's equipment performance guarantee policies and procedures, the ESCO's energy savings and cost savings guarantee policies and procedures, the ESCO's project cost guarantee policies and procedures, the ESCO's pricing methodologies, the price that the ESCO will charge for the Technical Energy Audit phase of the Work and the ESCO's fee structure for all phases of the ESPC.

- F.** Authority. Bureaus wanting to pursue an exemption from the Competitive Bidding requirements of ORS 279C.335 (and, if applicable, ORS 351.086), shall utilize the ESPC form of contracting only in accordance with the requirements of Sections 5.34.800 through 5.34.890.
- G.** No Findings. The City is only required to comply with the ESPC contracting procedures set forth in Sections 5.34.800 through 5.34.890 in order for the ESPC to be exempt from the competitive bidding processes of ORS 279C.335. No Findings are required for an ESPC to be exempt from the competitive bidding process for Public Improvement Contracts pursuant to ORS 279C.335, unless the City is subject to the requirements of ORS 279C.335 and chooses not to comply with the ESPC contracting procedures set for in these rules.
- H.** Selection. ESPC selection criteria may include those factors set forth above in Subsections 5.34.840 C.1., 2., and 3. Since the Energy Savings Guarantee is such a fundamental component in the ESPC contracting process, Proposers must disclose in their Proposals the identity of any Person providing (directly or indirectly) any Energy Savings Guarantee that may be offered by the successful ESCO during the course of the performance of the ESPC, along with any financial statements and related information pertaining to any such Person.
- I.** QBS Inapplicable. Because the value of construction Work predominates in the ESPC method of contracting, the qualifications based selection (QBS) process mandated by ORS 279C.110 is not applicable.
- J.** Licensing. If the ESCO is not an Oregon licensed design professional, the City shall require that the ESCO disclose in the ESPC that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will

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provide design services. See ORS 671.030(5) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction Work.

- K.** Performance Security. At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the ESCO must provide a performance bond and payment bond, each for 100 percent of the full Contract Price, including the construction Work and design and related Personal Services specified in the ESPC Design-Build Contract, pursuant to ORS 279C.380(1)(a). For ESPC Design-Build Contracts, these "design and related professional services" include conventional design services, commissioning services, training services for the City's operations and maintenance staff, and any similar Personal Services or Work provided by the ESCO under the ESPC Design-Build Contract prior to final completion of construction. M & V services, and any Personal Services and Work associated with the ESCO's Energy Savings Guarantee are not included in these ORS 279C.380(1)(a) "design and related professional services." Nevertheless, The City may require that the ESCO provide performance security for M & V services and any Personal Services and Work associated with the ESCO's Energy Savings Guarantee, if the City so provides in the RFP.
- L.** Contracting Requirements. Contracting Agencies shall conform their ESPC contracting practices to the following requirements:

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

 - a.** A contractual structure which includes general Contract terms describing the relationship of the parties, the various phases of the Work, the contractual terms governing the Technical Energy Audit for the project, the contractual terms governing the Project Development Plan for the project, the contractual terms governing the final design and construction of the project, the contractual terms governing the performance of the M & V services for the project, and the detailed provisions of the ESCO's Energy Savings Guarantee for the project.
 - b.** The various phases of the ESCO's Work will include the following:

 - (1)** The Technical Energy Audit phase of the Work;
 - (2)** The Project Development Plan phase of the Work;
 - (3)** A third phase of the Work that constitutes a Design-Build Contract, during which the ESCO completes any plans and Specifications required to implement the ECMs that have

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

- (4) A final phase of the Work, whereby the ESCO, independently or in cooperation with an independent consultant hired by the City, performs M & V services to ensure that the Energy Savings Guarantee identified by the ESCO in the earlier phases of the Work and agreed to by the parties has actually been achieved.
- 2. Design-Build Contracting Requirements in ESPCs. At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the City shall conform its Design-Build contracting practices to the Design-Build contracting requirements set forth in Subsection 5.34.870 G. above.
- 3. Pricing Alternatives. The City may utilize one of the following pricing alternatives in an ESPC:
 - a. A fixed price for each phase of the Personal Services and Work to be provided by the ESCO;
 - b. A cost reimbursement pricing mechanism, with a maximum not-to-exceed price or a GMP; or
 - c. A combination of a fixed fee for certain components of the Personal Services to be performed, a cost reimbursement pricing mechanism for the construction Work to be performed with a GMP, a single or annual fixed fee for M & V services to be performed for an identified time period after final completion of the construction Work, and a single or annual Energy Savings Guarantee fixed fee payable for an identified time period after final completion of the construction Work that is conditioned on certain energy savings being achieved at the facility by the ECMs that have been implemented by the ESCO during the project (in the event an annual M & V services fee and annual Energy Savings Guarantee fee is utilized by the parties, the parties may provide in the Design-Build Contract that, at the sole option of the City, the ESCO's M & V services may be terminated prior to the completion of the M & V/Energy Savings Guarantee period and the City's future obligation to pay the M & V services fee and Energy Savings Guarantee fee will likewise be terminated, under terms agreed to by the parties).

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

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

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

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

1. Time Savings. With the CM/GC Method, the Public Improvement has significant schedule ramifications, such that concurrent design and construction are necessary in order to meet critical deadlines and shorten the overall duration of construction. The City may consider operational and financial data that show significant savings or increased opportunities for generating revenue as a result of early completion, as well as less disruption to public facilities as a result of shortened construction periods;
2. Cost Savings. With the CM/GC Method, early CM/GC input during the design process is expected to contribute to significant cost savings. The City may consider value engineering, building systems analysis, Life Cycle Costing analysis and construction planning that lead to cost savings. The City shall specify any special factors influencing this analysis, including high rates of inflation, market uncertainty due to material and labor fluctuations or scarcities, and the need for specialized construction expertise due to technical challenges; and
3. Technical Complexity. With the CM/GC Method, the Public Improvement presents significant technical complexities that are best addressed by a

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collaborative or team effort between the City, design professionals, City project management or technical consultants and the CM/GC, in which the CM/GC will assist in addressing specific project challenges through pre-construction services. The City may consider the need for CM/GC input on issues such as operations of the facility during construction, tenant occupancy, public safety, delivery of an early budget or GMP, financing, historic preservation, difficult remodeling projects and projects requiring complex phasing or highly coordinated scheduling.

- B. Authority.** The City shall use the CM/GC Method only in accordance with the requirements of ORS 279C.337, when an exemption from Competitive Bidding is approved by Council. See particularly, Section 5.34.820 on "Use of Alternative Contracting Methods".
- C. Selection.** CM/GC selection criteria may include those factors set forth above in Subsection 5.34.840 C. The City shall, in documents the City uses to procure CM/GC Services.
1. Describe the selection criteria and the weight of each criterion in the evaluation process;
 2. Describe how interviews will be used and evaluated, if interviews are to be used in the selection;
 3. Describe any other criteria that may be considered in selecting a CM/GC;
 4. Describe how scoring from the evaluation of the written proposals and interviews will be combined to arrive at a Proposer's final score and ranking;
 5. State that any Savings the CM/GC realizes in performing the Contract will accrue to the City, unless the Contract provides otherwise;
 6. Specify terms and conditions that govern how the fixed price, GMP or other maximum price set forth in the Contract will be determined and whether the price includes or is based on unit pricing or allows for Work that is constructed in phases;
 7. State that the City will not pay any amount that exceeds a fixed price, GMP or other maximum price specified in the Contract unless the amount results from material changes to the scope of work set forth in the Contract and the parties to the Contract agree in writing to the material changes;
 8. State that the City will conduct the procurement in accordance with model rules the Attorney General adopts under ORS 279A.065 (3); and

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9. Specify deadlines and time periods for the selection that allow prospective Proposers a reasonable opportunity to submit proposals, including but not limited to:
 - a. The date and time by which the City must receive proposals;
 - b. The time periods during which the City will conduct interviews, if the City will conduct interviews;
 - c. The date by which the City plans to indicate an intent to award the Contract; and
 - d. The time period during which the City will meet with Proposers that the City did not select for the Contract, if a Proposer requests a meeting to discuss the procurement.
- D. **Basis for Payment.** The CM/GC process adds specified Construction Manager Professional, Technical and Expert Services to traditional design-bid-build general contractor Work, requiring full Contract performance within a negotiated GMP, fixed Contract Price or other maximum Contract Price. For a GMP pricing method, the basis for payment is reimbursable direct costs as defined under the Contract, plus a fee constituting full payment for Work and Professional, Technical and Expert Services rendered, which together shall not exceed the GMP. See GMP definition at Subsection 5.34.810 E. and Pricing Mechanisms in Section 5.34.860.
- E. **Contract Requirements.** The City shall conform its CM/GC Services contracting practices to the following requirements:
 1. Nature of the Contracts for CM/GC Services. Since the scope of CM/GC Services includes a pre-construction phase of Professional, Technical and Expert Services and a construction phase Work to be performed by the CM/GC, the City may award one or more Contracts for CM/GC Services. In general, Contracts for CM/GC Services will include contract provisions that will not only govern the relationship between the City and the CM/GC for the pre-construction Professional, Technical and Expert Services, but will also include provisions that will govern the CM/GC's providing of the Work necessary to complete the Public Improvement. The City will only authorize the construction phase or phases of a portion of the project or the entire project upon successful negotiation of the GMP. For purposes of paying BOLI prevailing wages, a CM/GC Services Contract becomes a public works Contract at the time covered Work activities commence, through authorized Early Work during the pre-construction phase or construction phase Work.

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2. Setting the GMP, Fixed Contract Price or Other Maximum Contract Price. The GMP, fixed Contract price or other maximum Contract Price shall be set at an identified time consistent with industry practice and project conditions and after supporting information reasonably considered necessary to its use has been developed. The supporting information for the GMP must define with particularity both what Professional, Technical and Expert Services and Work is included and/or excluded from the GMP, fixed Contract price or other maximum Contracts Price. A set of project drawings and Specifications shall be produced establishing the scope of Work contemplated by the GMP, fixed Contract price or other maximum Contract Price.
3. Adjustments to the GMP, Fixed Contract Price or Other Maximum Contract Price. The Contract shall clearly identify the standards or factors under which changes or additional Work will be considered outside of the Work Scope that warrants an increase in the GMP, fixed Contract price or other maximum Contract Price as well as criteria for decreasing the GMP, fixed Contract price or other maximum Contract Price. The GMP, fixed Contract price or other maximum Contract Price shall not be increased without a concomitant increase to the scope of Work defined at the establishment of the GMP, fixed Contract price or other maximum Contract Price or most recent amendment to the GMP, fixed Contract price or other maximum Contract Price.
4. Cost Savings. The Contract shall clearly identify the disposition of any Cost Savings resulting from completion of the Work below the GMP, fixed Contract price or other maximum Contract Price; that is, under what circumstances, if any, the CM/GC might share in those Cost Savings, or whether the Cost Savings accrue only to the City's benefit. Unless there is a clearly articulated reason for sharing the Cost Savings set forth in the Contract, the Cost Savings must accrue to the City .)
5. Cost Reimbursement. The Contract shall clearly identify what items or categories of items are eligible for cost reimbursement within the GMP or other maximum Contract Price.
6. Audit. Cost reimbursements shall be made subject to final audit adjustment, and the Contract shall establish an audit process to ensure that Contract costs are allowable, properly allocated and reasonable.
7. Fee. Compensation for the CM/GC's Personal Services and construction Work where the Contract uses a GMP, shall be paid on the basis of a fee that is inclusive of profit, overhead and all other indirect or non-reimbursable costs. Costs determined to be included within the fee shall be expressly defined in the Contract terms and conditions at the time the City

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selects the CM/GC. The fee, which may be expressed as either a fixed dollar amount or as a proposed percentage of all reimbursable costs, shall be identified during and become an element of the selection process. It shall subsequently be expressed as a fixed amount for particular construction Work authorized to be performed, when Early Work is added to the Contract through an amendment and when the GMP is established. The CM/GC fee does not include any fee paid to the CM/GC for performing preconstruction services during a separate preconstruction phase.

8. Incentives. The Contract shall clearly identify any economic incentives, the specific criteria that apply and their relationship to other financial elements of the Contract (including the GMP, fixed Contract price or other maximum Contract Price).
9. Controlled Insurance Programs. For projects where an owner-controlled or contractor-controlled insurance program is permitted, the Contract shall clearly identify whether an Owner Controlled or Contractor Controlled Insurance Program is anticipated or allowable. If so, the Contract shall clearly identify:
 - a. anticipated cost savings from reduced premiums, claims reductions and other factors;
 - b. the allocation of cost savings; and
 - c. safety responsibilities, incentives or both safety responsibilities and incentives.
10. Early Work. The RFP shall clearly identify, whenever feasible, the circumstances under which any Early Work may be authorized and undertaken for compensation prior to establishing the GMP, fixed Contract price or other maximum Contract price.
11. Subcontractor Selection. Subcontracts under the Contract are not Public Contracts within the meaning of the Code. However, the Contract must include provisions that clearly meet the requirements of ORS 279C.337(3) and other City requirements. Within the scope of ORS 279C.337(3), the CM/GC's subcontractor selection process must meet the following parameters:
 - a. Absent a written justification prepared by the CM/GC and approved by the City as more particularly provided for in this section, the CM/GC's Subcontractor selection process must be "competitive", meaning that the process should include publicly advertised subcontractor solicitations and be based on a low-bid competitive

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method, a low-quote competitive method for contracts in a specified dollar range agreeable to the City, or a method whereby both price and qualifications of the subcontractors are evaluated in a competitive environment, consistent with the RFP and Contract requirements;

- b.** When the Subcontractor selection process for a particular Work package will not be “competitive” as provided for in this section, the process must meet the following requirements:
- (1)** The CM/GC must prepare and submit a written justification to the City, explaining the project circumstances that support a non-competitive Subcontractor selection process for a particular Work package, including, but not limited to, Emergency circumstances, the CM/GC’s need to utilize a key Subcontractor member of the CM/GC’s project team consistent with the CM/GC’s project proposal, the need to meet other specified Contract requirements, the continuation or expansion of an existing Subcontractor agreement that was awarded through a “competitive process” along with facts supporting the continuation or expansion of the Subcontractor agreement, or a “sole source” justification;
 - (2)** For a “sole source” selection of a subcontractor to proceed, the City must evaluate the written justification provided by the CM/GC and must find that critical project efficiencies require utilization of labor, services or materials from one subcontractor; that technical compatibility issues on the project require labor, services or materials from one subcontractor; that particular labor, services or materials are needed as part of an experimental or pilot project or as part of an experimental or pilot aspect of the project; or that other project circumstances exist to support the conclusion that the labor, services or materials are available from only one subcontractor;
 - (3)** The CM/GC must provide an independent cost estimate for the Work package that will be subject to the non-competitive process, if required by the City;
 - (4)** The CM/GC must fully respond to any questions or comments submitted to the CM/GC by the City; and

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- (5) The City must approve the CM/GC's use of the non-competitive Subcontractor selection process prior to the CM/GC's pursuit of the non-competitive process.
 - c. A competitive selection process may be preceded by a publicly advertised subcontractor pre-qualification process, with only those subcontractors meeting the pre-qualification requirements being invited to participate in the later competitive process through which the CM/GC will select the subcontractor to perform the construction Work described in the selection process;
 - d. If the CM/GC or an Affiliate or subsidiary of the CM/GC will be included in the subcontractor selection process to perform particular construction Work on the project, the CM/GC must disclose that fact in the selection process documents and announcements. The Contract must also identify the conditions, processes and procedures the CM/GC will utilize in that competitive process in order to make the process impartial, competitive and fair, including but not limited to objective, independent review and opening of bids or proposals for the elements of Work involved, by a representative of the City or another independent third party.
12. Subcontractor Approvals and Protests. The Contract shall clearly establish whether the City must approve subcontract Awards, and to what extent, if any, the City will resolve or be involved in the resolution of protests of the CM/GC's selection of Subcontractors and suppliers. The procedures and reporting mechanisms related to the resolution of Subcontractor and supplier protests shall be established in the Contract with certainty, including the CM/GC's roles and responsibilities in this process and whether the CM/GC's subcontracting records are considered to be public records. In any event, the City must retain the right to monitor the subcontracting process in order to protect City's interests and to confirm the CM/GC's compliance with the contract and with applicable statutes, administrative rules and other legal requirements.
13. CM/GC Self-Performance or Performance by CM/GC Affiliates or Subsidiaries Without Competition. Consistent with the requirements of ORS 279C.3337(3)(c), the Contract must establish the conditions under which the CM/GC or an Affiliate or subsidiary of the CM/GC may perform elements of the Work without competition from subcontractors. In order for the CM/GC or an Affiliate or subsidiary of the CM/GC to perform elements of the construction Work without competition from subcontractors, the CM/GC must provide, or must have included in the CM/GC's RFP proposal to perform CM/GC Services for the project, a detailed proposal for performance of the Work by the CM/GC or an

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

14. **Unsuccessful Subcontractor Briefing.** ORS 279C.337(3)(e) is designed to allow a subcontractor who was not selected by the CM/GC to perform a particular element of the construction Work to obtain specific information from the CM/GC, and meet with the CM/GC to discuss the subcontractor qualification and selection process involved and the CM/GC's subcontractor selection decisions, in order to better understand why the subcontractor was not successful in being selected to perform the particular element of the Work and to improve the subcontractor's substantive qualifications or the subcontractor's methods in competing for elements of the Work for the particular project involved, or for future projects. The briefing meetings may be held with individual subcontractors or, if the subcontractors agree, in groups of subcontractors, with those groups established by bid package or other designation agreed to by the City and the CM/GC. Nevertheless, the CM/GC is not obligated to provide this briefing opportunity unless the CM/GC receives a written request from a subcontractor to discuss the subcontractor qualification and selection process involved. Unless the City and the CM/GC agree on a different schedule, the CM/GC Contract should include provisions:
 - a. Allowing a Subcontractor 60 days from the CM/GC's notice of award of a subcontract for a particular Work package to request, in writing, a post-selection meeting with the CM/GC under this section; and
 - b. Requiring the CM/GC to set a meeting with the subcontractor under this section within 45 days of the Subcontractor's written request.
15. **Performance and Payment Bonds.** Provided no construction Work is included with the preconstruction services to be performed under the initial form of the CM/GC Contract, no performance bond or payment bond is required to be provided by the CM/GC at the time of Contract signing, consistent with ORS 279C.380. Once construction Work is included in the Contract and authorized by the City to be performed by the CM/GC, however, the CM/GC must provide a performance bond and payment bond in the full amount of any Early Work to be performed by the CM/GC, or the full amount of the amount of the GMP, fixed price or other maximum Contract Amount, as applicable. Furthermore, in the event additional Early Work is added to the CM/GC Contract after the initial Early Work or in the event an amendment to the CM/GC Contract is made so that the GMP, fixed price or other maximum Contract Amount must be increased, the

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

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

5.34.900 Required Contract Clauses.

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

5.34.910 Waiver of Delay Damages Against Public Policy.

Any clause in a Public Improvement Contract purporting to waive, release, or extinguish the rights of a Contractor to damages resulting from The City's unreasonable delay in performing the Contract is void and unenforceable, as against public policy. However, Contract provisions requiring notice of delay, providing for alternative dispute resolution such as arbitration (where allowable) or mediation, providing other procedures for settling Contract disputes, or providing for reasonable liquidated damages, are permissible.

5.34.915 BOLI Public Works Bond.

(Amended by Ordinance No. 184403, effective February 2, 2011.) Pursuant to ORS 279C.830(2), the specifications for every Public Works Contract shall contain a provision stating that the Contractor and every subcontractor must have a Public Works bond filed with the Construction Contractors Board before starting Work on the project, unless otherwise exempt. This bond is in addition to performance bond and payment bonds requirements.

5.34.920 Retainage.

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

- A.** Retainage of 5 Percent. The amount to be retained from any given progress payment shall not exceed 5 percent of the payment. If the Contract Work is 50 percent completed and the Work is progressing satisfactorily, the City may, at its discretion, reduce or eliminate the retainage on the remaining progress payments. Any reduction or elimination of retainage shall be allowed only upon Written application of the Contractor, which application shall include Written approval of the Contractor's surety; except that when the Contract Work is 97.5 percent completed, the City may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the Contract Work remaining to be done. Upon receipt of a Written application by the Contractor, the City shall respond in Writing within a reasonable time. If retainage has been reduced or eliminated, the City reserves the right in protecting its interests to reinstate at any time retainage from further progress payments.
- B.** Form of Retainage. Unless the City finds in writing that accepting a bond or instrument described in 1. and 2. of this Subsection poses an extraordinary risk that is not typically associated with the bond or instrument, the City, in lieu of withholding moneys from payment, shall accept from the Contractor:

 - 1.** Bonds, securities, or other instruments that are deposited and accepted as provided in Subsection 5.34.920 D.1. of this rule; or
 - 2.** A surety bond deposited as provided in Subsection 5.34.920 D. of this rule.
- C.** Deposit in Interest-bearing Accounts. Upon request of the Contractor, the City shall deposit cash retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, for the benefit of the City. Earnings on such account shall accrue to the Contractor. The City may determine the account into which the retainage is placed.
- D.** Alternatives to Cash Retainage. In lieu of cash retainage to be held by the City, the Contractor may select one of the following options:

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1. Deposit of bonds, securities and other instruments:

- a.** The Contractor may deposit bonds, securities or other instruments with the City as set forth in Section 5.34.920 or in any bank or trust company to be held for the benefit of the City. If the City accepts the deposit, the City shall reduce the retainage in an amount equal to the value of the bonds and securities. This reduction in retainage shall be made in the progress payments made subsequent to the time the Contractor deposits the bonds and securities;
- b.** The value of the bonds and securities shall be determined periodically by the City, in the manner described in Subsection 5.34.920 D.1.c., and the amount retained on progress payments shall be adjusted accordingly. The bonds and securities deposited by the Contractor shall be fully assigned to the City or be payable to the City on demand and shall be of a character approved by the City Treasurer and in a form approved by the City Attorney including, but not limited to, the following:
 - (1)** Bills, certificates, notes or bonds of the United States;
 - (2)** Other obligations of the United States or agencies of the United States;
 - (3)** Obligations of any corporation wholly owned by the federal government;
 - (4)** Indebtedness of the Federal National Mortgage Association;
 - (5)** General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon; or
 - (6)** Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.
- c.** The value of bonds and securities deposited by the Contractor shall be calculated as follows:
 - (1)** As to bonds or securities for which the “Bid” and “asked” prices are published on a regular basis in the Wall Street Journal or in the New York Times, the value shall be the average of the “Bid” and “asked” prices for the bonds or securities so published on (or most recently prior to) the date value is determined;

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- (2) As to bonds or securities for which the “Bid” and “asked” prices are not published in the Wall Street Journal or the New York Times, the value shall be either: the average “Bid” price for the bond or security, on the date value is determined, as established by any two nationally recognized government securities dealers (selected by the City in its sole discretion) making a market in such investments; or, the “Bid” price published by a nationally recognized pricing service;
 - (3) As to certificates of deposit and bankers acceptances, the value shall be the face amount thereof, plus accrued interest.
 - d. At the time the City determines that all requirements for the protection of the City’s interest have been fulfilled, all bonds and securities deposited as above provided shall be released to the Contractor.
 2. Execution of Escrow Agreement. The Chief Procurement Officer is authorized to execute any escrow agreement necessary to safeguard deposit of securities with the City subject to approval as to form by the City Attorney.
 3. Deposit in Interest-Bearing Accounts. Upon Written request of the Contractor, the City shall deposit any amounts withheld as retainage in an interest-bearing account in a bank, savings bank, trust company or savings association for the benefit of the City. Earnings on such account shall accrue to the Contractor but the interest shall remain in the account until the City authorizes its release. The account shall be established through the City Treasurer.
- E. Recovery of Costs. If the City incurs additional costs as a result of the exercise of any of the options for retainage, the City may recover such costs from the Contractor by reduction of the final payment. As Work on the Contract progresses, the City shall, upon request, inform the Contractor of all accrued costs.
- F. Additional Retainage When Certified Payroll Statements not Filed. Pursuant to ORS 279C.845(7), if a Contractor is required to file certified payroll statements and fails to do so, the City shall retain 25 percent of any amount earned by the Contractor on a Public Works Contract until the Contractor has filed such statements with the City. The City shall pay the Contractor the amount retained under this provision within 14 days after the Contractor files the certified statements, regardless of whether a subcontractor has filed such statements.

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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.
- B. Contract completed. If the Contract has been completed and all funds disbursed to the prime Contractor, all claims shall be referred to the Contractor's surety for resolution. The City shall not make payments to Subcontractors or suppliers for Work already paid for by the City.

5.34.960 Records Maintenance; Right to Audit Records.

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

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

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

- D.** The City and its Authorized Representatives shall be entitled to inspect, examine, copy and audit the books and records of any Contractor or Subcontractor upon request by the City for any reason, including any documents that may be placed in escrow according to any Contract requirements. The records that may be inspected and copied include financial documents of the Contractor, including tax returns and financial statements. The City will keep such documents confidential to the extent permitted by Oregon law, subject to Subsection 5.34.960 E. below.
- E.** Contractors and Subcontractors agree to disclose the records requested by the City and agree to their admission as evidence in any proceeding between the parties, including, but not limited to a court proceeding, arbitration, mediation or other alternative dispute resolution process.
- F.** In the event that the records disclose that the City is owed money or establishes that any portion of any claim made against the City is not warranted, the Contractor or Subcontractor shall pay all costs incurred by the City in conducting the audit and inspection. Such costs may be withheld from any sum due or that becomes due to the Contractor by the City.
- G.** Failure of the Contractor or Subcontractor to keep or disclose records as required may result in a finding that the Contractor or Subcontractor is not a Responsible Bidder or Proposer as provided in Subsection 5.34.610 B.

5.34.970 Right to Inspect Plant or Place of Business.

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

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

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

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

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

- E.** Responsibility for Completed Work if Contract Canceled. Cancellation of a Contract or a portion thereof shall not relieve the Contractor of responsibility for the Work completed, nor shall it relieve the surety of its obligation for any just claims arising from the Work performed.
- F.** Termination of the Contractor's Performance for Default.
 - 1.** Declaration of Default. The City may, after giving the Contractor and its surety seven (7) Days Written notice and an opportunity to cure deficient performance, terminate the Contractor's performance for any reasonable cause, including but not limited to those set forth in Subsections 5.34.980 F.1.a. to g. Upon such termination, the City may immediately take possession of the premises and of all materials, tools and appliances thereon as well as all other materials, whether on the premises or not, on which the Contractor has received partial payment. The City may finish the Work by whatever method it may deem expedient;
 - a.** If the Contractor should repeatedly refuse or fail to supply an adequate number of skilled workers or proper materials to carry on the Work as required by the Contract documents, or otherwise fail to pursue the Work in a timely manner; or
 - b.** If the Contractor should repeatedly fail to make prompt payment to Subcontractors or for material or labor; or
 - c.** If permitted by law, if the Contractor should voluntarily or involuntarily seek protection under the United States Bankruptcy Code and its Debtor in Possession or Trustee for the estate fails to assume the Contract within a reasonable time, or as provided by the Bankruptcy Court; or
 - d.** If the Contractor should make a general assignment for the benefit of the Contractor's creditors; or
 - e.** If a receiver should be appointed on account of the Contractor's insolvency; or
 - f.** If the Contractor is otherwise in material breach of any part of the Contract; or
 - g.** If the Contractor should disregard laws, rules, or the instructions of the City or its Authorized Representative.

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

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- 3.** Notice of the amount of time (if any) in which the City shall permit the Contractor to correct the failure to perform.
- J.** The Contract documents may provide Contract cancellation or Contractor termination procedures that are different from, or in addition to, those provided in Section 5.34.980. If a Contract contains a cancellation or termination clause, that clause rather than Section 5.34.980 shall determine the respective rights and responsibilities of the parties in the event of cancellation or termination.

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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.

5.36.001 Surplus Property Policy.

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

5.36.010 Disposition of Surplus Property.

(Replaced by Ordinance No. 179813; Amended by Ordinance Nos. 181483 and 187165, effective July 10, 2015.)

A. Definition:

1. "Surplus Property" means: tangible personal property owned by the City, including equipment and materials, which is no longer needed by the City Bureau or Office that owns it. Examples include inventoried and non-inventoried office furniture, specialized equipment, and items that are obsolete or overstocked.

- B.** City Capital Asset Disposal Documentation: The bureau initiating the transfer, donation, sale, or disposal of surplus property that has been inventoried as a capital asset, shall comply with City Accounting Administrative Rules regarding disposal of capital assets, which establish minimum standards for the disposal of capital assets and subsequent reporting in the financial records.

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- C.** City Assets Procured with the Proceeds of Tax-Exempt Bonds: The bureau initiating the transfer, donation, sale, or disposal of surplus property that was procured with the proceeds of tax-exempt bonds should contact the City's debt management office prior to disposal of the property to determine what, if any, limitations exist on the disposal of such property and the use of any revenue derived from such disposal.
- D.** Usable Surplus Property: Whenever a Commissioner-In-Charge, or designee, determines that surplus property exists, the property may be disposed of in one of the following ways:
- 1.** Inter-Bureau Transfer or Sale - Surplus property may be transferred or sold to another City bureau upon written request from the director of the bureau that has a use for it.
 - 2.** Negotiated Direct Sale - Surplus property with an individual or aggregate current market value under \$5,000 may be sold as follows:
 - a.** The bureau obtains three written or verbal price quotations prior to final sale;
 - b.** The bureau negotiating the sale keeps written records of the price quotations, the amounts, and if necessary, the reason why three quotations could not be obtained;
 - c.** The bureau sells the surplus property to the highest bidder meeting all conditions of the sale; and
 - d.** The bureau applies the proceeds of the sale to its property disposition expenses in the following order: storage, transportation, publication fees and other costs of safekeeping and sale, and then to the City fund owning the property at the time of sale unless otherwise directed by the City Council.
 - 3.** Public Sale - The City Council may authorize the sale of surplus property through an external auction service. If the City does not have a contract with an external auction service, the bureau may conduct a public auction subject to the following conditions:
 - a.** The bureau shall give notice of such public auction at least once within ten days prior to the date of the auction in a newspaper of general circulation published in the City; such notice shall give the time and place of the auction;

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- 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.
 - d.** The Director of the Bureau or Office that owned the surplus property shall complete and retain a donation form for each donation made during the fiscal year and submit all forms to the City Auditor at the end of the fiscal year. The donation form shall contain:
 - (1)** A description of the surplus property donated; and,
 - (2)** The name of the recipient of the surplus property; and,
 - (3)** The originating bureau; and,

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- (4) The estimated market value of the surplus property at the time of donation.
- E.** Unusable Surplus Property: A Commissioner-In-Charge, or designee, may dispose of surplus property if it is determined that the surplus property is unusable, inoperable or not reasonably repairable, hazardous, or is of insufficient value to warrant a transfer, sale, or donation as prescribed in this Section. In addition to disposing of unusable property in accordance with existing federal, state, or local disposal regulations, every effort shall be made to recycle or otherwise dispose of property in an environmentally sound manner.
- F.** Exempt Property. The following surplus property, whether usable or unusable, shall not be transferred, donated, sold, or otherwise disposed of without Council approval or as otherwise provided by City code, policy, or procedure.
1. Vehicles or Vehicle Equipment.
 2. Corporately-Owned Communications Equipment.
 3. Contraband.
 4. Firearms.
 5. Intangibles.
 6. Hazardous items.
 7. Items of historical value.
 8. Any other item deemed appropriate for exemption from this Section by the Commissioner-In-Charge of the bureau that controls the property.
- G.** Vehicles and Vehicle Equipment: The Manager of OMF Business Operations Division is authorized to dispose of vehicles and related equipment when the vehicle is no longer needed by the City. The manner of disposal shall be the most efficient and cost-effective as determined by the Manager. This includes, but is not limited to, competitive written bids, public auction, negotiated sales, or exchange. Any and all revenue, less costs of sale, received from the sale of City-owned vehicles or vehicular equipment shall be credited to the replacement account for the originating bureau.
- H.** Corporately-Owned Communications Equipment: The Chief Technology Officer is authorized to dispose of corporately-owned communications equipment maintained by the Bureau of Technology Services when such equipment is no longer needed by the City. The manner of disposal shall be the most efficient and cost-effective as determined by the Director. This includes, but is not limited to,

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competitive written bids, public auction, negotiated sales, or exchange. Any and all revenue, less costs of sale, received from the sale of corporately-owned communications equipment shall be credited to the replacement account for the originating bureau.

- I.** Artificial Turf: The Chief Administrative Officer (CAO) is authorized to donate or arrange for recycling of artificial turf from City-owned spectator facilities when such turf no longer meets venue performance standards. The CAO shall comply with the provisions of this Section for all other means of disposing of the artificial turf.

5.36.011 Donations of Surplus Personal Property.

(Repealed by Ordinance No. 179813, effective January 6, 2006.)

5.36.015 Disposition of Unclaimed and Found Personal Property.

(Added by Ordinance No. 153293; amended by Ordinance No. 167825, effective June 22, 1994.)

- A.** Unclaimed Property: Unless directed otherwise by State law or a specific provision of this Code, all tangible personal property not owned by the City, that is under the control of a bureau and not reclaimed after notice has been sent, by the bureau in possession, to all parties who reasonably appear to have an interest in such property, of their right to claim such property within a specified period of time, shall become the property of the City, designated as surplus property, and, shall be disposed of as provided by this Chapter.
- B.** Found Property: All tangible personal property not owned by the City that is found by a bureau member and turned into the bureau, shall not become the property of the City until the requirements of the state law regarding the rights and duties of finders and owners of lost property are satisfied. After the requirements of State law are satisfied, found property shall be retained by the bureau which found it if the property is usable by the bureau. If the property is not usable by the bureau which found it, the bureau shall dispose of the property as surplus property as provided by this Chapter.

5.36.020 Sale of Buildings for Removal from City Property.

Whenever a Commissioner determines that a building or other structure assigned to a bureau under his control must be removed, he may authorize the Purchasing Agent to sell such building or other structure for removal by the purchaser. The Purchasing Agent shall use the method of sale which he finds most in the public interest. The Purchasing Agent shall specify terms and conditions of sale, except that such terms shall not include credit, and he shall fix the amount of bond or cash deposit to be given by the purchaser to guarantee removal of the building or structure and clearance of debris from the premises.

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5.36.025 Purchase and Resale by the City of Tax-Foreclosed Property.

(Added by Ordinance No. 162023; Amended by Ordinance Nos. 179813 and 181483, effective January 18, 2008.)

- A. The provisions of this Section apply to property which meets each of the following conditions:
 - 1. Property that has outstanding City liens;
 - 2. Property that has been foreclosed by a county for collection of delinquent taxes; and
 - 3. Property that has been purchased by a bidder at a county sheriff's sale.
- B. The OMF Business Operations Division may purchase and sell property described in this Section without public notice or sale provided:
 - 1. The Council adopts an ordinance authorizing the OMF Business Operations Division to purchase property. The ordinance shall include a legal property description; the total amount of outstanding taxes and costs; the total amount of outstanding city liens, accrued interest, penalties and costs; and the source of funds to be used to purchase the property;
 - 2. Property will be sold to the successful bidder at a county sheriff's sale; and
 - 3. The Council adopts an ordinance authorizing the property sale and setting forth sale terms. The ordinance shall include the name and address of the successful bidder at the county sheriff's sale and the terms of the City sale. The Council may adopt sale terms and provisions as a part of the ordinance authorizing the purchase of property.
- C. Sale contracts and other legal documents related to the sale shall be reviewed and approved by the City Attorney prior to the sale. Upon approval as to form by the City Attorney, the Mayor and City Auditor shall be authorized to sign a deed transferring title to the property.
- D. Proceeds from the sale shall be deposited in the City fund which incurred the expense of purchasing the property from the county unless otherwise directed by the Council in the ordinance authorizing the purchase and sale of the property.
- E. The OMF Business Operations Division is authorized to adopt administrative rules and procedures necessary to carry out the provisions of this Section.

5.36.030 Loans of Personal Property Owned by the City.

(Amended by Ordinance No. 180917, effective May 26, 2007.) Each Commissioner and each officer or employee of the City is and shall be hereby prohibited from loaning any

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personal property owned by the City to any other person either gratuitously or for a consideration, without the consent of the Council expressed by ordinance. However, in the event of extraordinary circumstances involving hazard to the general public occasioned by fire, flood, earthquake, or other public disaster, the Commissioner of any department may permit equipment in his department to be used without the consent of the Council during such extraordinary circumstances upon the written order of the Commissioner; provided that the Chief of Portland Fire & Rescue may lend or rent to the owner or operator of property damaged by fire, flood, earthquake or other public disaster such equipment of Portland Fire & Rescue as may be temporarily needed to prevent further damage to such property, and such owner or operator so borrowing or renting such equipment, shall agree with the City:

- A. To hold the City, its officers, agents and employees harmless for any loss or damage caused to the person or property of third persons while such equipment is in the possession of such owner or operator;
- B. To waive any claim for damage to the person or property of such owner or operator arising in whole or in part from the use of such equipment; and
- C. To return such equipment to Portland Fire & Rescue in as good condition as when received, reasonable wear and tear excepted. Such agreement shall be in writing on forms approved by the City Attorney and shall be filed with the Auditor of the City. Any rentals collected by Portland Fire & Rescue under such agreements shall be transmitted by Portland Fire & Rescue to the City Treasurer within 24 hours after receipt by the Bureau, the rentals to be credited to the General Fund.

5.36.035 Lost or Stolen City Property.

(Added by Ordinance No. 151849; effective June 25, 1981.) Any City employee charged with the care or having custody of any City property which is lost or stolen shall immediately, upon discovery that such property has been lost or stolen, report such loss or theft in writing to his bureau or division head. The bureau or division head shall upon receipt of such report, immediately notify the Accounting Division in writing of such loss or theft. The Accounting Division shall make such investigation and report and recommendation as may be deemed appropriate.

5.36.040 Parking Meter Fund Equipment.

All vehicles, equipment, and other things heretofore purchased or which may be purchased in the future from the Parking Meter Fund for the use of any bureau having service to perform in connection therewith, are and shall be assigned to the bureau where used. They shall be inventoried in connection with and as a part of the vehicles, articles, and equipment of such bureau.

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

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How Long in Possession
Where Obtained
.....
Special Remarks.
.....
.....
.....
AND I HEREBY RELINQUISH ALL CLAIM TO SAID SPECIMEN AND/OR ITS
PROGENY:
Signed
Address
Date
Accepted for the Zoo by:
Signed
Date
Object Number

5.36.090 Gifts and Loans of Property.

- A.** Whenever any real or personal property or the use thereof shall be offered to the City by way of donation, gift, grant, lease, loan or any other manner made available to the City by any person, firm, or corporation for the purpose of bestowing a gift or benefit upon the City, the Mayor hereby is authorized to accept any and all such real or personal property or the use thereof. The Mayor also hereby is authorized to execute any necessary agreement or document and to agree to any reasonable terms and conditions for the gift, grant, lease, loan or other use of such real or personal property. Provided, however, that any such grant, lease or loan by which the City shall be obligated in an amount exceeding \$250 shall first be approved by the Council by special ordinance.
- B.** It shall be the duty of all bureau chiefs to promptly report to the Commissioner In Charge, the receipt of any gift, contribution, donation or other use of personal property from any person, firm or corporation for and on behalf of the City so that the Commissioner may cause such property to be promptly included in the City inventory.

5.36.100 Use of City Property for Elections.

The Commissioner In Charge of any property or premises of the City hereby is authorized to permit the use of such premises or facilities as polling places for any election held by the State, county or any municipal corporation.

5.36.110 Use of City Property for Air Quality Measuring Stations.

The Commissioner In Charge of any particular parcel of real property owned by the City is hereby authorized to grant permission in writing to any governmental body to install on said real property on a temporary basis an air quality measuring station; provided, however,

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

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

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

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**CHAPTER 5.40 - DEMANDS AND
DISBURSEMENTS**

Sections:

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

5.40.010 Drawing Checks in Payments of Claims.

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

5.40.020 Certain Demands to be Submitted to Council.

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

5.40.030 Appropriation to be Charged for All Demands.

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

5.40.040 Requisitions Required.

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

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

(Repealed by Ordinance No. 139226, effective January 20, 1975.)

5.40.070 Funds Held for Benefit of Police Contributions Committee.

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

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Treasurer shall, not later than January 15th of each year, furnish to the Chief of Police a statement showing the amounts received by him for the benefit of the Police Contributions Committee and the amounts paid out by him, if any, and to whom paid. The Chief of Police shall immediately advise the Committee of the contents of the report of the City Treasurer. The Committee shall, not later than January 31st of each year, advise each donor as to the portion of his donation that is tax deductible.

5.40.080 Requisition of Funds for Purchasing Police Evidence.

The Chief of Police is hereby authorized to requisition funds in advance of expenditure for the purchase of evidence against the illegal sale of liquor, gambling or other violations of laws. Each advancement shall be on a memorandum requisition approved by the Commissioner In Charge of the Bureau of Police and charged to the appropriation of the Bureau of Police for evidence procurement. The requisition shall be accompanied by an affidavit signed by the Chief of Police which shall state that the amount of cash to be advanced will be used only for the purpose of evidence against the illegal sale of liquor, gambling or other violations of laws. There shall be no further formal accountability for such funds beyond the affidavit. However, the Chief of Police shall maintain sufficient confidential records to be able to provide a confidential accounting to the Commissioner In Charge on his request.

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

(Chapter 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 Council, all such services shall be charged for on the basis of actual costs, which shall be computed as follows:

A. Labor.

- 1.** The amount for salaries and wages shall be either:
 - a.** Actual time computed at the applicable hourly payroll rate when the services being provided require less than the full time of an employee on an annual basis, or
 - b.** Annual salary including vacation, sick leave, holiday and other leave with pay when the services being provided require the full time of an employee on an annual basis.

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2. To the amount for salaries and wages computed under paragraph A.1.a. above, add for the indirect cost of vacation, sick leave, holiday and other leave with pay and for the cost of disability, retirement and insurance as follows:
 - a. For other than sworn police personnel add 39 percent of salaries and wages.
 - b. For sworn police personnel add 42 percent of salaries and wages for labor provided at straight time. Add only 15 percent for labor provided at overtime rates.
3. To the amount for salaries and wages computed under paragraph A.1.b. above, add only for disability, retirement and insurance as follows:
 - a. For other than sworn police personnel add 21 percent of salaries and wages.
 - b. For sworn police personnel add 23 percent of salaries and wages provided at straight time only.
- B. Materials consumed shall be at actual cost including delivery to the City. The Bureau of Water Works shall charge an additional 5 percent for stock handling.
- C. Services from other City bureaus shall be at actual cost determined in accordance with Section 5.48.070.
- D. Services provided from non-City sources shall be at actual cost to the City.
- E. Motorized equipment, trailers, etc., shall be actual time at rates for each particular class of equipment established by the Commissioner In Charge.

5.48.035 Bureau of Emergency Communications-Recordings-Rates.

(Added by Ordinance No. 143377; effective March 30, 1977.) The Bureau of Emergency Communications is authorized to charge the following rates or the rate established by a court in a particular case for services rendered in locating and delivering particular segments of tape recordings for court use:

- A. Labor.
 1. Ten dollars per hour (straight time) for staff time expended for salaries and wages. After FY 1976-77 this rate shall be set equal to the 4-year rate for a police sergeant as approved in the official compensation plan of the City of Portland.

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

B. Material Costs.

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

C. General Overhead.

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

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

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

5.48.040 Collection of Money Due the City.

(Amended by Ordinance Nos. 147159, 149198, 165955, 181483 and 189413; effective March 6, 2019.) The Office of Management and Finance of the City shall bill for all services performed for other persons by the City and for all City accounts receivable, contracts receivable and grants receivable except for bills and statements regularly sent by the Bureau of Water Works, the City Treasurer, the OMF Risk Management Division, the Revenue Division and payments made under leases managed by the OMF Business Operations Division.

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

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

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

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

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

5.48.050 Improvements Without Assessment.

(Amended by Ordinance Nos. 144020 and 189413, effective March 6, 2019.)

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

- 1.** Estimated amount of the contract for the improvement;
- 2.** A fee for engineering and superintending equal to the engineer's estimate of the cost of providing such services. Use accounting procedure 5.48.030.
- 3.** Overhead of City in advertising for bids, preparing the contract, disbursing funds, etc., at 1/2 percent of the estimated contract amount with a minimum of \$100.

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

B. Advertising for bids and executing contract shall be authorized only by the City Council. In no event shall a contract be awarded for more than 93 percent of the funds on deposit.

C. The deposited funds shall be disbursed by the City Treasurer on order of the Commissioner In Charge of the improvement project and after approval by the Revenue Division. Disbursements shall be made as follows:

- 1.** Contract payments shall be paid directly to the contractor;
- 2.** Engineering fees and overhead shall be paid to the appropriate fund as revenue after the final cost of the contract has been determined.

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3. Prior to the issuance of the certificate of completion by the City Engineer the fees charged to the permittee will be adjusted to agree with the actual costs of services as recorded by the City Engineer. The remaining balance, if any, after payment of all costs shall be returned to the permittee. If additional funds are required of the permittee, they shall be paid prior to the issuance of the certificate of completion.

5.48.060 Interdepartmental Services Authorized.

(Amended by Ordinance No. 182377, effective December 26, 2008.) Each Commissioner shall have power and authority, in the direction of activities of their department, to use the officers, employees, material, and equipment in different bureaus or divisions of such department whenever in their judgment the most efficient and economical administration of the affairs of their department requires. Each Commissioner shall also have authority to direct their subordinate employees to perform duly authorized services for other bureaus or departments. The appropriations carrying the cost of such services shall be reimbursed by calculating the cost of such services.

5.48.070 Accounting Procedure for Interdepartmental Services.

(Amended by Ordinance No. 182377, effective December 26, 2008.) Unless a specific charge for interdepartmental services is fixed, reduced or waived by the Council, through ordinance or policy, all such services shall be charged on the same basis as work performed for private persons as provided in Section 5.48.030, except that stock handling costs under Subsection 5.48.030 B. shall not be added.

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CHAPTER 5.50 - COLLECTIONS SECTION

(Chapter added by Ordinance No. 147159, effective
February 1, 1979.)

Sections:

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

5.50.010 Collections Section.

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

- A.** A Collections Section shall be established within the OMF Risk Management Division. This Section shall be responsible for the investigation, billing, collection and compromise of accounts receivable generated by losses suffered by the City including, but not limited to, vehicle accidents, street light and traffic accidents, property damage for vandalism or negligence and theft, and claims by the City for services rendered without a formal contract including, but not limited to property board ups, but not any claim for which the City may impose a lien. If necessary, the Collections Section may assign individual accounts to outside collection agencies. This Section shall also be responsible for gathering cumulative data necessary for establishing methods to remove or reduce the causes of such losses in the future.
- B.** The bureau sustaining the loss or damage shall send a report to the Collections Section within 2 working days from the date of loss or damage. The bureau shall supply all information relating to the loss to the Collections Section and shall cooperate with and assist the Collections Section in the investigation and collection of such loss or damage.
- C.** The Collections Section shall recommend that the City Attorney institute suit in appropriate cases. The City Attorney shall institute legal proceedings for the City in any court or tribunal upon direction of the Council or with the approval of the Commissioner of Finance and Administration and for good cause shown.
- D.** Nothing in this Chapter shall be applicable to accounts receivable arising under any contract.

5.50.020 Compromise Authorization.

The Collections Section with the approval of the Commissioner of Finance and Administration is authorized and directed to effect compromises in all cases where in the judgment of the collections Section, substantial justice can thus be achieved. These compromises are authorized in all cases involving an original claim of \$5,000 or less.

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Where the amount of the original claim is greater than \$5,000 but less than \$10,000, the Collections Section with the approval of the Commissioner of Finance and Administration is authorized to accept compromises which provide for payment to the City of not less than 50 percent of the amount of the original claim. Where the amount of the original claim is greater than \$10,000, the Collections Section with the approval of the Commissioner of Finance and Administration is authorized to effect compromises which provide for payment to the City of not less than 75 percent of the original claim. Where the amount of the original claim is greater than \$5,000, lesser amounts than herein specified may be accepted in compromise only with Council approval. The Collections Section with the approval of the Commissioner of Finance and Administration is authorized to cancel accounts receivable invoices of under \$5,000 in amount or accept promissory notes or confessions of judgment where in the judgment of the Collections Section, substantial justice can thus be achieved.

All compromises shall be in writing utilizing forms approved by the City Attorney.

5.50.030 Money Collected.

All monies collected by the Collections Section will be credited to the appropriate City fund less a service charge of 15 percent for all claims for damages to its property against any third party tort-feasors arising out of an accident or incident. A 25 percent service charge will be required if necessary to assign to an outside collection agency. This service charge will be credited to the Insurance and Claims Fund. Financial records of amounts recovered will be cumulated and maintained by the Collections Section indicating the bureau and fund for which such amounts are recovered.

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CHAPTER 5.52 - PETTY CASH AND CHECKS

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

Sections:

- 5.52.010 Petty Cash and Change Accounts.
- 5.52.020 Cancellation of Checks and Issue of in Lieu Checks.
- 5.52.030 Cancellation of City Assessments on Mortgage records.
- 5.52.040 When Checks Are to Be Canceled.
- 5.52.050 Drawing Checks on Charter Appropriations.

5.52.010 Petty Cash and Change Accounts.

(Amended by Ordinance Nos. 135063, 138943, 141163, 146673, 152320, 162106; 169321 and 177676, effective July 9 2003.)

- A. Council by ordinance has authorized various offices of the City government to have petty cash and change funds. The Chief Administrative Officer shall approve establishment, closure, and administer changes to these funds, effective July 9, 2003. Petty cash accounts shall be for incidental expenditures and change cash accounts shall be for the purpose of making change at authorized locations and activities.
- B. The amount of each purchase from petty cash accounts shall not exceed \$100 unless approved in writing by the Bureau Manager.
- C. A petty cash account exceeding \$1,000 may be maintained as a checking account designated "City of Portland, Bureau of _____, (Title of Account.)" Such accounts shall be the responsibility of the individual bureaus/agencies, which will:
 - 1. Authorize in writing three signatures for each account.
 - 2. Require two signatures on each check.
 - 3. Establish a dollar limit for each check.
 - 4. Establish a control system for the account.
 - 5. Provide for audit procedures.

The City Treasurer shall provide technical assistance to the bureaus/agencies in the establishment of such accounts.

- D. Reimbursement from petty cash accounts may be made to employees for the purchase of safety shoes and/or rain gear as provided in labor contracts with the

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

5.52.020 Cancellation of Checks and Issue of in Lieu Checks.

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

5.52.030 Cancellation of City assessments on Mortgage Records.

(Amended by Ordinance No. 189413, effective March 6, 2019.) The Revenue Division is hereby authorized and empowered to cancel when paid, any and all assessments which have been or may be entered in the mortgage records for the cost of constructing sewers, drains, and all works necessary therefor by the City. Such cancellations may be made by endorsing a cancellation on the margin of the record as in case of release of mortgage or by executing and acknowledging a formal instrument of cancellation. Such cancellation shall be made only where payment has been duly received by the City Treasurer and duplicate copy of the receipt for such payment has been presented to the Revenue Division.

5.52.040 When Checks Are to Be Canceled.

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

5.52.050 Drawing Checks on Charter Appropriations.

(Amended by Ordinance No. 173369, effective May 12, 1999.) The Mayor and the Auditor shall draw checks on the appropriations provided for by Section 2-108 and Section 2-105 (14) of the Charter when a memorandum requisition for funds has been submitted to the Auditor which has been signed personally by the Commissioner of Finance and Administration. The proceeds from the checks shall be held by the Commissioner of Finance and Administration for disbursement.

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

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

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CHAPTER 5.56 - AMBULANCE SERVICE

Sections:

- 5.56.010 Police Radio Dispatch Service.
5.56.020 Acceptance by Ambulance Companies.

5.56.010 Police Radio Dispatch Service.

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

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

5.56.020 Acceptance by Ambulance Companies.

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

**CHAPTER 5.60 - MISCELLANEOUS
CHARGES**

Sections:

- 5.60.010 Charges For Architectural Services.
- 5.60.040 Employee Lists Furnished by Accounting Division Manager.
- 5.60.050 Licensees' Lists Furnished by License Bureau.
- 5.60.110 Driving City Cars to and from Work
- 5.60.120 Lien Accounting System Access.

5.60.010 Charges For Architectural Services.

(Replaced by Ordinance No. 136092; effective March 1, 1973.) Services performed by the Bureau of Architectural Planning for a service financed from a City fund other than the General Fund or by another governmental agency shall be charged for at the rate of 165 percent of the salary rates of the individuals working on the project. Services which are to be provided shall be undertaken only on approval of the Commissioner In Charge. Services to be charged for shall be authorized only after it has been determined that funds are available for payment.

5.60.020 Public Records Copy Charges.

(Repealed by Ordinance No. 156910, effective December 26, 1984.)

5.60.040 Employee Lists Furnished by the Accounting Division Manager.

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

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

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5.60.050 Licensees' Lists Furnished by License Bureau.

Upon written application accompanied by the fee hereinafter set out, the Bureau of Licenses may furnish to any applicant a list of licensees. The fee for such list shall be as follows:

- A.** For any list containing the names of not more than 15,000 licensees, the fee shall be \$250;
- B.** For any list containing the names of more than 15,000 licensees, the fee shall be in addition to the above, \$1 for each 100 names or fraction thereof.

No list of names of licensees shall be furnished to any person not a City employee without the prior approval of the City Licenses Director.

5.60.110 Driving City Cars to and from Work.

(Amended by Ordinance Nos. 141835, 142504, 154639, 157641; 168313, 173369, and 176872, effective August 28, 2002.)

- A.** Employees authorized to drive City vehicles to and from their place of residence shall pay to the City a rental charge for each accounting period of use.

If there is more than one City employee commuting in the same vehicle, the charge to the passenger will be equal to that of the driver. It shall be the responsibility of bureaus to report to the Accounting Division vehicles used as commuting vehicles.

Payroll deductions for rental charges shall be made from the employee's second payroll check of the month. Submission of the Personal Use of City Vehicle form is required upon vehicle assignment, cancellation, or when reduction is requested by Friday of the payroll submission week.

- B.** Credit will be given when total consecutive working days of nonuse exceed working days.
- C.** Requests for authorization to drive City vehicles to and from work must be approved by the employee's bureau manager and the employee's Commissioner In Charge.

5.60.120 Lien Accounting System Access.

(Added by Ordinance No. 159619; amended by Ordinance Nos. 176577 and 189413, effective March 6, 2019.) Access to the City's automated Lien Accounting System shall be provided by internet access. Fees for use of the System by internet will be assessed on a per search basis. The Revenue Division shall set the fee per search and the fee may be adjusted annually. Agencies and individuals not affiliated with the City of Portland shall be billed monthly for searches on the System.

**CHAPTER 5.64 - MISCELLANEOUS FISCAL
PROVISIONS**

Sections:

- 5.64.010 Fiscal Agency in New York City.
- 5.64.020 Appointment of Deputy Auditors.
- 5.64.030 Treasurer to Cash Credit Union Checks.
- 5.64.040 Bureau of Water Works Accounts.
- 5.64.050 Execution of Releases from Claims for Damages.
- 5.64.060 Cancellation of Refund Checks.
- 5.64.070 Refunds.
- 5.64.090 Investment of Available Funds.
- 5.64.100 Determination of City's Subrogation for Time Loss Payments.
- 5.64.110 Procedure upon Obtaining Real Property with Outstanding Liens, Assessments or Accumulated Interest.

5.64.010 Fiscal Agency in New York City.

The National Bank of New York, New York City, State of New York, shall be the fiscal agency in New York City for the City.

5.64.020 Appointment of Deputy Auditors.

The Auditor of the City shall have the authority to appoint as his deputies with power to act for and in his behalf any and all persons employed in the Office of the Auditor of the City. The authority hereby conferred shall in no way affect the classifications or salaries of employees so appointed, the authority being conferred merely for the purpose of facilitating the transactions of business in the office of the City Auditor.

5.64.030 Treasurer to Cash Credit Union Checks.

The City Treasurer is hereby authorized and directed to accept and cash checks properly drawn by the City Employees' Credit Union, signed by the Treasurer and countersigned by the President and Vice President. It shall be the duty of the Secretary of the City Employees' Credit Union to file with the City Treasurer annually at the time of election of officers of the credit union a certificate showing the name of the President, Vice-president and Treasurer of the Credit Union. In the event any change is made in the organization of the Credit Union whereby any other officers or individuals are authorized to sign or countersign checks, the same shall be immediately transmitted to the City Treasurer by the Secretary by the filing with the City Treasurer of a certificate so stating. In the event any change in officers is made at any time during the year the same shall be immediately transmitted to the City Treasurer in like manner.

5.64.040 Bureau of Water Works Accounts.

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

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5.64.050 Execution of Releases from Claims for Damages.

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

5.64.060 Cancellation of Refund checks.

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

5.64.070 Refunds.

(Amended by Ordinance 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.

(Corrected under authority of PCC Section 1.01.035 on May 15, 2017.) The City Treasurer hereby is authorized to invest any uninvested surplus balance to the credit of the General

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Fund or any sinking fund or special fund in interest bearing securities such as may be lawfully held by the City under Section 7-108 of the City Charter. The Treasurer may purchase such securities on the open market and may bid on new issues of such securities. The Treasurer may sell such securities on the open market, if there is an established market therefor, as necessary to meet the cash needs of the various funds.

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

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

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

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

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

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**CHAPTER 5.68 -PROFESSIONAL,
TECHNICAL AND EXPERT SERVICE
CONTRACTS**

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

Sections:

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

5.68.010 Definition.

(Amended by Ordinance Nos. 182213, 184427, 185065 and 187373, effective October 14, 2015.)

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

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solely to determine the applicable Contract solicitation method and is distinct from the total amount payable under the Contract.

- D.** “Price Agreement”, for purposes of the QBS Rules is limited to mean an agreement related to the procurement of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under agreed-upon terms and conditions and possibly at a set price with:
- 1.** No guarantee of a minimum or maximum purchase; or
 - 2.** An initial order or minimum purchase, combined with a continuing QBS Consultant obligation to provide Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services in which the City does not guarantee a minimum or maximum additional purchase.
- E.** "Project" means all components of a City's planned undertaking that gives rise to the need for a QBS Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under a Contract.
- F.** “Transportation Planning Services” include Project-specific transportation planning involved in categorical exclusions, environmental assessments, environmental impact statements and other documents required for compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services do not include transportation planning for corridor plans, transportation system plans, interchange area management plans, refinement plans and other transportation plans not associated with an individual Project which will require compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services also do not include transportation planning for Projects not subject to the National Environmental Policy Act, 42 USC 4321 et. seq.
- G.** “Related Services” means personal services, other than architectural, engineering, photogrammetric, mapping, Transportation Planning or land surveying services, that are related to planning, designing, engineering or overseeing public improvement projects or components of public improvements, including, but not limited to, landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services, and owner’s representation services or land-use planning services.

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5.68.015 General Requirements– PTE Manual.

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

5.68.020 Personal Services Contracts.

(Amended by Ordinance Nos. 179802, 182213, 184427 and 187373, effective October 14, 2015.)

- A.** This Chapter applies to City procurement of professional, technical and expert services.
- B.** The following services, designated as Personal Services Contracts, are exempt from the selection process outlined in the City's Professional, Technical and Expert Services Manual and can be made by direct appointment under this Chapter:
 - 1.** Processing of any claim for workers' compensation benefits;
 - 2.** Physician or medical personnel to determine any prospective or current City employee's ability to work or return to work;
 - 3.** Determining any reasonable accommodation that may be made to any job classification in the City; and
 - 4.** Veterinary physician, specialist, or medical personnel required to determine any prospective or current City-owned service animal's ability to work or return to work, or providing general medical upkeep to a City-owned service animal;
 - 5.** Performing artists, whether vocal, instrumental, or visual required by the City to provide a paid performance of their work for an audience determined by the City;
 - 6.** A one-time payment or gratuity granted in recognition of a special service in which propriety or competitive selection process is not feasible and made without the giver recognizing themselves as having any liability or legal obligation for services;

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7. Golf Course Management Agreements (including concessions and club house operations) of a duration not to exceed five years for the parks under the jurisdiction of the City of Portland Bureau of Parks and Recreation.
 8. Modification by the licensor of intellectual property licensed to the City.
 9. The City Attorney's retention of expert witnesses, consultants to assist the City Attorney's Office in providing legal advice to the City, and outside legal counsel.
- C. If any emergency as defined in the PTE Manual exists the Chief Procurement Officer may authorize selection of a contractor without following the requirements of this Chapter.
- D. If the services or expertise required for a project are only available from a "sole source" as defined in the PTE Manual, then the Chief Procurement Officer may authorize selection of a contractor without following these requirements.
- E. The Chief Procurement Officer shall include all emergency and sole source contracts in periodic reports to the City Council.
- F. If professional, technical or expert services are required in conjunction with the acquisition of goods, services, public improvements, construction services or some combination thereof, the Chief Procurement Officer may permit the acquisition of such services through the provisions of Chapter 5.33 or 5.34 of this Code instead of this Chapter.

5.68.030 Public Announcement of Requirements.

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

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

(Amended by Ordinance Nos. 182213 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.

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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. Periodic reports of such actions shall be provided to City Council by the City Attorney's Office.
- C.** The Chief Procurement Officer is authorized, but not required, to waive any procedural irregularities in the PTE selection process provided the irregularities had no material affect on the selection of the proposed contractor.
- D.** The provisions of Section 5.68.035 also apply to the procurement of services and contracts for services referenced in Subsection 5.68.020 B.

5.68.040 Process for Services Costing Under and Over The Formal Bid Threshold.

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

5.68.050 Review by City Attorney and Chief Procurement Officer.

(Amended by Ordinance Nos. 182213, 184427 and 187373, effective October 14, 2015.)

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

5.68.060 Outside Legal Services.

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

- A.** Except as specifically exempted by this Section, and in addition to the other requirements of this Chapter for professional, technical and expert service contracts, the following procedures and requirements shall apply to any contracts

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for legal services to be provided by attorneys outside of the Office of the City Attorney.

1. All City bureaus and agencies shall submit in writing to the City Attorney all requests for legal services from outside the City Attorney's Office before any agreement is made to obtain any such outside legal services.
2. The Chief Procurement Officer has the authority to sign and approve contracts and contract amendments for outside counsel to the same extent as other contracts for professional, technical and expert services. However, all billings and invoices for outside legal counsel's services shall be directed to the City Attorney for review and approval prior to payment.
3. The Chief Procurement Officer shall not process any purchase requisition for outside legal services without the written approval of the City Attorney or designee.
4. The Accounts Payable Division shall not process for payment any billing or invoice for outside legal services without the written approval of the City Attorney or designee.
5. This Section does not apply to selection of bond counsel, who are selected in accordance with Section 5.68.070 of this Code. However, all billings and invoices of bond counsel shall be directed to the City Attorney for review and approval prior to payment.

5.68.070 Procedure for Selection of Bond Counsel.

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

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

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

- B. Those counsel interested shall provide the following information to the City Attorney:
1. A statement of the fee arrangement proposed by the firm.
 2. Such other information as the City Attorney deems appropriate.

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- C.** On receipt of the proposals the City Attorney shall refer them to a consultant selection committee consisting of the City Attorney or designee; the Chief Administrative Officer or designee; and the Bureau Director or designee. The Committee shall consider only firms that are listed in the Red Book. The Committee may interview any or all firms, including more than once. The Committee may authorize firms to modify their proposals during the interview period.
- D.** The Consultant Selection Committee shall select a law firm to serve as bond counsel for the project or series of projects. The selection shall be based on fee, experience, or such other criteria as the Committee deems appropriate.

5.68.080 Contractor's Compliance with Workers' Compensation Requirements.

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

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

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

5.68.100 Direct Contracts with Architects, Engineers and Land Surveyors.

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

5.68.110 Two-Tiered Selection Process.

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

**CHAPTER 5.72 - ECONOMIC
DEVELOPMENT PROJECTS**

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

Sections:

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

5.72.010 Purpose.

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

5.72.020 Definitions.

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

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

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

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

5.72.030 Economic Development - Applications.

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

5.72.040 Economic Development -Initial Review, Standards.

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

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

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

5.72.050 Housing - Applications.

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

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

5.72.060 Housing - Initial Review, Standards.

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

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

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

5.72.070 Initial Determination of Eligibility, Final Approval, Appeals.

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

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

5.72.080 General Conditions; Document Preparation and Review.

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

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

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

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

4. The City of Portland does not guarantee the bonds and is not subject to any liability for their repayment.
5. The terms and conditions of the issuance and purchase of an industrial revenue bond issue are to be agreed upon by the applicant and bond purchaser with the concurrence of the Portland Development Commission (acting on behalf of the City.)
6. Where residential rental property is assisted under this Chapter, construction of the project must begin within 9 months from the date of bond issuance.
7. Applicant will be required to keep the Portland Development Commission advised of the schedule for document preparation and approval, and to provide drafts of documents to the Commission upon request of the Commission.

B. The following general conditions prevail regarding the preparation of all bond documents:

1. Bond counsel will be designated by the Portland Development Commission. Procedures for selecting bond counsel established by Section 5.68.080 of this Code shall not apply to projects initiated pursuant to this Chapter. The applicant will submit their recommendation of bond counsel.
2. Bond counsel will advise the Portland Development Commission of all federal and state procedural requirements as they apply to issuance of the bonds.
3. Bond counsel must be an Oregon law firm or other mutually acceptable bond counsel recognized in the Bond Buyers Directory of Municipal Bond Dealers of the United States.

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4. The trustee chosen by the applicant, and approved by the Commission, must be a bank or trust company doing business in the State of Oregon with trust powers.
5. All documents to be approved by the Portland Development Commission must be in final form and received by the Portland Development Commission 14 days before the Commission meeting at which it will be acted upon.

5.72.090 Application Processing, Financial Considerations.

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

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

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

5.72.100 Administrative Fees.

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

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

5.72.110 Bond Issuance.

Upon receipt of the recommendation of the Portland Development Commission, the Council may by ordinance authorize the issuance of bonds in an amount equal to the costs

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of the proposed project, pursuant to Chapter 772, Oregon Laws of 1977, if it determines that the proposed issue meets the requirements of said Act and this Chapter.

5.72.120 Reporting Requirements.

- A.** Beginning no later than 12 months following the issuance of bonds by the City, and continuing annually for a period as long as the bonds are outstanding, the Portland Development Commission shall require each project owner of the assisted project to submit a written report which describes:
 - 1.** Number of current employees by job category.
 - 2.** Total assessed value and property taxes paid during the most recent period for the assisted facility or facilities.
- B.** In addition to the foregoing, owners of multi-family projects assisted under this Chapter are required to report annually the number of residential units occupied by individuals or families who, at the date of reporting, have low or moderate incomes.

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

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

Sections:

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

5.73.010 Definitions.

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

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

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- F.** “Net Revenues” means the revenue remaining after interest, collection, administrative and other costs and refunds are deducted from Gross Revenues.
- G.** “Portland K-5 Students” means students that reside within the geographical boundary of the City of Portland, Oregon that attend Kindergarten through 5th grade in public schools.
- H.** “Resident” or “resident of the City” means:
- 1.** An individual who is domiciled in this City unless the individual:
 - a.** Maintains no permanent place of abode in the City;
 - b.** Does maintain a permanent place of abode elsewhere; and
 - c.** Spends in the aggregate not more than 30 days in the taxable year in the City; or
 - 2.** An individual who is not domiciled in the City but maintains a permanent place of abode in the City and spends in the aggregate more than 200 days of the taxable year in the City unless the individual proves that the individual is in the City only for a temporary or transitory purpose. For purposes of this Subsection, a fraction of a calendar day shall be counted as a whole day.
- I.** “Resident” or “resident of the City” does not include:
- 1.** An individual who is a qualified individual under section 911(d)(1) of the Internal Revenue Code for the tax year;
 - 2.** A spouse of a qualified individual under section 911(d)(1) of the Internal Revenue Code, if the spouse has a principal place of abode for the tax year that is not located in the City; or
 - 3.** A resident alien under section 7701(b) of the Internal Revenue Code who would be considered a qualified individual under section 911(d)(1) of the Internal Revenue Code if the resident alien were a citizen of the United States.
- J.** “Schools” means those educational institutions defined as schools by the Oregon Department of Education, but do not include on-line schools.
- K.** “School Districts” means the Portland Public, David Douglas, Centennial, Parkrose, Reynolds and Riverdale school districts.

5.73.020 Tax Imposed.

A tax of \$35 is imposed on the income of each income-earning resident of the City of Portland, Oregon who is at least eighteen years old. No tax will be imposed on filer(s) within any household that is at or below the federal poverty guidelines established by the federal Department of Health and Human Services for that tax year.

5.73.030 Net Revenues Distribution.

(Amended by Ordinance No. 187339, effective October 16, 2015.) Net Revenues will be paid by the Revenue Division to the Arts Education and Access Fund for distribution by the City as follows:

- A. First, funds shall be distributed to the School Districts for the purpose of hiring certified arts or music education teachers for elementary school students for Kindergarten through 5th grade (K-5). Distribution shall be based on a ratio of one teacher for every 500 K-5 students at schools that serve Portland K-5 students, except that Charter schools shall be funded based on a ratio of one teacher for every 500 Portland K-5 students served by the Charter school. Students attending schools that receive no distribution of funds shall not be counted. In the event that a school has less than 500 K-5 students, or in the case of Charter schools, less than 500 Portland K-5 students, funds shall be distributed on a pro rata basis based on the number of students attending that school. Funds shall not be distributed to:
 - 1. Elementary schools within the School Districts that have no Portland K-5 students; and
 - 2. Elementary schools within the School Districts that have Portland K-5 students enrolled, but whose catchment does not overlap with the City of Portland's geographical boundaries.
- B. Any funds remaining after distribution to the School Districts shall be distributed to the Regional Arts & Culture Council (RACC). The City shall execute a contract amendment with RACC to ensure the funds are spent as follows:
 - 1. Up to 95 percent of the remaining funds shall be distributed to RACC for grants to support non-profit Portland arts organizations that demonstrate artistic excellence, provide service to the community, show administrative and fiscal competence and provide a wide range of high-quality arts programs to the public. RACC will make the determination as to which arts organizations shall be supported, in accordance with their contract with the City. In the event that RACC distributes less than 95 percent of the funds to non-profit Portland arts organizations, the remaining funds shall be distributed for the purpose of providing grants and programs as described in Subsection 2. below.

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2. A minimum of 5 percent of the remaining funds shall be distributed to RACC for the purpose of providing grants and programs to non-profit arts organizations, other nonprofits and schools that will give access to high-quality arts experiences to Kindergarten through 12th grade students (K-12) and for grants and programs that will make arts and culture experiences available to Portland residents, with particular emphasis on programs directed to communities who are underserved by local arts providers.
3. These funds are in addition to existing and ongoing financial support from the City to RACC.

5.73.040 Intergovernmental Agreements.

The City will execute Intergovernmental Agreements (IGAs) with the School Districts and will amend its contract with RACC and require them to provide independently audited financial statements each year that show how the funds received pursuant to this program are spent.

5.73.050 Citizen Oversight Committee.

(Amended by Ordinance No. 185827, effective December 19, 2012.) The City will appoint a citizen oversight committee that is representative of the City's diverse communities to ensure the Arts Education and Access Fund is being implemented as required, to review expenditures made and to report their findings in a public record to the City Council on an annual basis. The committee shall be comprised of a minimum of 10 and a maximum of 20 members, including, if possible, a member of the Tax Supervising and Conservation Commission.

5.73.060 Audits.

The City will receive copies of annual independent audits or other documentation regarding expenditures by RACC and the School Districts each year. The Arts Education and Access Fund also will be part of the City's independent annual audit report, the results of which will be made available to the public.

5.73.070 Effective Dates.

This tax will be effective beginning with the tax year 2012 and shall continue each year thereafter. Payment of the tax each year is due on the date on which state taxes are due, not including any extensions of time that might be requested or received.

5.73.080 Revenue Division Responsibilities.

(Amended by Ordinance No. 187339, effective October 16, 2015.) The Revenue Division shall:

- A. Receive the Gross Revenues derived from the Arts Education and Access Income Tax and distribute the Net Revenues in accordance with the IGAs and RACC contract;

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- B.** Keep accurate records of the funds;
- C.** Report to the City Council by way of a public record on all funds received and directed to the School Districts and RACC;
- D.** Adopt administrative rules necessary to implement tax collection and administration.
- E.** If necessary, contract with public or private agencies to fulfill any of its duties in regard to this Arts Education and Access Income Tax and the Arts Education and Access Fund; and
- F.** Accept any and all gifts and donations to the Arts Education and Access Fund.

5.73.090 Limitation on Costs.

(Amended by Ordinance Nos. 185960, 187339 and 188859, effective April 13, 2018.)

- A.** The Revenue Division's first year start-up costs are capped at \$600,000. Ongoing administrative costs will be subject to the oversight and annual approval of the City Council.
- B.** The City's contract amendment with RACC will require RACC to:
 - 1.** Limit any additional RACC arts education coordination costs incurred as a result of receiving funds to a maximum of 3 percent of Net Revenues;
 - 2.** Ensure that highly qualified persons will coordinate and work with the School Districts in the provision of high quality arts and/or music education;
 - 3.** Seek additional funds from other sources for arts education and access to supplement the goals of the Arts Education and Access Fund;
 - 4.** Provide quality oversight to the programs of the School Districts as well as the expenditures made by RACC; and
 - 5.** Coordinate between School Districts and arts organizations to ensure high quality arts education for Portland students.

5.73.100 Confidentiality.

(Added by Ordinance No. 185827; amended by Ordinance Nos. 187339 and 187610, effective April 1, 2016.) It is unlawful for any City employee, agent or elected official, or for any person who has acquired financial information pursuant to Chapter 5.73 or the Division's administrative rules to divulge, release or make known in any manner any financial information submitted or disclosed to the City under the terms of the Arts

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Education and Access Income Tax, unless otherwise required by law. This Section does not prohibit:

- A.** Disclosure to the taxfiler or authorized representative of the taxfiler;
- B.** Disclosure of general statistics in a form which would prevent the identification of financial information regarding an individual taxfiler;
- C.** Disclosure to the City Attorney's Office to obtain payment on unpaid accounts or to receive legal advice; or
- D.** Disclosure to an outside collection agency for collection of any unpaid account balance receivable. Assignment to an outside collection agency permits the Division to collect a reasonable collection fee, above and beyond any amount otherwise owed to the Division;
- E.** Disclosure as otherwise required by law.

5.73.110 Frivolous Filing, False Filing and Hacking.

(Added by Ordinance No. 185827, effective December 19, 2012.)

- A.** A \$250 penalty will be assessed if a taxfiler takes a "frivolous position" in respect to preparing the taxfiler's tax return. A tax return is considered frivolous if a taxfiler does not provide information on which the substantial correctness of the self-assessment may be judged or if the tax return contains information that on its face indicates that the self-assessment is substantially incorrect. Examples of "frivolous positions" as provided in Oregon Administrative Rule 150-316.992(5)(2) are hereby adopted by direct reference.
- B.** A \$250 penalty will be assessed if a taxfiler willfully makes or provides false statements related to their tax return filing.
- C.** The provisions of PCC Subsection 7.02.850 regarding Hacking apply.

**CHAPTER 5.74 - ACQUISITION OF PUBLIC
ART**

(Chapter replaced by Ordinance No. 161537;
amended by Ordinance Nos. 168591 and 179869,
effective February 10, 2006.)

Sections:

5.74.010	Purpose.
5.74.020	Definitions.
5.74.030	Dedication.
5.74.040	Public Art Trust Fund.
5.74.050	Siting.
5.74.060	Guidelines.
5.74.070	Ownership.
5.74.080	Decisions.
5.74.090	Implementation.

5.74.010 Purpose.

It is the purpose of this Chapter and the policy of the City of Portland to dedicate two percent of the total Eligible Costs or two percent of the total Eligible Funds of all Improvement Projects (whichever is less) to the selection, acquisition, fabrication, installation, maintenance, management, deaccessioning, community education, documentation and registration of Public Art.

5.74.020 Definitions.

(Amended by Ordinance No. 178946, effective January 7, 2005.

A. As used in this Chapter:

1. Improvement Project means any project paid for wholly or in part by a Participating Bureau in which the Participating Bureau's contribution of Eligible Funds equals \$50,000 or more for the construction, rehabilitation, remodeling, improvement or purchase for a public use of any building, structure, park, public utility, street, sidewalk or parking facility or any portion thereof within the limits of the City of Portland.
2. Maintenance and repair does not constitute an Improvement Project.
3. Improvement Projects which are developed privately and leased back to the City of Portland are not exempt from the provisions of this Chapter.

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4. The purchase of improved or unimproved property by the Portland Development Commission solely for resale or redevelopment, in which property is not otherwise to be put to a governmental use, shall not constitute an Improvement Project subject to the provisions of this Chapter.
- B. Eligible Costs means the Participating Bureau's capitalized costs for completion of an Improvement Project, including costs for capitalized tenant improvements. Eligible Costs do not include costs for: design and engineering, administration, fees and permits, building demolition, relocation of tenants, environmental testing, environmental remediation, non-construction contingency or indirect costs, such as interest during construction, advertising and legal fees. When an improvement project involves the acquisition of real property, costs attributable to land acquisition are not Eligible Costs, while costs attributable to improvements on the real property are Eligible Costs.
- C. Eligible Funds means a Participating Bureau's monetary contribution to an Improvement Project. The following are not Eligible Funds: private development revenue, federal and state grants that preclude Public Art as an object for expenditure, Local Improvement District revenue, Water Operating Fund revenue, Water Construction Fund revenue, Sewer Systems Operating Fund revenue, Sewer Systems Construction Fund revenue and revenue from any other funding source subject to legal restrictions which preclude Public Art as an object for expenditure.
- D. Public Art means original artwork which is accessible to the public and/or public employees, and which has been approved as public art by the Regional Arts and Culture Council, acting on behalf of the City of Portland.
- E. Participating Bureau means a City of Portland Bureau or Commission that funds an Improvement Project within the meaning of this Chapter.
- F. Selection Panel means a group responsible for reviewing proposed Public Art and making recommendations to the Regional Arts & Culture Council on the selection of Public Art. Selection Panels shall include a representative of the Participating Bureau, the Improvement Project architect or engineer, artists and citizens.

5.74.030 Dedication.

(Amended by Ordinance No. 187570, effective March 4, 2016.) Any City of Portland official or employee acting on behalf of a Participating Bureau who authorizes or appropriates expenditures for an Improvement Project shall include in the capital improvement program of the City's capital budget, and disburse to the Regional Arts & Culture Council, a monetary contribution for Public Art equal to Two percent (2%) of the total Eligible Costs or two percent of the total Eligible Funds of the Improvement Project, whichever is less. The City Budget Office and the Portland Development Commission shall each adopt administrative rules and procedures to implement this section, which to

the greatest extent practicable shall set forth the same procedures to be followed by all Participating Bureaus, including the Portland Development Commission.

5.74.040 Public Art Trust Fund.

The Regional Arts & Culture Council shall maintain a special fund called the Public Art Trust Fund into which funds dedicated to Public Art pursuant to section 5.74.030 shall be deposited.

- A.** Such funds shall be deposited into the Public Art Trust Fund, and shall be allocated as follows:
 - 1.** 63 percent shall be used by the Regional Arts & Culture Council for costs associated with Public Art including, but not limited to the acquisition, fabrication, and installation of Public Art.
 - 2.** 27 percent shall be used by the Regional Arts & Culture Council for costs associated with Public Art, including, but not limited to costs of selection, project management, community education and registration of Public Art.
 - 3.** 10 percent shall be used by the Regional Arts & Culture Council for the maintenance, conservation and deaccessioning of Public Art.
- B.** Such funds shall be deposited in separate accounts within the Public Art Trust Fund if separate accounting is requested by the Participating Bureau or required by law.
- C.** Disbursements from the Public Art Trust Fund shall be made by the Regional Arts & Culture Council.
 - 1.** Disbursements shall be made according to the terms of this Chapter and any guidelines adopted hereunder by the Regional Arts & Culture Council.
 - 2.** If an Improvement Project is funded by revenue sources whose expenditure is restricted by the City Charter or other law, the Regional Arts & Culture Council, prior to making a disbursement for Public Art from such a restricted account in the Public Art Trust Fund, shall adopt written findings demonstrating that the proposed disbursement complies with all applicable restrictions.
 - 3.** The Regional Arts & Culture Council will report annually to Participating Bureaus on the disbursement of funds from the Public Art Trust Fund.

5.74.050 Siting.

Public Art selected pursuant to this Chapter may be sited in, on or about any Improvement Project or other property owned, leased, or rented by, donated to, or otherwise made available to the City of Portland in accordance with any restrictions placed on siting by the Participating Bureau.

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5.74.060 Guidelines.

The Regional Arts & Culture Council shall, after consultation with Participating Bureaus, adopt guidelines to:

- A.** Provide for annual reporting to Participating Bureaus;
- B.** Develop an annual plan for Public Art that takes into account the views of the Participating Bureau;
- C.** Provide a method for the appointment of representatives to Selection Panels;
- D.** Determine a method or methods of selecting and contracting with artists for the design, execution and siting of Public Art;
- E.** Determine the dedication and disbursement process for the Public Art Trust Fund;
- F.** Determine a process for the ongoing care, maintenance and conservation of Public Art;
- G.** Determine a process to deaccession art;
- H.** Set forth any other matter appropriate to the administration of this Chapter.

5.74.070 Ownership.

All Public Art acquired pursuant to this Chapter shall be acquired in the name of the City of Portland, and title shall vest in the City of Portland.

5.74.080 Decisions.

Except as limited by other sections of this Chapter, the Regional Arts & Culture Council's decisions as to the acquisition, fabrication, installation, deaccessioning, management, community education and registration of Public Art, and disbursement of the Public Art Trust Fund, shall be final.

5.74.090 Implementation.

(Amended by Ordinance No. 187570, effective March 4, 2016.) The Regional Arts & Culture Council, or its designee, shall implement the provisions of this Chapter, in cooperation with the City Budget Office and all Participating Bureaus.

**CHAPTER 5.75 - CLAIMS UNDER ORS
CHAPTERS 195 AND 197**

(Chapter replaced by Ordinance No. 181640,
effective February 28, 2008.)

Sections:

- 5.75.010 Purpose.
- 5.75.020 Definitions.
- 5.75.030 Filing an Amended Claim.
- 5.75.040 Review of Amended Claim by Program Manager.
- 5.75.050 Hearing on Amended Claim by City Council.
- 5.75.060 Filing a New Claim.
- 5.75.070 Review of New Claim by Program Manager.
- 5.75.080 Hearing on New Claim by City Council.
- 5.75.090 Claim Processing Fee.
- 5.75.100 Determination of Common Law Vested Right.
- 5.75.110 Hearing on a Common Law Vested Right By City Council.

5.75.010 Purpose.

The purpose of this Chapter is to establish a procedure by which owners of private real property located within the City of Portland may file claims pursuant to Chapters 195 and 197 of the Oregon Revised Statutes as amended by Ballot Measure 49 (November 6, 2007) (referred to in this chapter as "Measure 49") and to provide for consideration of claims by the City Council.

5.75.020 Definitions.

- A. Appraisal.** A written statement prepared by a person certified under ORS chapter 674 or a person registered under ORS chapter 308 that complies with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institution Reform, Recovery and Enforcement Act of 1989.
- B. Approved Measure 37 Claim.** A claim filed under ORS 197.352 and approved by the City Council before December 6, 2007.
- C. Department.** The Oregon Department of Land Conservation and Development.
- D. Exempt Land Use Regulation.** A land use regulation that:
 - 1. Restricts or prohibits activities commonly and historically recognized as public nuisances under common law;
 - 2. Restricts or prohibits activities for the protection of public health and safety;
 - 3. Is required in order to comply with federal law;

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4. Restricts or prohibits the use of property for the purpose of selling pornography or performing nude dancing; or
- E. **Land Use Regulation.** A provision of the City of Portland comprehensive plan, zoning ordinance or land division ordinance that restricts the residential use of private real property zoned for residential use.
- F. **Measure 37.** A ballot measure adopted by the voters of the State of Oregon and effective on November 6, 2004 that was codified as Oregon Revised Statutes (ORS) 197.352 and that required, under certain circumstances, the payment of just compensation to landowners if a government land use regulation restricted the use of property and reduced its value, or, in the alternative, authorized the government to remove, modify, or not apply one or more challenged regulations.
- G. **Owner.** A person who is:
 1. The owner of fee title to the property as shown in the deed records of the county where the property is located;
 2. The purchaser under a land sale contract, if there is a recorded land sale contract in force for the property; or
 3. If the property is owned by the trustee of a revocable trust, the settlor of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner.
- H. **Program Manager.** The person authorized to administer and oversee the processing of claims under this Chapter.
- I. **Protection of Public Health and Safety.** A law, rule, ordinance, order, policy or permit or other governmental authorization that restricts a use of property in order to reduce the risk or consequence of fire, earthquake, landslide, flood, storm, pollution, disease, crime or other natural or human disaster or threat to persons or property including, but not limited to, building and fire codes, health and sanitation regulations, solid or hazardous waste regulations and pollution control regulations.
- J. **Reduction in Value.** A decrease in fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after enactment, plus interest, adjusted by any ad valorem property taxes not paid as a result of any special assessment of the property under ORS 308A.050 to 308A.128, 321.257 to 321.390, 321.754 or 321.805 to 321.855, plus interest, offset by any severance taxes paid by the claimant and by any recapture of potential additional tax liability that the claimant has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703.

- K. Waiver.** Action by the Portland City Council to modify, remove or not apply one or more land use regulations found to have caused a reduction in value.

5.75.030 Filing an Amended Claim.

- A.** A person may amend a Measure 37 claim that was filed with the City of Portland on or before June 28, 2007.
- B.** To qualify for compensation or waiver, a person filing an amended claim under this section must establish that:
- 1.** The claimant is an owner of the property;
 - 2.** All owners of the property have consented in writing to the filing of the claim;
 - 3.** The property is located, in whole or in part, within the City of Portland;
 - 4.** On the claimant's acquisition date, the claimant lawfully was permitted to establish at least the number of single family dwellings on the property that are authorized under Measure 49;
 - 5.** The property is zoned for residential use;
 - 6.** A land use regulation prohibits the establishment of a single-family dwelling;
 - 7.** The establishment of a single-family dwelling is not prohibited by a land use regulation described in ORS 197.352(3);
 - 8.** The land use regulation described in paragraph 6 of this section was enacted after the date the property, or any portion of it, was brought into the Metro Urban Growth Boundary;
 - 9.** The land use regulation described in paragraph 6 of this section was enacted after the date the property, or any portion of it, was annexed to the City of Portland;
 - 10.** The enactment of the land use regulation caused a reduction in the fair market value of the property; and
 - 11.** The highest and best use of the property was residential use at the time the land use regulation was enacted.
- C.** A person filing an amended Measure 37 claim under this section must submit the following information:

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1. The name, street address and telephone number of the claimant and all other persons and entities with an interest in the property;
 2. A title report issued no more than 30 days prior to submission of the claim that shows the claimant's current real property interest in the property, the deed registry of the instrument by which the claimant acquired the property, the location and street address and township, range, section and tax lot number(s) of the property, and the date on which the owner acquired the property interest;
 3. A written statement signed by all owners of the property, or any interest in the property, consenting to the filing of the claim;
 4. A reference to any and all specific, existing land use regulations the claimant believes reduced the value of the property and a description of the manner in which the regulation prohibits the residential use of the property;
 5. A copy of the city land use regulations that applied to the property at the time the challenged land use regulations became applicable to, or were enforced against, the property;
 6. An appraisal showing the fair market value of the property one year before the enactment of the land use regulation and one year after enactment, and expressly determining the highest and best use of the property at the time the land use regulation was enacted;
 7. A description of the claimant's proposed use of the property if the Council chooses to waive a land use regulation instead of paying compensation;
 8. If the property is or has been enrolled in one or more of the special assessment programs listed in Section 5.75.020 J., information regarding tax amounts not paid as a result of the program or programs; and
 9. A statement whether the claimant filed a claim with other public entities on or before June 28, 2007, involving the same property and a copy of any decision made by the entity on the claim.
- D.** The Program Manager shall notify all claimants who filed claims on or before June 28, 2007, and whose claims were not decided by the City Council prior to December 6, 2007, that they may amend their claims under this section and shall provide a form for amended claims. A claimant must submit an amended claim under this section to the Program Manager within 120 days after the date of notice under this paragraph or the claimant is not entitled to relief.

5.75.040 Review of Amended Claim by Program Manager.

- A.** The Program Manager shall review a claim filed under Section 5.75.030 to ensure that it provides the information required by Subsection 5.75.030 C. If the Program Manager determines that the claim is incomplete, the Program Manager shall, within 21 days after the filing of the claim, provide written notice of the incompleteness to the claimant. If the Program Manager does not notify the owner that the claim is incomplete within the prescribed 21 days, the claim shall be considered complete on the date it was filed with the City of Portland.
- B.** The Program Manager shall review the claim for compliance with the requirements of Subsection 5.75.030 B. and prepare a tentative determination of compliance not later than 90 days after the filing of a complete claim. The Program Manager shall provide written notice to the claimant, the Department, and owners of property within 200 feet of the claim property of the tentative recommendation as to whether the claimant qualifies for the number of single-family dwellings the City of Portland proposes to authorize. The written notice shall inform recipients they have 15 days to submit evidence or argument to the Program Manager in response to the tentative recommendation. The Program Manager shall make a final recommendation on the claim within 135 days of the date the claimant notifies the Program Manager of the claimant's intent to continue the claim.
- C.** The Program Manager's recommendation to approve or deny a claim under Subsection B of this section shall be in writing and shall be supported by a brief explanation for the basis of the recommendation.

5.75.050 Hearing on Amended Claim by City Council.

- A.** The Auditor shall schedule each amended claim for consideration by City Council at a regularly scheduled City Council meeting. After considering the report and final recommendation by the Program Manager and any other material the Council determines is relevant, the Council shall make its final determination and adopt a final decision and order that explains the determination.
- B.** The City Council shall take final action within 180 days of receipt of a claim.
- C.** The City Council's decision shall be in writing and shall be supported by a brief explanation of the basis for the decision.
- D.** The Program Manager shall provide notice of the date, time and location of the public hearing at least 30 days before the hearing to the claimant, the Department, and owners of property within 200 feet of the claim property.

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5.75.060 Filing a New Claim.

- A.** A person may file a claim after June 28, 2007, and will qualify for compensation or waiver, if:
- 1.** The claimant is an owner of the property and all owners of the property have consented in writing to filing of the claim;
 - 2.** The claimant's desired use of the property is a residential use;
 - 3.** The claimant's desired use of the property is restricted by a land use regulation enacted after January 1, 2007;
 - 4.** The enactment of the land use regulation has reduced the fair market value of the property; and
 - 5.** The highest and best use of the property was residential use at the time the land use regulation was enacted.
- B.** A person filing a claim under this section must submit the fee for processing the claim prescribed in Section 5.75.090 and the following information:
- 1.** The name, street address and telephone number of the claimant and all other owners of the property;
 - 2.** A title report issued no more than 30 days prior to submission of the claim that shows the claimant's current real property interest in the property; the deed registry of the instrument by which the claimant acquired the property; the location and street address and township, range, section and tax lot number(s) of the property; the date on which the owner acquired the property interest; and any exceptions and encumbrances to title;
 - 3.** A written statement signed by all owners of the property consenting to the filing of the claim;
 - 4.** A citation to the land use regulation the claimant believes is restricting the claimant's desired use of the property;
 - 5.** A description of the specific single-family residential use of the property that the claimant desires to carry out, but cannot because of the land use regulations;
 - 6.** An appraisal showing the fair market value of the property one year before the enactment of the land use regulation and one year after enactment, and expressly determining the highest and best use of the property at the time the land use regulation was enacted;

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7. If the property is or has been enrolled in one or more of the special assessment programs listed in Measure 49, Section 9(6), information regarding taxes not paid as a result of the program or programs; and
 8. A statement whether the claimant filed a claim with other public entities on or before June 28, 2007, involving the same property and a copy of any decision made by the entity on the claim.
- C. A person filing a claim under this section must file the claim within five years after the challenged land use regulation was enacted.

5.75.070 Review of New Claim by Program Manager.

- A. The Program Manager shall review the claim to ensure that it provides the information required by Section 5.75.060. If the Program Manager determines that the claim is incomplete, the Program Manager shall, within 60 days after the filing of the claim, provide written notice of the incompleteness to the claimant. If the Program Manager does not notify the owner that the claim is incomplete within the prescribed 60 days, the claim shall be considered complete on the date it was filed with the Program Manager.
- B. A claim filed under this section shall not be considered complete until the claimant has submitted the information required by this section. If the claimant fails to submit a complete claim within 60 days after the notice prescribed in Subsection A, the claim shall be deemed withdrawn.
- C. The Program Manager shall conduct a preliminary review of a claim to determine whether it satisfies all of the following prerequisites for full evaluation of the claim:
1. The property lies within the City of Portland's jurisdictional boundary;
 2. The land use regulation that is the basis for the claim is a provision of a city land use regulation; and
 3. The claimant acquired an interest in the property before the effective date of the land use regulation and has continued to have an interest in the property since the effective date.
- D. If the claim fails to satisfy one or more of the prerequisites in subsection C of this section, the Program Manager shall prepare a report to that effect and recommend to the City Council that it dismiss the claim following a public hearing under Section 5.75.080.
- E. If the claim satisfies each of the prerequisites in Subsection C of this section, the Program Manager shall complete the review of the claim to determine whether it satisfies the criteria in Section 5.75.060.

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- F.** The Program Manager may commission an appraisal or direct other research in aid of the determination whether a claim meets the requirements of ORS 197.352 and to assist in the development of a recommendation regarding appropriate relief for a valid claim.
- G.** The Program Manager shall prepare a written report with the determinations required by Subsection E of this section and the reasoning to support the determination. The report shall include a recommendation to the City Council on the validity of the claim and, if valid, whether the City of Portland should compensate the claimant for the reduction of value or waive the regulation. If the Program Manager recommends compensation or waiver, the report shall recommend any conditions that should be placed upon the compensation or waiver to help achieve the purpose of this chapter and the policies of the City of Portland's comprehensive plan. If the Program Manager recommends waiver, the report shall recommend the specific number of single-family dwellings the City of Portland should authorize commensurate to the reduction in fair market value of the property.
- H.** The Program Manager shall provide the report to the City Council, the claimant, Metro, and other persons who request a copy.

5.75.080 Hearing on New Claim by City Council.

- A.** The City Council shall hold a public hearing on a claim prior to its final determination. The Program Manager shall schedule the hearing for a date within 180 days after the filing of a completed claim.
- B.** The Program Manager shall provide notice of the date, time and location of the public hearing at least 30 days before the hearing to the claimant and owners of the subject property, owners and occupants of property within 100 feet of the subject property, the Department, Metro, and Multnomah County. The notice shall indicate that:
 - 1.** A copy of the Program Manager's recommendation is available upon request;
 - 2.** Judicial review of the City of Portland's final determination is limited to the written evidence and arguments submitted to the City of Portland prior to or at the public hearing; and
 - 3.** Judicial review is available only for issues that are raised with sufficient specificity to afford the City of Portland an opportunity to respond in its final determination.
- D.** After the close of the public hearing the City Council shall make its final determination on the claim and enter an order with findings of fact and conclusions

of law, based upon the record made before the City of Portland, that explain the determination. The Program Manager shall mail a copy of the final determination to the claimant, Multnomah County, and any person who submitted written or oral testimony prior to the close of the public hearing.

- E.** The City Council will make its final determination within 180 days of the date the claim is complete.

5.75.090 Claim Processing Fee.

A claimant shall pay a \$250 fee to file a claim under Sections 5.75.030 and 5.75.060 of this Chapter. A claim will not be considered complete until the fee is paid. For any claims submitted on or after December 2, 2004 for which a fee was not paid at the time of claim submittal, the Program Manager may bill the owner for the fee at any time during the claim review process and prior to a final decision on the claim.

5.75.100 Determination of Common Law Vested Right.

- A.** A person with an approved Measure 37 claim may apply for a determination that the person has a common law vested right to continue and complete a use or development allowed by an approved Measure 37 claim consistent with Measure 49.
- B.** An applicant seeking to establish a common law vested right for an approved Measure 37 claim must submit the following information:
- 1.** The name, mailing address, and telephone number of the applicant.
 - 2.** A legal description and tax lot numbers of the subject property as well as a street address for the property, if any.
 - 3.** A copy of the approved Measure 37 claim decision from the City of Portland and, if appropriate, the State of Oregon.
 - 4.** Additional information sufficient to address each of the factors listed in Subsection C of this Section.
- C.** The factors to be considered by the Program Manager and the City Council in determining whether the applicant has a common law vested right to continue and complete a use or development allowed by an approved Measure 37 claim are:
- 1.** The amount of money spent on developing the use in relation to the total cost of establishing the use.
 - 2.** The good faith of the property owner.

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3. Whether the property owner had notice of the proposed change in law before beginning development.
 4. Whether any improvements could be used for other allowed uses.
 5. The kind of use, and the location and cost of the development.
 6. Whether the property owner's acts are more than mere contemplated use or preparation, such as the leveling of land, boring test holes, or preliminary negotiations with contractors or architects.
 7. Other relevant factors.
- D.** The Program Manager shall review the application to ensure that it provides the information required by Subsections B and C of this Section. If the Program Manager determines that the application is incomplete, the Program Manager shall, within 30 days after the filing of the application, provide written notice of the incompleteness to the applicant. If the applicant fails to respond or submit the missing information within 30 days of the date of the Program Manager's notice, the application shall be considered complete on the date it was filed with the City of Portland.
- E.** The Program Manager shall prepare a written report with the determinations required by Subsections B and C of this section and the reasoning to support the determination. The report shall include a recommendation to the City Council on whether the applicant has established a common law vested right to continue and complete a use or development allowed by an approved Measure 37 claim.
- F.** The Program Manager shall provide the report to the City Council, the claimant, Metro, and other persons who request a copy.

5.75.110 Hearing on a Common Law Vested Right By City Council.

- A.** The City Council shall hold a public hearing on an application for a common law vested right to continue and complete a use or development allowed by an approved Measure 37 claim prior to its final determination. The Program Manager shall schedule the hearing for a date within 90 days after the filing of a completed application.
- B.** The Program Manager shall provide notice of the date, time and location of the public hearing at least 30 days before the hearing to the applicant and owners of the subject property, owners and occupants of property within 100 feet of the subject property, and the Department. The notice shall indicate that:
1. A copy of the Program Manager's recommendation is available upon request;

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2. Judicial review of the City of Portland's final determination is limited to the written evidence and arguments submitted to the City of Portland prior to or at the public hearing; and
 3. Judicial review is available only for issues that are raised with sufficient specificity to afford the City of Portland an opportunity to respond in its final determination.
- C. After the close of the public hearing the City Council shall make its final determination on the application and enter an order with findings of fact and conclusions of law, based upon the record made before the City of Portland, that explain the determination. The Program Manager shall mail a copy of the final determination to the claimant, the Department, and any person who submitted written or oral testimony prior to the close of the public hearing.
- D. The City Council will make its final determination within 120 days of the date the claim is complete.

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CHAPTER 7.02 - BUSINESS LICENSE LAW

(Chapter replaced by Ordinance No. 182137,
effective September 19, 2008.)

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7.02.005 Short Title.

Chapter 7.02 of the Portland City Code is known as the Business License Law.

7.02.010 Fees for Revenue.

The term “license” as used in the Business License Law does not mean a permit, nor is it regulatory in any manner. It is strictly for revenue purposes.

7.02.020 Conformity to State Income Tax Laws.

(Amended by Ordinance No. 187339, effective October 16, 2015.) The Business License Law is construed in conformity with the laws and regulations of the State of Oregon imposing taxes on or measured by net income. Any reference in this Chapter to the laws of the State of Oregon means the laws of the State of Oregon imposing taxes on or measured by net income as those laws existed for that particular tax year. The Division has the authority by written policy to connect to and/or disconnect from any legislative enactment that deals with income or excise taxation or the definition of net income. Should a question arise under the Business License Law on which this Chapter is silent, the Division may look to the laws of the State of Oregon for guidance in resolving the question, provided that the determination under State law is not in conflict with any provision of this Chapter or the State law is otherwise inapplicable.

7.02.100 Definitions.

(Amended by Ordinance Nos. 184597, 187339 and 189389, effective February 21, 2019.) The terms used in this Chapter are defined as provided in this section or in Administrative Rules adopted under Section 7.02.210, unless the context requires otherwise:

- A. “Division” means the Revenue Division of the City of Portland, Oregon Bureau of Revenue and Financial Services, along with its employees and agents.
- B. “Bank” has the same meaning as used in ORS 706.008(1).

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- C.** “Business tax” means the tax owed by a taxfiler for any particular license tax year.
- D.** “Business” means an enterprise, activity, profession or undertaking of any nature, whether related or unrelated, by a person in the pursuit of profit, gain, or the production of income, including services performed by an individual for remuneration, but does not include wages earned as an employee.
- E.** “Certificate of Compliance” means the document (or license) issued to a taxfiler upon full compliance with the Business License Law for the license tax year in question.
- F.** “Controlling Shareholder” means any person, alone or together with that person’s spouse, parents, and/or children, who, directly or indirectly, owns more than five (5) percent of any class of outstanding stock or securities of the taxfiler. The term “controlling shareholder” may mean the controlling shareholder individually or in the aggregate.
- G.** “Day” means a calendar day unless otherwise noted.
- H.** “Director” means the Director of the Revenue Division or his or her designee.
- I.** “Doing Business” means to engage in any activity in pursuit of profit or gain, including but not limited to, any transaction involving the holding, sale, rental or lease of property, the manufacture or sale of goods or the sale or rendering of services other than as an employee. Doing business includes activities carried on by a person through officers, agents or employees as well as activities carried on by a person on his or her own behalf.
- J.** “Employee” means any individual who performs services for another individual or organization and whose compensation is reported by an IRS Form W-2.
- K.** “In Compliance” means that:
 - 1.** a non-exempt business has filed and paid the current year’s required business tax; or
 - 2.** a non-exempt business has filed and paid the previous year’s required business tax and has met the current year filing requirements; or
 - 3.** an exempt business has filed the required income verification; or
 - 4.** a new business has filed a completed registration form and is otherwise in compliance with all provisions of the Business License Law.
- L.** “Income” means the net income arising from any business, as reportable to the State of Oregon for personal income, corporation excise or income tax purposes, before

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any allocation or apportionment for operation out of state, or deduction for a net operating loss carry-forward or carry-back.

- M.** “Individual” means a natural person, including natural persons who report their income to the State of Oregon in a joint personal state income tax return. In such case, the term “individual” shall refer to the joint taxfiler.
- N.** “Large Retailer” means a business that:
- 1.** is subject to the Portland Business License Tax;
 - 2.** has total gross income, as reported per Section 7.02.610, from Retail Sales of \$1 billion or more in the tax year; and
 - 3.** has Portland gross income, as reported per Section 7.02.610, from Retail Sales of \$500,000 or more in the tax year.
 - 4.** the term “Large Retailer” does not include:
 - a.** any manufacturer or business that is not engaged in Retail Sales within the City;
 - b.** any entity operating a utility within the City;
 - c.** any cooperative recognized under state or federal law; or
 - d.** a federal or state credit union
- O.** “License Tax Year” means the taxable year of a person for federal or state income tax purposes.
- P.** “Net Operating Loss” means the negative taxable income that may result after the deductions allowed by the Business License Law in determining net income for the tax year.
- Q.** “Non-business Income” means income not created in the course of the taxfiler’s business activities.
- R.** “Notice” means a written document mailed first class by the Division to the last known address of a taxfiler as provided to the Division in the latest registration form or tax return on file with the Division.
- S.** “Ownership of Outstanding Stock or Securities” means the incidents of ownership which include the power to vote on the corporation’s business affairs or the power to vote for the directors, officers, operators or other managers of the taxfiler.

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- T.** “Person” includes, but is not limited to, an individual, a natural person, sole proprietorship, partnership, limited partnership, family limited partnerships, joint venture (including tenants-in-common arrangements), association, cooperative, trust, estate, corporation, personal holding company, limited liability company, limited liability partnership or any other form of organization for doing business.
- U.** “Qualified Groceries” means food products that qualify for purchase under the U.S. Department of Agriculture Supplemental Nutritionals Assistance Program (“SNAP”).
- V.** “Qualified Medicine or Drugs” means any medicine, drugs, or medical devices that are regulated by the U.S. Food and Drug Administration as a medicine or drug.
- W.** “Qualified Health Care Services” means any services that involves the provision of health care to the public, including but not limited to doctor, medical clinic and hospital visits and all related services, health insurance, and any care provided by senior care facilities or rehabilitation facilities. This definition includes but is not limited to all services defined as “health care services” under ORS 750.005(5).
- X.** “Received” means the postmark date affixed by the United States Postal Service if mailed or the date stamp if delivered by hand or sent by facsimile, or the receipt date from the online file and pay application confirmation notice.
- Y.** “Registration Form” means the initial form that establishes a taxfiler’s account with the Division.
- Z.** “Retail Gross Revenue” means Retail Sales excluding the deductions outlined in Subsection 7.02.500 F.3.
- AA.** “Retail Sale” means a sale to a consumer for use or consumption, and not for resale. Retail Sale also includes but is not limited to the sale of services, including but not limited to retail banking services.
- BB.** “Tax return” means any tax return filed by or due from the taxfiler, including an annual exemption request form.
- CC.** “Tax Year” means the taxable year of a person for Federal and/or State income tax purposes.
- DD.** “Taxfiler” means a person doing business within the City and required to file a return, a registration form or other income documentation under the Business License Law.

7.02.110 Income Defined.

(Amended by Ordinance Nos. 183727 and Ordinance No. 187339, effective October 16, 2015.)

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- A.** Partnerships, S corporations, limited liability companies, limited liability partnerships, family limited partnerships, estates, trusts and joint ventures (including tenants-in-common arrangements) are liable for the business license tax and not the individual partners, shareholders, members, beneficiaries or owners. The income of these entities must include all incomes received by the entity, including ordinary income, interest and dividend incomes, income from sales of business assets and other incomes attributable to the entity. For income purposes, a limited liability company is deemed to be the tax entity that includes the income of the limited liability company in its federal tax return – if the limited liability company will be disregarded as a separate tax entity.
- B.** If one or more persons are required or elect to report their income to the State of Oregon for corporation excise or income tax purposes or personal income tax purposes in a consolidated, combined or joint return, a single license certificate will be issued to the person filing such return. In such cases, “income” means the net income of the consolidated, combined or joint group of tax filers before any allocation or apportionment for operation out of the state, or deduction for a net operating loss carry-forward or carry-back.
- C.** The absence of reporting income to the Internal Revenue Service or the State of Oregon does not limit the ability of the Division to determine the correct income of the taxfiler through examination under Section 7.02.260.

7.02.200 Administration.

(Amended by Ordinance No. 187339, effective October 16, 2015.)

- A.** The Division is responsible for administering the Business License Law. Authority granted to the Director may be delegated, in writing, to another employee within the Bureau.
- B.** The Division may, upon request, interpret how the Business License Law applies, in general or for a certain set of circumstances.
- C.** Nothing in this Chapter precludes the informal disposition of controversy by stipulation or agreed settlement, through correspondence or a conference with the Director.

7.02.210 Administrative Authority.

(Amended by Ordinance No. 187339, effective October 16, 2015.)

- A.** The Director may implement procedures, forms, and written policies for administering the provisions of the Business License Law.
- B.** The Director may adopt rules relating to matters within the scope of this Chapter to administer compliance with Business License Law.

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- C.** Before adopting a new rule, the Director must hold a public hearing. Prior to the hearing, the Director will publish a notice in a newspaper of general circulation in the City. The notice must be published not less than ten nor more than thirty days before the hearing, and it 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.
- D.** At the public hearing, the Director or designee 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 Division's office. Copies of all current rules will be made available to the public upon request.
- E.** Notwithstanding Subsections C. and D. of this Section, 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. Any interim rule adopted pursuant to this paragraph is effective for a period of not longer than 180 days.

7.02.220 Presumption of Doing Business.

(Amended by Ordinance No. 184597, effective June 17, 2011.) A person is presumed to be doing business in the City and subject to this Chapter if engaged in any of the following activities:

- A.** Advertising or otherwise professing to be doing business within the City; or
- B.** Delivering goods or providing services to customers within the City; or
- C.** Owning, leasing, or renting personal or real property within the City; or
- D.** Engaging in any transaction involving the production of income from holding property or the gain from the sale of property, which is not otherwise exempted in this Chapter. Property may be personal, including intangible or real in nature; or
- E.** Engaging in any activity in pursuit of gain which is not otherwise exempted in this Chapter.

7.02.230 Confidentiality.

(Amended by Ordinance Nos. 185312 and 187339, effective October 16, 2015.) It is unlawful for any City employee, agent or elected official, or for any person who has

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acquired information pursuant to Section 7.02.240 A. and C., to divulge, release or make known in any manner any financial information submitted or disclosed to the City under the terms of the Business License Law, unless otherwise required by law. Additionally, it is unlawful to divulge, release or make known in any manner identifying information about any taxpayer applying for tax amnesty, including, but not limited to, the name and address of the taxpayer, unless otherwise required by law. Except as noted above, this Section does not prohibit:

- A. The disclosure of the names and addresses of any persons that have a Division account;
- B. The disclosure of general statistics in a form which would prevent the identification of financial information regarding an individual taxfiler;
- C. The filing of any legal action by or on behalf of the Division to obtain payment on unpaid accounts; or
- D. The assignment to an outside collection agency of any unpaid account balance receivable, provided that the Division notifies the taxfiler of the unpaid balance at least 60 days prior to the assignment of the claim. Any assignment to an outside collection agency is subject to a reasonable collection fee, above and beyond any amount owed to the Division.

7.02.240 Persons to Whom Information May be Furnished.

(Amended by Ordinance No. 187339, effective October 16, 2015.)

- A. The Division may disclose and give access to information described in Section 7.02.230 to an authorized representative of the Department of Revenue, State of Oregon, or any local government of the State of Oregon imposing taxes upon or measured by gross receipts or net income, for the following purposes:
 - 1. To inspect the license registration or tax return of any taxfiler;
 - 2. To obtain an abstract or copy of the license registration or tax return;
 - 3. To obtain information concerning any item contained in any registration or tax return; or
 - 4. To obtain information of any financial audit of any tax returns of any taxfiler.

Such disclosure and access will be granted only if the laws, regulations or practices of such other jurisdiction maintain the confidentiality of such information at least to the extent provided by the Business License Law.

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- B.** Upon request of a taxfiler, or authorized representative, the Division will provide copies of the taxfiler's registration and/or tax returns filed with the Division for any license tax year.
- C.** The Division may also disclose and give access to information described in Section 7.02.230 to:
 - 1.** The City Attorney, his or her assistants and employees, or other legal representatives of the City, to the extent the Division deems disclosure or access necessary for the performance of the duties of advising or representing the Division, including but not limited to instituting legal actions on unpaid accounts.
 - 2.** Other employees, agents and officials of the City, to the extent the Division deems disclosure or access necessary for such employees, agents or officials to
 - a.** aid in any legal collection effort on unpaid accounts,
 - b.** perform their duties under contracts or agreements between the Division and any other department, bureau, agency or subdivision of the City relating to the administration of the Business License Law, or
 - c.** aid in determining whether a Division account is in compliance with all City, State and Federal laws or policies.
- D.** Officials, employees and agents of the Division or City, prior to the performance of duties involving access to financial information submitted to the Division under the terms of the Business License Law, must be advised in writing of the provision of Section 7.02.730 relating to penalties for the violation of Sections 7.02.230 and 7.02.255. Such employees, agents and officials must execute a certificate in a form prescribed by the Division, stating that the person has reviewed these provisions of law and is aware of the penalties for the violation of Sections 7.02.230 and 7.02.255.
- E.** Prior to any disclosures permitted by this Section, all persons described in Subsection A. above, to whom disclosure or access to financial information is given, must:
 - 1.** Be advised in writing of the provisions of Section 7.02.730 relating to penalties for the violation of Section 7.02.230; and

2. Execute a certificate, in a form prescribed by the Division, stating these provisions of law have been reviewed and they are aware of the penalties for the violation of Section 7.02.230.

7.02.250 Taxfiler Representation.

(Amended by Ordinance No. 187339, effective October 16, 2015.) No person will be recognized as representing any taxfiler in regard to any matter relating to the tax of such taxfiler without written authorization of the taxfiler or unless the Division determines from other available information the person has authority to represent the taxfiler.

7.02.255 Representation Restrictions.

(Amended by Ordinance No. 187339, effective October 16, 2015.)

- A. No employee or official of the City may represent any taxfiler in any matter before the Division. The restriction against taxfiler representation continues for two years after termination of employment or official status.
- B. Members of the Appeals Board, as described in Section 7.02.295 of the Business License Law can not represent a taxfiler before the Appeals Board. No member of the Appeals Board can participate in any matter before the Board if the appellant is a client of the member or the member's firm.

7.02.260 Information Request; Examination of Books, Records or Persons.

(Amended by Ordinance Nos. 183727 and 187339, effective October 16, 2015.)

- A. The Division may request information or examine any books, papers, records or memoranda, including state and federal income or excise tax returns, to ascertain the correctness of any license registration or tax return, or to make an estimate of any business tax. The Division has the authority, after notice, to:
 1. Require the attendance of any person subject to the requirements of the Business License Law, or officers, agents, or other persons with knowledge of the person's business operations, at any reasonable time and place the Division may designate;
 2. Take testimony, with or without the power to administer oaths to any person required to be in attendance; and
 3. Require proof for the information sought, necessary to carry out the provisions of this Chapter.
 4. Require the property manager of a tenants-in-common arrangement to provide financial information related to the arrangement as well as information regarding the owners, including but not limited to the name and last known address of the owners.

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- B.** The Director will designate the employees that have the power to administer oaths hereunder. Such employees must be notaries public of the State of Oregon.
- C.** The Division may require contact information, including but not limited to, business phone numbers and business email addresses for all officers and/or owners of businesses doing business in the City of Portland. This information may be used by the City for any lawful purpose.

7.02.270 Records.

Every person subject to the requirements of this Chapter must keep and preserve for not less than seven (7) years such documents and records, including state and federal income or excise tax returns, accurately supporting the information reported on the taxfiler's registration form and/or tax returns, and the calculation of tax for such license tax year.

7.02.280 Deficiencies and Refunds.

(Amended by Ordinance No. 187339, effective October 16, 2015.)

- A.** Deficiencies may be assessed and refunds granted any time within the period provided under ORS 314.410, ORS 314.415, and ORS 317.950. The Division may by agreement with the taxfiler extend such time periods to the same extent as provided by statute.
- B.** Consistent with ORS 314.410 (4), in cases where no tax return has been filed, there is no time limit for a notice of deficiency and/or the assessment of taxes, penalty, and interest due.
- C.** Notwithstanding Subsections A. and B., the Division is not required to accept any tax return from a taxfiler if:
 - 1.** The Division obtains a money judgment against the taxfiler for failure to pay an unpaid account balance due; and
 - 2.** The Division or its designee lawfully served the taxfiler with the lawsuit pursuant to the Oregon Rules of Civil Procedure; and
 - 3.** The tax return is for a taxable year that is the subject of the money judgment; and
 - 4.** The Division gave written notice stating that the taxfiler had an outstanding balance due at least 30 days before the Division (or its designee) filed a lawsuit for those particular tax years.

7.02.290 Protests and Appeals.

(Amended by Ordinance No. 187339, effective October 16, 2015.)

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- A.** Any determination by the Division may be protested by the taxfiler. Written notice of the protest must be received by the Division within 30 days after the Division mailed or delivered the notice of determination to the taxfiler. The protest must state the name and address of the taxfiler and an explanation of the grounds for the protest. The Division must respond within 30 days after the protest is filed with either a revised determination or a final determination. The Division's determination must include the reasons for the determination and state the time and manner for appealing the determination. The time to file a protest or the time for the Division's response may be extended by the Division for good cause. Requests for extensions of time must be received prior to the expiration of the original 30 day protest deadline. Written notice will be given to the taxfiler if the Division's deadline is extended.
- B.** Any final determination by the Division may be appealed by the taxfiler to the Business License Appeals Board (the "Appeals Board"). Written notice of the appeal must be received by the Division within 30 days after the Division mailed or delivered the final determination to the appellant. The notice of appeal must state the name and address of the appealing taxfiler ("appellant") and include a copy of the final determination.
- C.** Within 90 days after the Division mails or delivers the final determination to the appellant, the appellant must file with the Appeals Board a written statement containing:
- 1.** The reasons the Division's determination is incorrect, and
 - 2.** What the correct determination should be.
- Failure to file such a written statement within the time permitted will be deemed a waiver of any objections, and the appeal will be dismissed.
- D.** Within 150 days after the Division mails or delivers the final determination to the appellant, the Division must file with the Appeals Board a written response to the appellant's statement. A copy of the Division's response must be mailed to the address provided by the appellant within 10 days.
- E.** The Division must provide the appellant written notice of the hearing date and location at least 14 days prior to the hearing. The appellant and the Division may present relevant testimony and oral argument at the hearing. The Appeals Board may request additional written comment and documents as it deems appropriate.
- F.** Decisions of the Appeals Board must be in writing, state the basis for the decision and be signed by the Appeals Board Chair.

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- G.** The decision of the Appeals Board is final as of the issue date and no further administrative appeal will be provided.
- H.** The filing of an appeal with the Appeals Board temporarily suspends the obligation to pay any tax that is the subject of the appeal pending a final decision by the Appeals Board.
- I.** Penalty waiver and/or reduction requests are not subject to the protest/appeal process or timeline outlined in Sections 7.02.290 A. through 7.02.290 H.. The taxfiler must file a written request with the Division detailing why a penalty should be waived within 30 days of receipt of a billing notice that assesses a penalty. The Division must respond to requests to reduce and/or waive penalties within 60 days from the date the written request is received. As provided in Section 7.02.700 G., the Division may waive or reduce penalties in certain situations. If the taxpayer has requested that penalties be waived and the Division denies the taxpayer's request for this discretionary waiver of penalties, the taxpayer may request a conference with the Director (or designee) within 30 days of the date of the Division's notice of denial. If the conference with the Director results in a denial of the penalty waiver request, that decision is final and may not be appealed to the Business License Appeals Board.

7.02.295 Business License Appeals Board.

(Amended by Ordinance No. 187339, effective October 16, 2015.) The Business License Appeals Board (the "Appeals Board") hears appeals and consists of the following members:

- A.** A member of the public appointed by the City Auditor for a two year term that expires every even year.
- B.** A member of the public appointed by the elected official in Charge of the Division, (whether that elected official is the Mayor or a Commissioner) for a two year term that expires every odd year.
- C.** Three members of the public appointed by the Mayor, subject to confirmation by the City Council. In making the initial appointments, one member will be appointed for one year, one for two years and one for three years. After making the initial appointments, each member will serve for a term of three years.
- D.** Appointments to the Business License Appeals Board must provide for an appropriate level of expertise in accounting methods and tax regulation.
- E.** No employee or agent of the City may be appointed to or serve on the Business License Appeals Board.

7.02.300 Certificates of Compliance.

(Amended by Ordinance Nos. 183727, 187339 and 189389, effective February 21, 2019.)

- A. Within 60 days of beginning business, the taxfiler must complete a registration form. The Division may issue or otherwise provide access to either an electronic or printed “Certificate of Compliance” upon registration to assist businesses in proving their compliance to regulatory agencies or to the public. Subsequently, after each year’s tax filing the Division may issue or otherwise provide access to either an electronic or printed Certificate of Compliance indicating that the taxfiler is in compliance with the City’s Business License Tax Law as of a particular date.
- B. The City’s issuance of a “Certificate of Compliance” does not entitle a taxfiler to carry on any business not in compliance with all other requirements of this Code and all other applicable laws.
- C. A taxfiler is deemed to be doing business within the City within any fiscal year they receive income from business activity conducted within the City, notwithstanding that such activity has ceased. Income from business activity that has ceased includes, but is not limited to, income from installment sales (including sales of real property), collection of accounts receivable, covenants not to compete, and income from contractual agreements related to the trade or business activity.

7.02.310 Duplicate Certificates of Compliance.

(Amended by Ordinance No. 187339, effective October 16, 2015.) Upon request by the taxfiler a duplicate Certificate of Compliance may be issued to replace any Certificate previously issued that has been lost or destroyed. Duplicate Certificates will be issued in accordance with the Division’s written policy.

7.02.330 Account Merger or Division.

When two or more taxfilers combine by merger or acquisition into one reporting entity, or one taxfiler divides or spins off into more than one reporting entity, the business tax for the license tax year after the combination or division will be computed upon the incomes earned by all entities for all tax periods required to be reported under state and federal tax laws and regulations.

7.02.350 License Tax Year Term.

Each license tax year begins on the first day of the month in which a taxfiler became subject to the requirements of this Chapter. Each license tax year expires at the end of the applicable tax period on the basis of which the taxfiler computes net income under the applicable laws of the State of Oregon imposing taxes on or measured by net income, not to exceed one year.

7.02.400 Exemptions.

(Amended by Ordinance Nos. 183727, 185394 and 187339, effective October 16, 2015.)
The Division may require the filings of tax returns or other documentary verification of

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any exemption claimed under this section. To the extent set forth below, the following persons are exempt from payment of the business license tax, and/or the following incomes are exempt from calculation of the business license tax:

- A.** Persons whom the City is prohibited from taxing under the Constitution or laws of the United States, the Constitution or laws of the State of Oregon, or the Charter of the City.
- B.** Income arising from transactions which the City is prohibited from taxing under the Constitution or the laws of the United States, the Constitution or laws of the State of Oregon, or the Charter of the City.
- C.** Persons whose gross receipts from all business, both within and without the City, amounts to less than \$50,000 (\$25,000 for tax years that begin prior to January 1, 2007).
- D.** Corporations exempt from the Oregon Corporation Excise Tax under ORS 317.080, provided that any such corporation subject to the tax on unrelated business income under ORS 317.920 to 317.930 must pay a business tax based solely on such income.
- E.** Trusts exempt from Federal income tax under Internal Revenue Code Section 501, provided that any exempt trust subject to tax on unrelated business income and certain other activities under Internal Revenue Code Section 501 (b), must pay a business tax based solely on that income.
- F.** The following incomes of an individual:
 - 1.** Income from sales, exchanges or involuntary conversions of a primary residence;
 - 2.** Income from the sale of personal property acquired for household or other personal use by the seller;
 - 3.** Income from interest and dividend income earned from investments if the income is not created in the course of or related to the taxfiler's business activities;
 - 4.** Income from gains and losses incurred from the sale of investments (other than real property) that are not a part of a business.
- G.** Any person whose only business transactions are exclusively limited to the following activities:
 - 1.** Raising, harvesting and selling of the person's own crops, or the feeding, breeding, management and sale of the person's own livestock, poultry,

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furbearing animals or honeybees, or sale of the produce thereof, or any other agricultural, horticultural or animal husbandry activity carried on by any person on said person's own behalf and not for others, or dairying and the sale of dairy products to processors. This exemption does not apply if, in addition to the farm activities described in this subsection, the person does any processing of the person's own farm products which changes their character or form, or the person's business includes the handling, preparation, storage, processing or marketing of farm products raised or produced by others; or the processing of milk or milk products whether produced by said person or by others for retail or wholesale distribution.

2. Operating within a permanent structure a display space, booth or table for selling or displaying merchandise by an affiliated participant at any trade show, convention, festival, fair, circus, market, flea market, swap meet or similar event for less than 14 days in any tax year.

- H.** Gross revenues subject to Chapters 7.12 or 7.14. Unless otherwise prohibited by law, gross revenue which is not otherwise subject to Chapters 7.12 or 7.14 is subject to the Business License Law.

7.02.500 Tax Rate.

(Amended by Ordinance Nos. 187743, 188129, 189017, 189261 and 189389, effective February 21, 2019.)

- A.** The tax established by the Business License Law is 2.2 percent of adjusted net income, for tax years beginning on or before December 31, 2017. For tax years beginning on or after January 1, 2018, the tax is 2.6 percent of adjusted net income, except as provided in Subsections B., C., D. and E. of this Section.
- B.** Surcharges applicable to Tax Years 2002 through 2005. The following surcharges are imposed in addition to the 2.2 percent tax established in Subsection A. above. The proceeds of the surcharges are dedicated to supplementing the funding provided by the State to the public schools within the City, and allocated to all of the public school districts within the City of Portland.
1. For the tax year beginning on or after January 1, 2002, a surcharge is imposed in the amount of 1 percent.
 2. For tax year beginning on or after January 1, 2003, a surcharge is imposed in the amount of 0.4 percent.
 3. For tax year beginning on or after January 1, 2004, a surcharge is imposed in the amount of 0.4 percent.

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- C.** Surcharge applicable to Tax Years 2006 through 2007. The following surcharges are imposed in addition to the 2.2 percent tax established in Subsection A. above. The proceeds of the surcharges are dedicated to supplementing the funding provided by the State to the public schools within the City, and allocated to all of the public school districts within the City of Portland. The proceeds of the surcharges must be used by the school districts only for programs and activities on which the City is authorized to expend funds pursuant to its charter and state law.
- 1.** For the tax year beginning on or after January 1, 2006, a surcharge is imposed in the amount of 0.14 percent.
 - 2.** No penalties or interest for failure to make quarterly estimated payments in the amount of the surcharge will be charged or imposed for the 2006 tax year.
 - 3.** For the tax year beginning on or after January 1, 2007, a surcharge is imposed in the amount of .07 percent.
 - 4.** If the surcharges raise more than \$9 million plus City costs but less than \$9.5 million plus City costs for the 2006 and 2007 tax years combined, the excess over \$9 million, less City costs, will be dedicated to public schools within the City as provided in Subsection C. of this Section. If the surcharges raise more than \$9.5 million plus City costs for the 2006 and 2007 tax years combined, the excess over \$9 million, less City costs, will be retained as a credit for taxes due in a later tax year. The Director will apply the credit to taxes due no later than the 2010 tax year. The Director has the sole discretion to determine the method of calculating and distributing credits.
- D.** Heavy Vehicle Use Tax applicable to Tax Years 2016 through 2019. The following tax is imposed in addition to the tax established in Subsection A. above. The proceeds of this tax are dedicated to supplementing the funding of City of Portland street maintenance and safety and shall be deposited in a Street Repair and Traffic Safety Program of the Transportation Operating Fund where street repair and traffic safety expenditures are recorded.
- 1.** For the tax years beginning on or after January 1, 2016, January 1, 2017, January 1, 2018 and January 1, 2019, a Heavy Vehicle Use Tax is imposed on taxpayers who operate one or more Heavy Vehicles on streets owned or maintained by the City of Portland. For purposes of this tax, a Heavy Vehicle is any vehicle that is subject to the Oregon Weight-Mile Tax pursuant to ORS 825.450 et seq. This tax is 2.8 percent of the total Oregon Weight-Mile Tax calculated for all periods within the tax year.

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2. The minimum Heavy Vehicle Use Tax due for a tax year is \$100. The minimum tax would be in addition to the \$100 minimum tax described in Section 7.02.545, if applicable.
 3. No penalties or interest for failure to make quarterly estimated payments in the amount of the Heavy Vehicle Use Tax will be charged or imposed for the 2016 tax year only. Thereafter, penalties and interest will be calculated as provided for in the Code.
- E.** Pay ratio surtax applicable to publicly traded companies subject to U.S. Securities and Exchange Commission pay ratio reporting requirements. The following surtax is imposed in addition to the tax established in Subsection A. above.
1. For tax years beginning on or after January 1, 2017, a surtax of 10 percent of base tax liability is imposed if a company subject to this section reports a pay ratio of at least 100:1 but less than 250:1 on U.S. Securities and Exchange Commission disclosures.
 2. For tax years beginning on or after January 1, 2017, a surtax of 25 percent of base tax liability is imposed if a company subject to this section reports a pay ratio of 250:1 or greater on U.S. Securities and Exchange Commission disclosures.
- F.** Clean Energy Surcharge applicable to Large Retailers with Retail Sales within the City. The following surcharge is imposed in addition to the tax established in Subsection A. above. The proceeds from this surcharge are to support the City of Portland's Climate Action Plan and the shall be deposited into the Portland Clean Energy Community Benefits Fund.
1. Filing Requirement. All businesses with total gross income of \$1 billion or more and Portland gross income of \$500,000 or more, as reported on the Combined Tax Return per Section 7.02.610, shall file a schedule with their Combined Tax Return.
 2. Imposition of Surcharge and Rate. Large Retailers shall pay a 1 percent surcharge on Retail Gross Revenue within the City. This surcharge is not a tax imposed directly on the purchaser (consumer). If a Large Retailer itemizes its cost of doing business for the purchaser (consumer), these amounts are still considered Retail Sales subject to the Clean Energy Surcharge.
 3. Calculation of Retail Gross Revenue. In calculating the amount of Retail Gross Revenue for purposes of this Clean Energy Surcharge, a deduction from Retail Sales within the City is allowed for the following:

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- a.** The amount of the Portland Business License Tax attributable to revenue subject to this surcharge, if any, paid to the city;
 - b.** Retail Sales of Qualified Groceries;
 - c.** Retail Sales of Qualified Medicine or Drugs;
 - d.** Retail Sales of Qualified Health Care Services.
- 4.** Effective Date and Penalties. The Clean Energy Surcharge will apply for all tax years beginning on or after January 1, 2019. Payments will be made consistent with the schedule required in Section 7.02.530. No underpayment interest for failure to make quarterly estimated payments for the Clean Energy Surcharge will be charged or imposed for the 2019 tax year. Thereafter, penalties and interest will be calculated separately from other taxes and surcharges as provided for in Sections 7.02.700 and 7.02.710.

7.02.510 Registration Form and Tax Return Due Dates.

(Amended by Ordinance Nos. 183727 and 187339, effective October 16, 2015.)

- A.** All persons subject to the requirements of this Chapter must register with the Division on a form provided or approved by the Division. Thereafter, taxfilers must file tax returns with the Division. The following timing requirements apply:
 - 1.** Registration forms must be filed within 60 days of the person beginning business in the City.
 - 2.** Tax returns must be filed by the 15th day of the fourth (4th) month following the end of the tax year. For cooperatives and non-profit corporations that have later due dates under Oregon tax law, the due date for filing tax returns with the Division must conform to the due date under Oregon tax law.
- B.** The Division may, for good cause, grant extensions for filing tax returns, except that no extension may be granted for more than six (6) months beyond the initial filing due date. This extension does not extend the time to pay the tax.
- C.** Registration forms and tax returns must contain a written declaration, verified by the taxfiler, to the effect that the statements made therein are true.
- D.** The Bureau will prepare blank registration forms and tax returns and make them available at its office upon request. Failure to receive or secure a form does not relieve any person from the obligation to pay a business tax.

7.02.520 Quarterly Estimates.

Every taxfiler expecting to have a tax liability under Section 7.02.500 of \$1,000 or greater must make an estimate of the tax based upon the taxfiler's current tax year and pay the amount of tax determined as provided in Section 7.02.530.

7.02.530 Schedule for Payment of Estimated Tax.

(Amended by Ordinance No. 187339, effective October 16, 2015.) A taxfiler required under Section 7.02.520 to make payments of estimated business taxes must make the payments in installments as follows:

- A. One quarter or more of the estimated tax on or before the 15th day of the fourth (4th) month of the tax year; and
- B. One quarter or more of the estimated tax on or before the 15th day of the sixth (6th) month of the tax year; and
- C. One quarter or more of the estimated tax on or before the 15th day of the ninth (9th) month of the tax year; and
- D. The balance of the estimated tax must be paid on or before the 15th day of the twelfth (12th) month of the tax year.
- E. Any payment of the estimated tax received by the Division for which the taxfiler has made no designation of the quarterly installment to which the payment is to be applied, will first be applied to underpayments of estimated taxes due for any prior quarter of the tax year. Any excess amount will be applied to the installment that next becomes due after the payment was received.

7.02.545 Tax Returns.

(Authorized by Ordinance No. 189389, effective February 21, 2019.) Each tax return must be accompanied by a tax payment at the rate established in Section 7.02.500, provided that each such tax return must be accompanied by a minimum tax of \$100 plus any amount due as a result of the temporary surcharge established in Section 7.02.500 B. and D. The minimum payment may have previously been paid by quarterly payments, an extension payment, or credit available from a prior tax year.

7.02.550 Presumptive Tax.

(Amended by Ordinance No. 187339, effective October 16, 2015.)

- A. If a person fails to file a tax return, a rebuttable presumption exists that the tax payable amounts to \$500 for every license tax year for which a tax return has not been filed.
- B. Nothing in this Section prevents the Division from assessing a tax due which is less than or greater than \$500 per license tax year.

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- C.** Presumptive taxes assessed under this subsection are considered filed documents and are subject to the time limitations for deficiencies and refunds as described in Section 7.02.280.
- D.** Taxes determined under this subsection are subject to penalties and interest from the date the taxes should have been paid as provided in Section 7.02.510 in accordance with Sections 7.02.700 and 7.02.710. The Division will send notice of the determination and assessment to the taxfiler.

7.02.560 Payment Plan Fee.

(Amended by Ordinance No. 187339, effective October 16, 2015.) If a person fails to pay the business tax when due, the Division may establish a payment plan and charge a set up fee pursuant to written policy.

7.02.600 Income Determinations.

(Amended by Ordinance Nos. 183727, 185781, 186331, 187339, 189017 and 189389, effective February 21, 2019.)

- A. Owners Compensation Deductions.** “Owners Compensation Deduction” is defined as the additional deduction allowed in Subsections B., C. and D. below. The owners compensation deduction is indexed (beginning in January 1999) by the Consumers Price Index - All Urban Consumers (CPI-U) US City Average as published by the US Department of Labor, Bureau of Labor Statistics, using the September to September index, not seasonally adjusted (unadjusted index). The Division determines the exact deduction amount and publishes the amount on forms. Any increase or decrease under this paragraph that is not a multiple of \$500 will be rounded up or down to the next multiple of \$500 at the Division’s discretion.
 - 1.** For tax years beginning on or after January 1, 2007, the Owners Compensation Deduction cannot exceed \$80,000 per owner as defined in Subsections B., C. and D. below. For tax years beginning on or after January 1, 2008, the Owners Compensation Deduction will be indexed as described above.
 - 2.** For tax years beginning on or after January 1, 2013, the Owners Compensation Deduction cannot exceed \$90,500 per owner as defined in Subsections B., C. and D. below.
 - 3.** For tax years beginning on or after January 1, 2014, the Owners Compensation Deduction cannot exceed \$100,000 per owner as defined in Subsections B., C. and D. below. For tax years beginning on or after January 1, 2015, the Owners Compensation Deduction will be indexed as described above.

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4. For tax years beginning on or after January 1, 2018, the Owners Compensation Deduction cannot exceed \$125,000 per owner as defined in Subsections B., C. and D. below. For tax years beginning on or after January 1, 2019, the Owners Compensation Deduction will be indexed as described above.
- B. Sole Proprietorships.** In determining income, no deduction is allowed for any compensation for services rendered by, or interest paid to, owners. However, 75 percent of income determined without such deductions is allowed as an additional deduction, not to exceed the amounts listed in Subsection A. per owner.
- C. Partnerships.** In determining income, no deductions are allowed for any compensation for services rendered by, or interest paid to, owners of partnerships, limited partnerships, limited liability companies, limited liability partnerships, or family limited partnerships. Guaranteed payments to partners or members are deemed compensation paid to owners for services rendered. However:
1. For general partners or members, 75 percent of income determined without such deductions is allowed as an additional deduction, not to exceed the amounts listed in Subsection A. per general partner or member.
 2. For limited partners or members of LLCs who are deemed limited partners by administrative rule or policy, 75 percent of income determined without such deductions is allowed as an additional deduction, not to exceed the lesser of actual compensation and interest paid or the amounts listed in Subsection A. per compensated limited partner.
- 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

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stock or securities in their own name. In that case, each spouse, parent or child who owns more than five (5) percent of stock is deemed to be an additional controlling shareholder.

3. For purposes of this Subsection, joint ownership of outstanding stock or securities is not considered separate ownership.
- E. **Estates and Trusts.** In determining income for estates and trusts, income is measured before distribution of profits to beneficiaries. No additional deduction is allowed.
- F. **Non-business Income.** In determining income under this Section, an allocation is allowed for non-business income as reported to the State of Oregon. However, income treated as non-business income for State of Oregon tax purposes may not necessarily be defined as non-business income under the Business License Law. Interest and dividend income, rental income or losses from real and personal business property, and gains or losses on sales of property or investments owned by a trade or business is treated as business income for purposes of the Business License Law. Income derived from non-unitary business functions reported at the State of Oregon level may be considered non-business income. Non-unitary income will not be recognized at an intrastate level. The taxfiler has the burden of showing that income is non-business income.
- G. **Nondeductible Taxes and Surcharges.** In determining income, no deduction is allowed for taxes based on or measured by net income. No deduction is allowed for the federal built-in gains tax. No deduction is allowed for the Clean Energy Surcharge.
- 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.

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2. In computing the net operating loss for any license tax year, the net operating loss of a prior year is not allowed as a deduction.
3. In computing the net operating loss for any license or tax year, no compensation allowance deduction is allowed to increase the net operating loss. "Compensation allowance deduction" is defined in Subsection 7.02.600 A.
4. The net operating loss of the earliest license tax year available must be exhausted before a net operating loss from a later year may be deducted.
5. The net operating loss in any license tax year is allowed as a deduction in the five (5) succeeding license tax years until used or expired. Any partial license tax year will be treated the same as a full license tax year in determining the appropriate carry-forward period.

7.02.610 Apportionment of Income.

(Amended by Ordinance Nos. 182427, 184597 and 187339, effective October 16, 2015.)

- A. "Jurisdiction to tax" occurs when a person engages in business activities in a jurisdiction that are not protected from taxation by Public Law 86-272. Public Law 86-272 applies to interstate sales of tangible personal property. For purposes of the Business License Law, the limits imposed by Public Law 86-272 for interstate jurisdiction to tax shall also be presumed to apply on an intrastate basis. If a taxpayer's business is based in Portland, a taxpayer must have business activity outside Portland that results in a jurisdiction to tax outside Portland to apportion 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.:

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1. Sales of tangible personal property are deemed to take place in the City if the property is delivered or shipped to a purchaser within the City regardless of the f.o.b. point or other conditions of sale. If sales of tangible personal property are shipped from the City to a purchaser located where the taxfiler is not taxable, those sales are not apportioned to the City.
 2. Sales other than sales of tangible personal property are deemed to take place in the City if the income producing activity is performed in the City.
- E.** Certain industries or incomes are subject to specific apportionment methodologies. Such methodologies are described in administrative rules adopted in accordance with Section 7.02.210. Industry specific or income specific apportionment methodologies required by Oregon Revised Statutes for apportionment of gross sales, will be used in cases where no rule has been adopted by the Division regarding the apportionment of such industry or income. When gross sales as reported to Oregon are used for apportionment purposes, such gross sales will be defined as gross income for apportionment purposes herein. All apportionment methodologies directed under this Subsection will be a single factor gross income apportionment as directed under Subsections 7.02.610 C. and 7.02.610 D. In those specific cases where Oregon has directed allocation of income, such income will be apportioned for purposes of this Chapter, unless allocation is otherwise allowed in this Chapter.
- F.** If the apportionment provisions of Subsection C. do not fairly represent the extent of the taxfiler's business activity in the City and result in the violation of the taxfiler's rights under the Constitution of this State or the United States, the taxfiler may petition the Division to permit the taxfiler to:
1. Utilize the method of apportionment used by the taxfiler under the applicable laws of the State of Oregon imposing taxes upon or measured by net income; or
 2. Utilize any other method to effectuate an equitable apportionment of the taxfiler's income.

7.02.620 Changes to Federal and/or State Tax Returns.

(Amended by Ordinance No. 187339, effective October 16, 2015.)

- A.** If a taxfiler's reported net income under applicable Oregon laws imposing a tax on or measured by income is changed by the federal Internal Revenue Service or the Oregon Department of Revenue, or amended by the taxfiler to correct an error in the original federal or state return, a report of such change must be filed with the Division within 60 days after the date of the notice of the final determination of change or after an amended return is filed with the federal or state agencies. The

report must be accompanied by an amended tax return with respect to such income and by any additional tax, penalty, and interest due.

- B.** The Division may assess deficiencies and grant refunds resulting from changes to federal, state, city or county tax returns within the time periods provided for in Section 7.02.280, treating the report of change in federal, state, city or county tax returns as the filing of an amended tax return.
- C.** The Division may assess penalties and interest on the additional tax due as provided in Subsection 7.02.700 A. and 7.02.710 A., or may refuse to grant a refund of business taxes as a result of the amended tax return if the amended tax return is not filed with the Division within the time limits set forth in Subsection A.

7.02.630 Income Long Term Construction Contract Methods.

- A.** A taxfiler reporting income using a long term construction contract method must file an additional tax return for the taxfiler's income earned during the last license tax year, not later than the 15th day of the fourth (4th) month following the end of the prior license tax year during which either:
 - 1.** The taxfiler ceases to do business in the City; or
 - 2.** The taxfiler ceases to receive income from such long term construction contracts.
- B.** Net income for such taxfiler must include apportioned income arising from all contracts completed during such license tax year.

7.02.700 Penalties.

(Amended by Ordinance Nos. 187339 and 189389, effective February 21, 2019.)

- A.** A penalty will be assessed if a person:
 - 1.** Fails to file a tax return or extension request at the time required under Subsections 7.02.510 A. or 7.02.620 A.; or
 - 2.** Fails to pay the tax when due.
 - 3.** The penalty under Subsection A. is:
 - a.** Five percent (0.05) of the total tax liability, but not less than \$5, if the failure is for a period less than four (4) months;
 - b.** An additional penalty of 20 percent (0.20) of the total tax liability if the failure is for a period of four (4) months or more; and

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- c. An additional penalty of 100 percent (1.00) of the total tax liability of all license tax years if the failure to file is for three (3) or more consecutive license tax years.
- B. A penalty will be assessed if a person who has filed an extension request:
 1. Fails to file a tax return by the extended due date; or
 2. Fails to pay the tax liability by the extended due date.
 3. The penalty under Subsection B. is:
 - a. Five percent (0.05) of the total tax liability, but not less than \$5, if the failure is for a period less than four (4) months; and
 - b. An additional penalty of 20 percent (0.20) of the total tax liability if the failure is for a period of four (4) months or more.
- C. A penalty will be assessed if a person:
 1. Fails to pay at least 90 percent (0.90) of the total tax liability, but not less than \$100, by the original due date; or
 2. Fails to pay at least 100 percent (1.00) of the prior year's total tax liability by the original due date.
 3. The penalty under Subsection C. is five percent (.05) of the tax underpayment, but not less than \$5.
- D. A penalty of \$100.00 may be assessed if a person fails to file a registration form at the time required under Subsection 7.02.510 A.
- E. The Director may impose a civil penalty of up to \$500 for each of the following violations of the Business License Law:
 1. Failure to file any tax return within 60 days from the due date as further outlined in Section 7.02.510 of this Chapter; or
 2. Failure to pay any tax within 60 days of the Division's original written notice for payment; or
 3. Failure to provide either documents or information (as required by Section 7.02.260) within 60 days of the Division's original written notice to provide the documents or information; or
 4. Failure to fully complete any form required under this Chapter.

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- 5. Failure to fully comply with the requirements of any section of PCC 7.02 unless such section has a separate penalty calculation.
- F. The Director may impose a civil penalty under Subsections E.2. and E.3. only if the Division gave notice of the potential for assessment of civil penalties for failure to comply or respond in the original written notice.
- G. The Division may waive or reduce any penalty determined under Subsections A. through E. for good cause, according to and consistent with written policies.

7.02.710 Interest.

(Amended by Ordinance No. 187339, effective October 16, 2015.)

- A. Interest will be assessed on any unpaid business tax at the rate of .833 percent simple interest per month or fraction thereof (10 percent per annum), computed from the original due date of the tax to the 15th day of the month following the date of payment.
- B. Interest will be assessed on any unpaid or underpaid quarterly estimated payment required by Sections 7.02.520 and 7.02.530 at the rate of .833 percent simple interest per month or fraction thereof (10 percent per annum), computed from the due date of each quarterly estimated payment to the original due date of the tax return to which the estimated payments apply.
- C. Notwithstanding Subsection B. there is no interest on underpayment of quarterly estimated payments if:

 - 1. The total tax liability of the prior license tax year was less than \$1,000; or
 - 2. An amount equal to at least 90 percent (0.90) of the total tax liability, but not less than \$100, for the current license tax year was paid in accordance with Section 7.02.530; or
 - 3. An amount equal to at least 100 percent (1.00) of the prior year's total tax liability was paid in accordance with Section 7.02.530.
- D. For purposes of Subsection B., the amount of underpayment is determined by comparing the 90 percent of the current total tax liability amount to quarterly estimated payments made prior to the original due date of the tax return. However, if 100 percent of the prior year's total tax liability is paid to the Division by the due date of the fourth quarterly payment, the Division may use the prior year's tax liability if doing so will reduce the amount of interest owed.
- E. For purposes of Subsection A. of this Section, the amount of tax due on the tax return will be reduced by the amount of any tax payment made on or before the date

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for payment of the tax in accordance with Subsection 7.02.510 A. or Section 7.02.530.

- F.** Interest at the rate specified in Subsection A. of this Section accrues from the original due date without regard to any extensions of the filing date.
- G.** Any interest amounts properly assessed in accordance with this section may not be waived or reduced by the Division, unless specifically provided for by written policy.

7.02.715 Payments Applied.

(Amended by Ordinance No. 187339, effective October 16, 2015.) Business taxes received will be applied first to any penalty accrued, then to interest accrued, then to business taxes due, unless the Division determines in accordance with its written policies that a more equitable method exists for a particular taxfiler's account.

7.02.720 Interest on Refunds.

(Amended by Ordinance No. 187339, effective October 16, 2015.) When, under a provision of the Business License Law, taxfilers are entitled to a refund of a portion of the business tax paid to the Division, they will receive simple interest on such amount at the rate specified in Subsection 7.02.710 A., subject to the following:

- A.** Any overpayments will be refunded with interest for each month or fraction thereof for a period beginning four (4) months after the later of:
 - 1.** the original due date of the tax return, or
 - 2.** the date the tax return was filed or the refund was otherwise requested, or
 - 3.** the date the business tax was paid to the date of the refund; and
- 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

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convicted is ineligible for participation in any City contract for a period of five (5) years thereafter.

7.02.800 Refundable Credit.

(Amended by Ordinance Nos. 187339 and 189389, effective February 21, 2019.) For tax years beginning on or after January 1, 2005, a maximum of four (4) refundable credits of \$500 each are allowed for qualifying businesses that employ disconnected youth. For the purpose of this credit, the terms used in this section are defined below or as defined in written policies adopted under Section 7.02.210 unless the context requires otherwise.

A. “Local Business” means a business operating in the pursuit of profit, gain or the production of income that:

1. has at least one physical location (such as an office, warehouse, store or restaurant) within the geographic boundaries of the State of Oregon and/or Clark County, Washington; and
2. is registered to do business in the State of Oregon and said registration has not expired or otherwise been dissolved; or is a sole proprietorship that is not legally required to register to do business in the State of Oregon ; and
3. has a current account with the City of Portland and has complied with all filing and payment requirements of Portland ’s Business License Law and the Multnomah County Business Income Tax Law.

B. “Disconnected Youth” means a youth that is

1. a resident of the City of Portland,
2. is 16-24 years old on the date on which the youth begins working with the local business,
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

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- d. is a high school drop-out; or
 - e. is an adjudicated youth, meaning that they are or have been, in the Oregon Juvenile Justice System or the equivalent thereof in another state.
- C. **“Qualified Youth Employment Organization”** means an organization that is qualified and funded to operate youth employment and training programs by the youth certifying agency.
- D. **“Credit Certificate”** means a pre-numbered certificate issued by the Youth Certifying Agency upon fulfillment of the employment contract. A separate certificate is required for each credit granted to a business.
- E. **“Youth Certifying Agency”** means an agency that has entered into an agreement or other memorandum of understanding with the Division to act as the Youth Certifying Agency for the purpose of this program.
- F. **“2005 Tax Year”** means a tax year that begins on or after January 1, 2005 and ends on or before November 30, 2006, but does not exceed a 12 month period.
- G. **“2006 Tax Year”** means a tax year that begins on or after January 1, 2006 and ends on or before November 30, 2007, but does not exceed a 12 month period.
- H. **“Non-exempt”** means that the local business has not claimed an exemption from the requirements of the Business License Law as defined and provided for in 7.02.400.

7.02.810 Credits Issued.

- A.** For the 2005 tax year, a total of 100 refundable credits of \$500 each will be available to non-exempt local businesses. For the 2006 tax year, a total of 100 refundable credits of \$500 each will be available to non-exempt local businesses. The credit is non-refundable if the local business was exempt during the tax year in which it claimed the credit. The credit cannot be used to offset amounts due under the Multnomah County Business Income Tax.
- B.** The 100 refundable credits allocated per year will be issued on a first come, first served basis as measured by the date on which the youth certifying agency completes the certification process for any particular business.
- C.** A maximum of four (4) credits can be claimed on the tax return based on the taxable income for the tax year in which the credit is claimed. If a consolidated, combined or joint return is required to be filed under Section 7.02.110 B., the consolidated, combined or joint group is limited to a maximum of four (4) credits.

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- D.** Credit certificates can only be used in the tax year in which they are claimed and cannot be used in any other tax year.
- E.** For the 2005 tax year, only hours worked after June 30, 2005 may be counted towards the 300 hour minimum requirement.
- F.** Businesses cannot count reimbursable or otherwise subsidized hours (wages) toward the 300 hours.
- G.** A business may claim a credit for the same disconnected youth in successive tax years, provided that the youth works the required minimum 300 hours in each tax year.
- H.** The 300 hour requirement must be completed during the business' fiscal tax year rather than the calendar year.

7.02.820 Obligations of Participating Businesses.

To be eligible to receive a refundable credit and participate in the program, a local business must do each of the following:

- A.** Submit an application to the youth certifying agency that includes an intent to employ an eligible disconnected youth for an average of 25 hours per week and a minimum of 300 hours within four months.
- B.** Contact one or more qualified youth employment organizations for assistance in identifying youth, enrolling a specific youth in one of the qualified youth employment programs in order to pursue eligibility of the youth in the program, and/or seek assistance working with a youth to increase his/her opportunity for employment success.
- C.** Complete employee evaluations or conduct reviews of employees that fall under this program;
- D.** Report employment data for each youth to the participating qualified youth employment organization or the youth certifying agency.

7.02.830 Collection and Remittance of Donations to “Work for Art,” a Program of the Regional Arts & Culture Council.

(Amended by Ordinance No. 187339, effective October 16, 2015.) The Revenue Division is authorized to collect and remit donations from taxfilers to “Work for Art,” a program of the Regional Arts & Culture Council.

- A.** Taxfilers may donate to “Work for Art” by either
 - 1.** paying a sum above what is owed for their City business taxes, or

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2. by designating that all or some of any refund due to them be instead donated to “Work for Art.”
- B. To indicate a desire to donate, the taxfiler must check the appropriate donation box on their tax return for the tax year in question. In addition, the taxfiler must indicate the amount that is to be donated.
- C. Once the tax return is filed with the Division, the taxfiler may not cancel the donation or request that it be instead credited to any other outstanding receivable owed to the Division.

7.02.840 Frivolous Filing.

A \$500.00 penalty will be assessed if a taxfiler takes a "frivolous position" in respect to preparing the taxfiler's tax return. A tax return is considered frivolous if a taxfiler does not provide information on which the substantial correctness of the self-assessment may be judged or if the tax return contains information that on its face indicates that the self-assessment is substantially incorrect. Examples of “frivolous positions” as provided in Oregon Administrative Rule 150-316.992(5) are hereby adopted by direct reference.

7.02.850 Hacking.

(Amended by Ordinance Nos. 187339 and 189389, effective February 21, 2019.)

- A. Any individual who intentionally accesses the Division's computer database without authorization will be fined:
 1. \$10,000 if the individual acquires any information regarding any business account found in the database;
 2. \$10,000 or the cost of the loss (whichever is greater) if the individual uses or attempts to use the acquired information for financial gain of any kind; or
 3. \$10,000 or the cost of the loss (whichever is greater) if the individual causes the transmission of a program, information, code, or command to the Division's computer database, and, as a result of such conduct, causes damage to the database.
- B. Definitions. As used in this Section:
 1. the term “Division's computer database” means computer application(s) used by the Division to calculate and store business and financial data collected under the authority granted by the Business License Law;
 2. the term “loss” means any reasonable cost incurred by the City of Portland, including but not limited to the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or

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information to its condition prior to the offense, and any revenue lost, cost incurred, or other consequential damages incurred because of interruption of service;

3. the term "damage" means any impairment to the integrity or availability of data, a program, a system, or information.

7.02.860 First Year Adjustment Credit.

(Amended by Ordinance Nos. 182427 and 187339, effective October 16, 2015.)

- A. Any taxfiler that was assessed a “First Year Adjustment” fee on a prior tax filing and has been licensed in all consecutive years since is entitled to receive a credit equal to that amount. The credit will be applied towards future City tax filings as a prepayment.
- B. If the amount of the credit cannot be determined from Division records, a rebuttable presumption exists that the credit amount is equal to the amount of the minimum fee payment due for the tax year in which the City assessed the “First Year Adjustment” fee. A taxfiler may present evidence to the Division showing that its First Year Adjust fee was higher than the minimum fee amount due for a particular tax year.
- C. Once the credit amount is determined, the Division will apply 100 percent of that amount towards tax payments due and owing for the 2008 license tax year. If that credit amount exceeds the tax amount due for the 2008 license tax year, the City will issue a refund for the difference or credit the overpayment forward to the next tax year if requested by the taxpayer.

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.

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- 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

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- b. Determined as a percentage of the value of assets managed by the firm (including payments to the firm from their parties if the payments are credited against or offset such fees in whole or in part).
 2. At least 90 percent of the assets managed by the firm must consist of Qualifying Investment Securities.
 3. A majority of the voting interests in the firm must be owned by persons who received compensation from the firm that is subject to the Owner's Compensation Deduction in Section 7.02.600.
 4. The firm was physically located within the City of Portland boundaries at the end of the tax year.
- D. The terms "Diversified Investing Fund" and "Qualified Investment Securities" have the meanings as defined by Administrative Rule.
- E. This credit is available for tax years beginning on or after January 1, 2009.

7.02.880 Youth Employment Credit Programs.

(Added by Ordinance No. 184716; amended by Ordinance No. 187339, effective October 16, 2015.)

- A. For tax years beginning on or after January 1, 2011, any youth employment credit authorized by City Council will use the terms defined below or as defined by written policy adopted under Section 7.02.210 unless the context requires otherwise.
1. **“Local Business”** means a business operating in the pursuit of profit, gain or the production of income that:
- a. has at least one physical location (such as an office, warehouse, store or restaurant) within the geographic boundaries of the State of Oregon and/or Clark County, Washington ; and
 - b. is registered to do business in the State of Oregon and said registration has not expired or otherwise been dissolved; or is a sole proprietorship that is not legally required to register to do business in the State of Oregon ; and
 - c. has a current account with the City of Portland and has complied with all filing and payment requirements of Portland ’s Business License Law and the Multnomah County’s Business Income Tax Law.

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2. **“Non-exempt”** means the local business has not claimed an exemption from the requirements of the Business License Law as defined and provided for in 7.02.400.
 3. **“Tax Year”** means any tax year allowed by the Internal Revenue Service and/or State of Oregon and used by the business to file their income taxes and begins during the year identified as the tax year of the credit.
 4. **“Youth Certifying Agency”** means the agency that is responsible for determining youth that qualify for one or more Youth Employment Credit programs.
- B.** Credits issued under a Youth Employment Credit program will have the following features:
1. Credits will be non-refundable;
 2. There will be a maximum number of credits per tax year per program;
 3. There will be a maximum number of credits that can be claimed by a Local Business in any given tax year;
 4. No individual credit will exceed \$500; and
 5. Credit certificates or letters will be provided by the Revenue Division to be attached to the tax return claiming the credit(s).
- C.** Each Youth Employment Credit program will outline any youth qualifications and business obligations to qualify for the credit, including but not limited to the number of hours and the length of time that the youth must be employed to qualify for the credit, the definitions of a qualifying youth, the certifying agencies for either the youth qualifications for the program or obligations of the business to obtain the credit, and any program goals and results that should be attained for renewal if the program is a pilot program.

7.02.881 Foster Youth Employment Opportunity Credit.

(Added by Ordinance No. 184716; amended by Ordinance No. 187339, effective October 16, 2015.)

- A.** A Youth Employment Credit, known as the Foster Youth Employment Opportunity Credit, is available for tax years 2011 and 2012 to local businesses that employ foster youth certified by the State of Oregon Department of Human Services (DHS).
- B.** For each tax year, 25 non-refundable \$500 credits are available on a first-come, first-served basis. An individual business can claim one credit for each separate

foster youth employed for the minimum required hours, up to a maximum of four (4) credits in one tax year.

C. To qualify for the credit, a business must:

- 1.** Employ a certified foster youth.
 - a.** If the foster youth is enrolled in an educational program, the youth must average 12 hours per week and must have worked at least 200 hours in a six month period; or
 - b.** If the foster youth is not enrolled in an educational program, the youth must average 25 hours per week and must have worked at least 400 hours in a six month period.
- 2.** Submit the following documentation no later than one month following the close of the tax year in which the credit is to be claimed. The documentation can be submitted at any time once the youth has worked sufficient hours to qualify for the credit.
 - a.** A copy of the youth's DHS certification;
 - b.** Sufficient summary payroll records that supports the average hours per week and total minimum hours required; and
 - c.** Sufficient documentation of the school or other educational program where the youth was enrolled if claiming the credit based on Subsection 1.a. above.
- 3.** The Revenue Division will issue either a credit certificate or credit letter authorizing the maximum credit(s) for the tax year.

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

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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:
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.

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3. Complete the certified program as agreed to obtain the credit certificate from the CRLE Certifying Agency.

7.02.890 Residential Rental Registration Program.

(Added by Ordinance No. 189086, effective July 25, 2018.)

- A. For tax years beginning on or after January 1, 2018, all owners of residential rental property in the City are required to register the property and annually provide a schedule that includes the address of all owned residential rental units within the City. The Director may require additional data about the rental location by administrative rule. For purposes of this section, except where defined by administrative rule in accordance with Section 7.02.210, “residential rental unit” means any residential property rented or offered for rent for a period of more than 30 consecutive days. If a property contains more than one residential living quarter, the term residential rental unit refers to each separate living quarter.
- B. In the first tax year of the Residential Rental Registration Program, no additional fee will be imposed in connection with the registration. In subsequent years, a fee may be enacted to partially or fully recover the administration costs of the program in addition to other services as the Council may direct. Any fee schedule would be created and amended by administrative rule in accordance with Section 7.02.210. Section 7.02.700, Penalties, shall not apply for failure to file rental registration data in the 2018 tax year. Beginning in tax year 2019 and beyond, the penalty provisions of Section 7.02.700 shall apply.

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CHAPTER 7.03 - TEMPORARY BUSINESSES

(Chapter added by Ordinance No. 182137, effective
September 19, 2008.)

Sections:

- 7.03.010 Temporary Businesses Exempt from Business License Law.
- 7.03.020 Fees for Revenue.
- 7.03.030 Temporary Businesses Defined.
- 7.03.040 License Required; Fees.

7.03.010 Temporary Businesses Exempt from Business License Law.

- A. Persons doing business as defined in Section 7.03.030 are considered “temporary businesses” and are not subject to the provisions of the Business License Law, Chapter 7.02, but are subject to the provisions of this Chapter. This Chapter does not apply to a business that is currently licensed under the provisions of Chapter 7.02.
- B. The term “person” includes, but is not limited to, a natural person, sole proprietorship, partnership, limited partnership, family limited partnerships, joint venture, association, cooperative, trust, estate, corporation, personal holding company, limited liability company, limited liability partnership or any other form of organization for doing business.

7.03.020 Fees for Revenue.

The term “license” as used in this Chapter does not mean a permit, nor is it regulatory in any manner. The fees prescribed under this Chapter are for revenue purposes only.

7.03.030 Temporary Businesses Defined.

The following persons, as defined, are considered “temporary businesses” subject to the requirements of this Chapter:

- A. “Amusement Ride Operator” means an operator of amusement rides not in the same location for more than 14 days.
- B. “Temporary Structure Vendor” means a vendor not located in a permanent structure for more than 14 days.
- C. “Promoter” means a promoter of commercial entertainment doing business in the City of Portland for no more than three (3) days in any calendar year.
- D. “Production Company” means a production company filming in the City of Portland for no more than three (3) days in any calendar year.

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- 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.

(Amended by Ordinance No. 187339, effective October 16, 2015.) Temporary businesses must apply for and obtain temporary business license certificates from the Revenue Division of the City of Portland Bureau of Revenue and Financial Services. 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.

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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.)

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CHAPTER 7.07 – PORTLAND CLEAN ENERGY COMMUNITY BENEFITS

(Chapter added by Measure 26-201 (approved at November 6, 2018 election); Amended by Ordinance No. 189389, effective February 21, 2019.)

Sections:

7.07.010	Findings.
7.07.020	Policy and Purpose.
7.07.030	Definitions.
7.07.040	Portland Clean Energy Community Benefits Fund.
7.07.050	The Portland Clean Energy Community Benefits Fund Committee.
7.07.060	Funding Allocation Priorities.
7.07.070	Severability Clause.

7.07.010 Findings.

- A.** The City of Portland has adopted a Climate Action Plan, which affirms the importance and value of local initiatives and community-based development to decrease carbon emissions, while also seeking to maximize the economic, social and environmental benefits of transitioning away from fossil fuels. In June 2017, in response to changed national priorities, the City reaffirmed the goals of the Climate Action Plan and established a new goal to meet 100 percent of community-wide electricity needs with clean renewable energy by 2035.
- B.** To meet the City's Climate Action Plan and 100 percent clean renewable energy goals there is an urgent need to fund and accelerate greenhouse gas reductions and energy efficiencies, especially in underserved communities.
- C.** Climate change has a disproportionate impact on the health and financial well-being of low income communities and communities of color.
- D.** To implement the Climate Action Plan and this Chapter, there is a critical need for more skilled workers. Members of historically disadvantaged groups, including women, people of color, and the chronically underemployed are under-represented in the skilled work force, and therefore offer an enormous untapped resource to meet the goals of the Climate Action Plan.
- E.** Large retail businesses are a significant contributor to carbon emissions. They encourage consumption of heavily packaged and non-recyclable products, have carbon intensive shipping, manufacturing, and supply chain practices, and share responsibility for generating a substantial portion of the City's overall greenhouse gas emissions when customer traffic and facility operations are considered. These

businesses have an inherent responsibility and the financial capacity to support the goals of this Chapter, and an incentive to remain in the City to engage in retail activities here.

7.07.020 Policy and Purpose.

- A.** Based on the findings set forth above, the purpose of this Chapter is to provide a consistent long-term funding source and oversight structure to ensure that the City of Portland's Climate Action Plan is implemented in a manner that supports social, economic and environmental benefits for all Portlanders, including the development of a diverse and well-trained workforce and contractor pool in the field of clean energy.
- B.** This Chapter requires large retailers (those with gross revenues nationally exceeding \$1 billion, and \$500,000 in Portland) to pay a surcharge of 1 percent on gross revenues from retail sales in Portland, excluding basic groceries, medicines, and health care services, in accordance with Subsection 7.02.500 F.
- C.** Revenues raised through this business surcharge on Large Retailers will be deposited into a separate fund designated as the "Portland Clean Energy Community Benefits Fund." The money in this fund will be used to finance programs that meet the following priorities:
 - 1.** Clean Energy Projects.
 - a.** Renewable energy and energy efficiency projects, with an emphasis on those that benefit low income individuals and that broaden access to energy efficiency and clean renewable energy infrastructure to low income communities and communities of color;
 - b.** Regenerative agriculture and green infrastructure projects that result in sequestration of greenhouse gases and support sustainable local food production.
 - 2.** Clean Energy Jobs Training. Job training, apprenticeship programs, and contractor support initiatives that prioritize skills training and workforce development for economically disadvantaged and traditionally underemployed workers, including communities of color, women, persons with disabilities, and the chronically underemployed.
 - 3.** Priority will be given to programs that both reduce greenhouse gases and promote economic, social, and environmental benefits.
- D.** This Chapter creates a "Portland Clean Energy Community Benefits Committee ("Committee") made up of experts and communities members to:

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1. make funding recommendations to the Mayor and City Council; and
2. evaluate the effectiveness of the Fund in achieving the goals of this Chapter, as set forth in Subsection A.

7.07.030 Definitions.

Unless otherwise defined in this Section, terms that are defined in Portland's Business License Law, Chapter 7.02 of the Portland City Code, shall have the meanings provided therein.

- A. "City" means the City of Portland.
- B. "Clean renewable energy" means energy that is not produced from fossil fuels or nuclear power and which is produced from sun, wind, water, or other sources of renewable energy as identified by the City of Portland. In-river hydropower projects that harm or have the potential to harm salmonids or other aquatic species, or Native American or other communities that rely on such species shall not be appropriate for support under this Chapter.
- C. "Energy Efficiency" means a measure of how efficiently an appliance, building, organization or country uses energy. Examples of projects designed to increase energy efficiency include, but are not limited to:
 1. heating, lighting water and cooling efficiencies;
 2. repairs to increase the performance of the building envelope;
 3. community initiated energy plans;
 4. energy storage; and
 5. green building design.
- D. "Greenhouse gas reduction projects" means a project implemented within the City of Portland that reduces emissions or the presence of carbon dioxide or other compounds that contribute to climate change.
- E. "Greenhouse gas sequestration" means a project that involves long-term storage of carbon dioxide or other pollutants to mitigate or defer global warming. Examples include but are not limited to:
 1. protections and restoration of urban tree canopy;
 2. protection and restoration of greenspace and wetlands; and

3. agricultural practices that increase the capacity of the soil to store carbon, also referred to as “regenerative agriculture.”
- F.** “Green infrastructure” means a project that uses vegetation, soils, and other elements and practices to restore some of the natural processes required to reduce greenhouse gases while also benefiting water quality and creating healthier urban environments. Examples include but are not limited to:
1. urban tree canopy;
 2. green roofs;
 3. greenspace protection;
 4. bioswales; and
 5. green streets.
- G.** “Program[s]” means an organized effort by a qualified non-profit organization to achieve greenhouse gas reduction outcomes in a framework that delivers the related social justice outcomes identified in this Chapter. The qualified non-profit can apply solely or in partnership with other non-profit entities, government entities or for-profit businesses. These programs will be the primary way funds collected under this Chapter are distributed from the City to achieve the goals of the Chapter.
- H.** “Non-profit organization” means any organization recognized by the Internal Revenue Service (“IRS”) under Sections 501 and 521(a) of the Internal Revenue Code, in addition to other tax-exempt entities recognized by the IRS, such as schools.
- I.** “Regenerative agriculture” means farming and land management practices that reverse climate change by rebuilding soil organic matter and restoring degraded soil biodiversity.

7.07.040 Portland Clean Energy Community Benefits Fund.

- A.** The proceeds from this Large Retailer business surcharge, after deducting the reasonable costs of administering and collecting the revenue, shall be placed in a special fund to be designated as the “Portland Clean Energy Community Benefits Fund” (“Fund”).
- B.** Money in the Portland Clean Energy Community Benefits Fund shall be dedicated to the funding of the following, as described in more detail in Section 7.07.060:
1. Clean Energy Projects.

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- a.** Renewable energy and energy efficiency projects, with an emphasis on programs that benefit low income individuals and that broaden access to energy efficiency and clean renewable energy infrastructure to low income communities and communities of color;
 - b.** Regenerative agriculture and green infrastructure projects that result in sequestration of greenhouse gases and support sustainable local food production.
 - 2.** Clean Energy Jobs. Programs to increase access to and support for job training, apprenticeship programs and contractor support initiatives that prioritize skills training and workforce development for economically disadvantaged and traditionally under-employed workers, including communities of color, women, persons with disabilities, and the chronically underemployed.
 - 3.** Priority will be given to programs that both reduce greenhouse gases and promote social, economic and environmental benefits.
- C.** No more than 5 percent of the fund shall be spent on expenses associated with administering the fund once established. Specifically, the limitation will not apply to reasonably necessary expenses incurred in calendar year 2019 and 2020, while the program is being established and systems put in place for administering and collecting the surcharge and distributing funds.
- D.** The Fund shall be subject to a financial audit every year and a performance audit every 2 years, with the costs of any audit excluded from the 5 percent limitation for administrative expenses.
- E.** The Mayor and City Council shall generally accept the funding recommendations from the Committee. If the Mayor or Council determines that they will reject a funding recommendation, they shall provide the Committee with a written explanation of the decision.

7.07.050 The Portland Clean Energy Community Benefits Fund Committee.

- A.** There shall be established a “Portland Clean Energy Community Benefits Fund Committee (“Committee”) made up of experts and communities members to:
 - 1.** make funding recommendations to the Mayor and City Council; and
 - 2.** evaluate the effectiveness of the Fund in achieving the goals of this Chapter.
- B.** The Committee shall be made up of nine members who are residents of the City of Portland. Members shall be appointed by the Mayor for staggered 4-year terms,

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with the exception of the first Committee, which will have five members appointed for 4-year terms and four members appointed for 2-year terms.

- C.** For the first Committee, each City Council member (including the Mayor) may nominate a committee member who meets the qualifications set forth in Subsection D.3. Those five nominees, once appointed, shall then recommend four additional members to the Mayor for appointment. The Mayor shall appoint members consistent with the recommendations of each City Council member and the Committee, absent good cause. Thereafter, when a member resigns or their term expires, the Committee shall recommend a replacement member.
- D.** The Mayor shall appoint members of the Committee based on the following background and expertise:

 - 1.** The Committee shall reflect the racial, ethnic and economic diversity of the City of Portland. At least two members will be residents living east of 82nd Avenue.
 - 2.** Committee members shall have demonstrated commitment to furthering the goals of the City's Climate Action Plan and empowering historically disadvantaged groups, including women, people of color, people with disabilities, and the chronically underemployed.
 - 3.** At least one member of the Committee should have significant demonstrated experience in the following fields:

 - a.** Residential renewable energy and energy efficiency projects;
 - b.** Commercial renewable energy and energy efficiency projects;
 - c.** Workforce development, job training and apprenticeship programs that are targeted at reaching historically disadvantaged groups;
 - d.** Experience promoting minority-owned and/or women-owned businesses;
 - e.** Sustainable local food production, green infrastructure and greenhouse gas sequestration; and
 - f.** Financing tools that help make renewable energy and energy efficiency available to a broader spectrum of the public.
 - 4.** While Committee members may have experience in multiple fields, members with deep expertise in a single field will be encouraged in order to create a balanced Committee in which no one area of expertise dominates.

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E. The Committee shall:

1. Establish and maintain a public website that includes the Committee's membership, meeting agenda, meeting notes, governance standards and policy statements.
2. Solicit applications for funding from qualified nonprofit organizations registered with the State of Oregon. Requests for proposals as well as applications shall be posted on the Committee's website.
3. Evaluate applications for funding to determine whether they meet the allocation priorities set forth in Section 7.07.060, and whether the applicant nonprofit organization has the capacity to implement the program and project as described and to ensure fiscal accountability.
4. Make recommendations for funding to the Mayor, consistent with the allocation priorities set out in Section 7.07.060. All applications and final recommendations will be posted on the Committee's website. If the Mayor or City Council reject a funding recommendation, then their explanation for that decision will be posted on the Committee's website.
5. Adopt a methodology to measure, track and report to the public, the Mayor, and the City Council the effectiveness of the programs in implementing the City's Climate Action Plan in a manner that supports social, economic and environmental justice, including developing a diverse and well-trained workforce and contractor pool in the field of energy efficiency, renewables, green energy initiatives generally. All fund recipients shall file a report tracking their success in meeting the stated objectives.
6. Adopt a workforce and contractor equity plan to ensure that the work funded by the Committee is being performed by historically disadvantaged groups, including measurable and ambitious goals for the training and hiring of historically disadvantaged groups, including women, people of color, people with disabilities, and the chronically underemployed and measurable goals for contracting with businesses owned or operated by such groups. In developing the plan and goals, the Committee shall consult with workforce and contractor equity stakeholders as well as incorporate appropriate best practices from City procurements. Progress in meeting these goals shall be prominently displayed on the Committee's homepage and, if goals are not being met, shall be the Committee's top priority to address.
7. Make recommendations to the City Council on changes to this law as necessary to ensure the effectiveness of this Chapter in achieving the stated goals of implementing the City's Climate Action plan in a manner that supports social, economic and environmental justice.

- F.** Staff within the Bureau of Planning and Sustainability shall assist the Committee as needed to initiate and begin implementation of the provisions of this Chapter. Once the Committee is appointed and a framework for implementing this Chapter is in place, the Committee may decide to either continue to utilize Bureau of Planning and Sustainability staff to support its work or hire its own program support staff. Staff costs shall be included the calculation of administrative expenses.

7.07.060 Funding Allocation Priorities.

- A.** The Committee shall allocate funds consistent with the goals of this Chapter and within the following allocation percentages to the extent possible:
- 1.** Forty percent to sixty percent: Renewable energy and energy efficiency programs.
 - a.** This category includes residential, commercial and school-based projects.
 - b.** Programs broadening access to energy efficiency and renewable energy, such as community-initiated energy strategies and decentralized renewable energy, shall be a high priority.
 - c.** At least one half of the projects under this Subsection should specifically benefit low-income residents and communities of color.
 - d.** Funding agreements shall include terms to encourage rent stability including, but not limited to, provisions barring owners from using improvements funded by this Chapter as a basis for rent increases.
 - 2.** Twenty percent to twenty-five percent: Clean energy jobs training, apprenticeships and contractor support.
 - a.** This category is intended to support non-profit programs that directly facilitate and promote job training, pre-apprenticeship programs, apprenticeship programs and contractor training and support that are primarily aimed at supporting economically disadvantaged and traditionally underrepresented workers in the skilled workforce (including people of color, women, persons with disabilities and chronically un-employed).
 - b.** Programs supporting entry into union registered apprentice trades shall be a high priority.
 - 3.** Ten percent to fifteen percent: Regenerative agriculture and green infrastructure programs that result in sequestration of greenhouse gases.

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- a. This category is intended to reduce greenhouse gases by supporting sustainable local food production and green infrastructure programs that result in sequestration of greenhouse gases within the City.
 - b. Programs funded under this category should be designed to help demonstrate and promote the broader adoption of such practices, with a particular focus on low-income communities and communities of color.
 4. Five percent: Future Innovation.
 - a. This category is intended to provide the Committee with flexibility to fund a project that does not directly fall under one of the other categories, but which provides an opportunity to further the goals of this Chapter.
- B. In making funding decisions, the Committee shall consider the following:
 1. Co-benefits: Whether a project prioritizes greenhouse gas reduction outcomes in a manner that promotes the economic, social and environmental justice outcomes identified in this Chapter.
 2. Geographical diversity, with the goal of funding projects that operate at the neighborhood level (including east of 82nd Avenue) as well as citywide. The Committee may also consider providing support to neighborhood-scale organizations to develop and expand their organizational capacity to implement projects on a larger scale.
 3. Organizational representation. To ensure that the City’s work addressing climate change is inclusive as well as effective, at least 20 percent of the Committee’s Funds shall be awarded to non-profit organizations with a stated mission and track-record of programs that benefit economically disadvantaged community members, including people of color, women, people with disabilities, and the chronically unemployed. The qualified non-profit can apply solely or in partnership with other non-profit entities, government entities or for-profit businesses.
 4. Leveraging. Programs that would leverage additional governmental or private funding and therefore increase the overall program effectiveness should be priorities, but are not required.
 5. If there are insufficient qualified applicants, funds may be held over to the following year.

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6. If the Committee determines that the level of funding under any of these distribution categories is not meeting the climate or equity goals of the Chapter, the Committee may recommend that the City Council amend the Code to alter the allocation percentages.

C. Terms of Grants

1. U.S. made renewable energy products: Solar, wind, or other renewable energy systems purchases with monies provided by the Fund shall be predominantly manufactured in the United States unless a product meeting this criteria is unavailable or the cost is prohibitive.
2. Workforce and Contractor Equity Agreement. Recipients of Funds must agree to the Workforce and Contractor Equity Agreement developed by the Committee.
3. Family Wage Standards. Wage standards for projects funded by this Chapter shall be no less protective of workers than those contained in the State of Oregon's Energy Efficiency and Sustainable Technology Act, ORS 470.560(2)(g).

7.07.070 Severability Clause.

If any part, section or provision of this Chapter, or surcharge imposed pursuant to this Chapter is found unconstitutional, illegal or invalid, such a finding will affect only that part, section or provision of the Chapter and the remaining parts, sections or provisions shall remain in full force and effect.

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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.)

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CHAPTER 7.12 - FRANCHISES AND UTILITY PRIVILEGE TAX LAW

(Chapter replaced by Ordinance No. 186827,
effective October 31, 2013)

Sections:

- 7.12.010 Definitions.
- 7.12.020 Record of Franchises.
- 7.12.030 Authority to Inspect Franchisee Records and Require Reports.
- 7.12.040 Contents of Franchise.
- 7.12.050 Short Title and Administration.
- 7.12.060 Payment of Privilege Tax Required.
- 7.12.070 Privilege Tax Applicable to Other Cases.
- 7.12.080 Report of Earnings.
- 7.12.090 Time Payment of the Privilege Tax.
- 7.12.100 No Waiver or Estoppel.
- 7.12.110 Credits Allowable.
- 7.12.120 Interest and Penalty Applicable.

7.12.010 Definitions.

As used in this Chapter 7.12, the following terms are defined as provided in this Section:

- A. “Bureau”** means the Bureau of Revenue and Financial Services of the City of Portland, Oregon, along with its employees and agents, or such other bureau as the City Council may designate.
- B. “Director”** means the Bureau Director, as defined in Subsection 3.15.060 A., or the Director’s designee.

7.12.020 Record of Franchises.

- A.** Except as otherwise required by the City Charter, the Bureau shall keep a separate record of each franchise granted by the Council, including:
 - 1.** Compliance of franchisees with applicable franchise provisions;
 - 2.** Franchise fee payments made to the City by franchisees; and
 - 3.** Any franchise records and statements required by the City Charter.
- B.** Records and data required under the City Charter, including such information that the Bureau may require the franchisee to furnish to the City. Franchisees shall provide such records and information upon the Bureau’s request, at the franchisees’ own cost and expense.

7.12.030 Authority to Inspect Franchisee Records and Require Reports.

- A.** The Bureau shall have the right to inspect franchisee records during normal business hours upon reasonable notice, to determine compliance with obligations under applicable franchise provisions, including relevant financial franchise obligations.
- B.** The Bureau shall have the right to require, in writing and upon reasonable notice, reports and information as appropriate to determine whether franchisees are in compliance with their franchises. Franchisees shall cooperate with the Bureau and shall provide such information and documents as necessary for the City to evaluate compliance. The Bureau may specify the form and details of all franchise reports required under applicable franchise provisions.
- C.** In case any franchisee fails to provide access to records, or refuses to furnish information required under this Section when required so to do, on behalf of the City and if so directed by the City Council, the City Attorney may petition the Circuit Court of the State of Oregon for Multnomah County to compel such franchisee to furnish the information and to pay the City's costs of the court proceedings.
- D.** For purposes of this Section 7.12.030, "record" means written or graphic materials, however produced or reproduced, or any other tangible permanent record, including, without limitation, all letters, correspondence, memoranda, minutes, notes, summaries or accounts of telephone conversations, summaries or accounts of personal conversations or interviews, reports, notebooks, sketches, summaries or accounts of meetings or conferences, opinions or reports of consultants or experts, invoices, billings, statements of accounts, studies, appraisals, analyses, contracts, agreements, charts, graphs, photographs and any other writings or recordings of every kind and description, including magnetic media, and all sound recordings, to the extent related to the enforcement or administration of a franchise.

7.12.040 Contents of Franchise.

Each franchise granted by the City shall provide that the legal name and title of the franchisee, including where applicable the names of any members of a co-partnership or association to which any franchise may be granted, shall be kept on file in the Bureau and shall be open to public inspection. Each franchise shall also contain provisions setting forth and requiring that:

- A.** Each franchise granted by the City is subject to the Charter of the City of Portland and general ordinance provisions passed pursuant thereto, affecting matters of general City concern and not materially in conflict with the franchisee's existing contractual rights, then in effect or thereafter made effective.

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- B.** Each franchise granted by the City shall incorporate by reference Sections 10-201 through 10-218, inclusive, of the Charter of the City of Portland (1942 compilation, as revised in part by subsequent amendments), and made a part of such franchise.
- C.** Nothing in any franchise granted by the City shall be deemed to waive the requirements of the various codes and ordinances of the City regarding permits, fees to be paid or the manner of construction.
- D.** Franchisees shall comply with all applicable City ordinances, resolutions, rules and regulations adopted or established pursuant to the City's lawful authority.
- E.** Unless specifically otherwise declared by the City Council, nothing in any franchise granted by the City shall be deemed a waiver by the City of the rights of the City under applicable law.

7.12.050 Short Title and Administration.

- A.** Purpose. Section 7.12.050 through Section 7.12.120 shall be known as the Utility Privilege Tax Law. The authority to impose utility privilege taxes is granted to the City by Oregon statutes and is exercised to the fullest extent of the state laws. The revenues generated by the Utility Privilege Tax Law are for general revenue purposes and are not regulatory.
- B.** Administration.
 - 1.** The Utility Privilege Tax Law shall be administered by the Director. The Director may adopt procedures, forms, and written policies for administering the Utility Privilege Tax Law.
 - 2.** Authority granted to the Director may be delegated, in writing, to employees or agents of the Bureau.
 - 3.** The Director may, upon request, issue written interpretations of how the Utility Privilege Tax Law applies in general or to specific circumstances.
 - 4.** Nothing in the Utility Privilege Tax Law precludes the informal disposition of controversy by the Director in writing, whether by stipulation or agreed settlement.
 - 5.** The Director may implement procedures, forms, and written policies for administering the provisions of the Utility Privilege Tax Law.
 - 6.** The Director may adopt rules relating to matters within the scope of this Chapter to administer compliance with Utility Privilege Tax Law.

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- a.** Before adopting a new rule, the Director must hold a public hearing. Prior to the hearing, the Director will notify utilities and telecommunications utilities. Such notice, which may be provided by mail or electronic means, must be distributed to utilities and telecommunications utilities not less than 10 nor more than 30 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.
- b.** 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.
- c.** Notwithstanding Subsections a. and b., 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.

7.12.060 Payment of Privilege Tax Required.

- A. Definitions.** As used in the Utility Privilege Tax, the following terms are defined as provided in this Section:

 - 1. "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, or for the furnishing or sale of communications or associated services, and for use, rental, or lease of operating facilities of the utility engaged in such business. "Gross Revenues" shall not include earnings from interstate business, or earnings from the business of the United States government.

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2. **“Telecommunications Utility”** has the meaning provided in ORS 759.005(9) (2011).
 3. **“Utility”** means any electric cooperative, people’s utility district, privately-owned public utility or heating company.
- B.** Any telecommunications utility using or occupying a street, alley or highway for other than travel within the City without a franchise for a period of 30 days or longer shall pay a privilege tax. The privilege tax imposed upon telecommunications utilities under this Subsection shall be in an 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.
- C.** Any utility using or occupying a street, alley, or highway within the City without a franchise for a period of 30 days or longer shall pay a privilege tax for the use and occupancy of any street, alley or highway. The privilege tax imposed under this Subsection shall be in an amount of 5 percent of the utility’s Gross Revenues of the City for each consecutive 3 month period. The privilege tax shall be computed as of 30 days after the commencement of business or 30 days after the expiration of any franchise or other authority 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.
- D.** In the event a franchise is granted to any utility subject to the privilege tax under the Utility Privilege Tax Law 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.

- A.** The terms of the Utility Privilege Tax shall not apply to any holder of a current, valid franchise granted or issued by the Council.
- B.** The terms of Section 7.12.060 through Section 7.12.120 shall apply to any utility or telecommunications utility using or occupying a street, alley or highway within

the corporate limits of the City 30 days after the expiration of the utility or telecommunications utility's franchise.

7.12.080 Report of Earnings.

Each utility and telecommunications utility subject to the privilege tax as provided in Section 7.12.060 shall file with the Bureau a report of the revenues earned within the corporate limits of the City for each consecutive 3 month period in the form and manner specified by the Bureau ("quarterly report").

- A. 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 February 15, May 15, August 15, and November 15 of each year.
- B. If a franchise is granted to a utility or telecommunications utility which is otherwise subject to the provisions of the Utility Privilege Tax Law, the utility or telecommunications utility shall file a report with Bureau 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.

- A. Utilities and telecommunications utilities shall submit quarterly payment of Utility Privilege Taxes under Section 7.12.060 on or before February 15, May 15, August 15, and November 15 of each year and shall be accompanied by the quarterly report of the revenues for that payment period, as provided under Section 7.12.080.
- B. If a utility or telecommunication utility fails to pay the privilege tax under the Utility Privilege Tax Law, the City Attorney may 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, together with any applicable penalties and accrued interest.

7.12.100 No Waiver or Estoppel.

Nothing in the Utility Privilege Tax Law, 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.

Any amount which any utility or telecommunications utility may have paid to the City under the terms of any provision of franchise, permit or ordinance in lieu of franchise granted by the City Council shall be credited against the amount or amounts which have accrued or shall have accrued under the Utility Privilege Tax Law.

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7.12.120 Interest and Penalty Applicable.

- A.** Interest will be assessed on any unpaid privilege tax at the rate of 0.833 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 the payment.

 - 1.** For purposes of calculating interest under Subsection 7.12.120 A., the amount of the privilege tax due shall be reduced by the amount of any privilege tax payments received by the Bureau on or before the due dates established in the Utility Privilege Tax Law.
 - 2.** Interest amounts properly assessed in accordance with this Section may not be waived or reduced by the Director.
- B.** 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 Bureau, fails, neglects, or refuses to file with the Bureau the quarterly statement of Gross Revenues of such person, association or corporation shall be subject to the penalties, including the criminal penalties, provided for violations of Section 7.02.700 Penalties.

CHAPTER 7.14 - UTILITY LICENSE LAW

(Chapter 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.
- 7.14.070 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.

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.

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- 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, 185756, 186827, 187339 and 187717, effective June 3, 2016.)

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- A. **“Bureau”** means the Bureau of Revenue and Financial Services 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, from the furnishing or sale of communications or associated services by or from a telecommunications or cable communications business, or any revenue earned by a Utility within the City from the use, rental, or lease of operating facilities, or any revenue earned within the City for supplying electricity or natural gas. 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.
 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).
 4. The calculation of gross revenues for telecommunications utilities for purposes of the Utility License Fee shall not include revenues from any tariffed or non-tariffed charge or service applicable to any connection, circuit or equipment which brings an E9-1-1 call to the appropriate

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responding Public Safety Answering Point, regardless of where the E9-1-1 call is originated.

- 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;
 - 7. mobile service within the meaning of 47 U.S.C. § 153(33) (2012) and

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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, or cable, telecommunications, or other services through or associated with telephone or coaxial cable, and other operations for public service. “Utility” does not include transportation service or railroad operations.

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.

7.14.060 Fees and Payment.

(Amended by Ordinance Nos. 185756 and 186366, effective January 3, 2014.)

- A. Except as provided in Section 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:

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Electrical Utility	5.0 percent
Gas Utility	5.0 percent
Sewer Utility	5.0 percent
District Heating or Cooling Utility	5.0 percent
Water Utility	5.0 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.

(Repealed by Ordinance No. 186366, effective January 3, 2014.)

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.
 - 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

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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.

7.14.110 Civil Penalties.

(Amended by Ordinance No. 187717, effective June 3, 2016.)

- A.** The Director may assess civil penalties for any of the following violations of the Utility License Law:
 - 1.** Any failure to file a license application at the time required under the Utility License Law;
 - 2.** Any failure to pay the utility license fee when due;
 - 3.** Any failure to file a utility license fee report when due;
 - 4.** Any failure to provide or make available all books, financial records, papers, invoices, documents, data and related information when required by the Director; or,

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5. For any person to make any false statement on any license application or utility license fee report or to provide false information in any investigation or audit conducted pursuant to the Utility License Law.
- B. The Director may assess civil penalties for any violation under Subsection 7.14.110 A. of the greater of either a minimum of \$500 per occurrence or up to two percent (2%) of the utility's gross revenues subject to the Utility License Law for the period during which the violation occurred.
- C. The Director may assess a civil penalty of \$500 if a person fails to file a reporting form as required under Section 7.14.080.
- D. In assessing civil penalties under this Section, the Director shall produce a written decision, identifying the violation, the amount of the penalty, and the basis for the decision. In making such determination, the Director shall consider the following criteria:
 1. The extent and nature of the violation;
 2. Any benefits to the licensee and any impacts to the City or the general public, financial or otherwise, resulting from the violation;
 3. Whether the violation was repeated and continuous, or isolated and temporary;
 4. Whether the violation appeared willful (characterized primarily by substantial acts of commission) or negligent (characterized primarily by substantial acts of omission);
 5. The magnitude and seriousness of the violation;
 6. The City's costs of investigating the violation and correcting or attempting to correct the violation; and,
 7. Any other factors the Director deems relevant in the particular case.
- E. The Director may impose civil penalties under this Section only after having given written notice of the potential for assessment of civil penalties identifying the violation serving as the basis for the assessment.
- F. The Director may waive or reduce any civil penalty for good cause, according to and consistent with written policies.

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;
- 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.

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**CHAPTER 7.16 - CHARITABLE
SOLICITATIONS**

(Chapter repealed by Ordinance No. 157640,
effective July 25, 1985.)

**CHAPTER 7.18 - LIQUOR LICENSE
RECOMMENDATIONS**

(Chapter repealed by Ordinance No. 174900,
effective September 13, 2000.)

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CHAPTER 7.22 - STREET AND SIDEWALK USE PERMITS

(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.

(Amended by Ordinance No. 186746, effective August 6, 2014.)

- A.** The Street and Sidewalk Use Coordinator of the Portland Bureau of Transportation is authorized to issue street and sidewalk use permits.
- B.** Adoption of Administrative Regulations. The Director of the Portland Bureau of Transportation 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 Portland Bureau of Transportation 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 Portland Bureau of Transportation shall publish a notice regarding the proposed administrative regulations, and shall make them available for public review and written comments.
 - 2.** No sooner than thirty days from the publication of the notice, the Director of the Portland Bureau of Transportation may adopt the proposed administrative regulations. All administrative regulations adopted by the

Bureau Director shall be filed in the office of the Portland Bureau of Transportation. 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 Portland Bureau of Transportation 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:

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- 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.

**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.

(Amended by Ordinance No. 186746, effective August 6, 2014.)

- 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 Portland Bureau of Transportation officer, employee or agent.

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- 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 Portland Bureau of Transportation 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.
- 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.

(Amended by Ordinance No. 186746, effective August 6, 2014.) 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

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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 Portland Bureau of Transportation.
- 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.
- 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,

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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.
- 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.

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- 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.

(Amended by Ordinance No. 186746, effective August 6, 2014.)

- 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 Portland Bureau of Transportation, 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 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,

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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 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.

(Amended by Ordinance No. 187514, effective January 15, 2016.) Except for towing allowed under ORS 98.854(3), 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 PPI Tower first contacts the private parking facility owner or agent at the time of the tow; and
- C. The private parking facility fully complies with this Chapter and the PPI administrative rules; and,
- D. The vehicle is towed directly to the PPI tower's storage facility within the Portland city limits; and,
- E. 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

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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,
- 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,

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- 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,
- 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,

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- 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.

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.

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- 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.
- 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.

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- 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;
 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.

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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.
 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.

(Amended by Ordinance No. 186746, effective August 6, 2014.)

- 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 Portland Bureau of Transportation shall

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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.
4. Staff. The Portland Bureau of Transportation 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.

7.25.010 Purpose.

(Amended by Ordinance No. 189333, effective February 1, 2019.) The purposes of this Chapter 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.

(Amended by Ordinance No. 189333, effective February 1, 2019.) The If any provision of this Chapter 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 Chapter.

7.25.030 Definitions.

(Amended by Ordinance Nos. 186267, 186746 and 189333, effective February 1, 2019.) Except where the context requires otherwise, the following words and phrases have the definitions given in Section 7.25.030:

- A. “Administrative Fee”** means a fee assessed by a department of motor vehicles for the purpose of determining the registered owner of a vehicle.

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- B. "Boot"** means a mechanical device attached to a vehicle to prevent its movement.
- C. "Director"** means the Director of the Revenue Division of the Bureau of Revenue and Financial Services or a designee.
- D. "Operator"** means any person or entity whose business includes assessing and collecting penalties at Registered Facilities.
- E. "Park"** means to leave a vehicle standing, while the driver has exited the Registered Facility, or to leave a vehicle standing for more than 5 minutes.
- F. "Parker"** means any person in control of any vehicle that is parking at a Registered Facility.
- G. "Parking Fee"** means an amount collected in addition to the Penalty in pay and park facilities to compensate facility owners.
- H. "Payment Device"** means any device capable of accepting or receiving parking fee payments by cash or credit card and providing proof of payment.
- I. "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.
- J. "Penalty Payment Letter"** means the letter sent by the Operator to the last-known 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.
- K. "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.
- L. "Registered Facility"** means a parking lot or structure that is accessible to the public that has been registered with the Revenue Division and is either:
 - 1.** A non-pay private parking facility at which there is no charge for daily or transient parking, and parking or storage of vehicles is limited by time or authorization by the property owner/operator, and where the limitations are enforced by issuance of Penalty Notices; 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.

3. Registered Facility does not include property used for governmental purposes by any agency or special district if the agency or management of the special district performs their own enforcement of the parking policies on the property. If the agency or manager of the special district contracts with another entity to enforce parking policies, the property must be registered with the Revenue Division.

M. “Second Penalty Payment Letter” means the letter 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 Payment Letter.

7.25.040 Authorization.

(Amended by Ordinance No. 189333, effective February 1, 2019.)

- 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 Chapter. 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 Chapter 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 Division. Copies of all rules will be made available to the public upon request.

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3. Notwithstanding Subsections 7.25.040 C.1. and 2., 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.

(Amended by Ordinance Nos. 186267, 186746 and 189333, effective February 1, 2019.)

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 Division:
 1. The name, address and telephone number of the applicant;
 2. The name, email address and telephone number of the person that will be the point of contact for the Division. This person will be available to respond to inquiries, informational requests, or complaints at all times during normal business hours from 9 a.m. to 5 p.m. Monday through Friday;
 3. Proof of valid insurance as described in this Chapter;
 4. A sample copy of the proposed Penalty Notice;
 5. A sample copy of the proposed Penalty Payment Letters;
 6. The name, address and telephone number of any collection agency that may be employed by the Operator for collection of delinquent payments;
 7. 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 location of the facility as provided on the original registration application;

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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, if an operator collects the Administrative Fee, that the 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 Division 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 Division's mailing address and website address for the Parking Penalty Notice Complaints webpage 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 Division must approve all notices and letters. If a proposed Penalty Notice or Penalty Payment Letter is rejected by the Division, 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 Division before they are implemented.
- E. The Director shall reject any incomplete application.

7.25.060 Registration of a Facility.

(Amended by Ordinance Nos. 186746 and 189333, effective February 1, 2019.) No Operator shall assess any penalties at any facility unless it is registered with the Revenue Division.

- A. Application. To register a facility with the Division an operator must submit:
1. A written request from the Operator that includes the facility's number (designated by the Operator) and the facility's location;
 2. A drawing of the facility showing adjacent street names, facility entrances and exits, and location of Payment Devices;

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3. A nonrefundable registration fee for each facility in an amount as required by Administrative Rule.
- 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 Division 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.

(Amended by Ordinance No. 189333, effective February 1, 2019.) Payment Devices must be installed at pay and park facilities in locations convenient and accessible to all Parkers.

7.25.080 Signage Requirements.

(Amended by Ordinance Nos. 186267 and 189333, effective February 1, 2019.) 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.

Notwithstanding the requirements in Section 7.25.080, the Director may approve a location that is more than 10 feet from the entrance or is not within 2 feet of the property line due to physical characteristics of the property. The Director must give written approval of any exceptions before a sign is posted.

If vehicles are subject to being towed, the facility must comply with the signage requirements in Chapter 7.24 and the Administrative Rules for Towing from Private Property.

If a facility is subject to monitoring by a registered operator, the signs at the payment station or at the entrance of a non-pay facility must include a warning that the facility may be monitored.

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.** at any facility where a Parker receives a printed receipt, that proof of payment must be displayed and clearly visible through the windshield; and
 - c.** that vehicles parked without valid proof of payment or permit are subject to a Penalty.

The center of all signs required at the payment station must be at least 4 feet from the ground.

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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:
 - 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; and
 - e. 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 and parking spaces are assigned to specific businesses, the parking spaces must be marked (or signs posted) clearly indicating which spaces are reserved for each business.

- C. Notwithstanding Subsections 7.25.080 A. and B., if the Director determines that the requirements are not sufficient to protect the parking public due to a facility's site-specific conditions, configurations, or location, the Director may impose additional facility requirements. These requirements may include, but are not limited to, additional lighting, signage, landscaping, pavement markings, and restrictions on the hours during which penalties may be issued.

7.25.090 Assessment of Penalties.

(Amended by Ordinance No. 189333, effective February 1, 2019.)

- 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.

The Operator may assess and collect a Parking Fee in addition to the Penalty. Parking Fees must be paid by the Operator to the owner of the facility and must not exceed the maximum authorized by Administrative Rule.

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- 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 assessed to vehicles described in Subsections 7.25.090 A. and B. 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.

(Amended by Ordinance No. 189333, effective February 1, 2019.)

- 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 or given to the Parker,
 - 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.

(Amended by Ordinance Nos. 186267 and 189333, effective February 1, 2019.)

- 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 last-known 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;

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3. The schedule of increases for continued non-payment as described in Chapter 7.25;
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 Division if attempts to resolve any disputes with the Operator have been unsuccessful;
6. The mailing address of the Division and the website address for the Parking Penalty Notice Complaints webpage, and
7. A statement to the effect that the Division will only investigate complaints by Parkers regarding the issuance of a Penalty Notice filed within 90 days of the date of the first Penalty Payment Letter.

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, 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 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.

(Amended by Ordinance No. 189333, effective February 1, 2019.) It is unlawful for any person to tow any vehicle parked at any Registered Facility without the permission of the Parker unless:

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- 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 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 Facility. The notice must also state the total amount due for outstanding Penalties, the issue date and Registered 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 Division 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; or
- D.** The vehicle is parked at any of the Operator's Registered Facilities, and:

 - 1.** Within the previous 90-day 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

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2. During that time the Operator affixed notices to the vehicle as provided for in this Chapter; and
3. The Operator requested the registered owner's name and address from the appropriate State licensing department but received invalid information due to a new owner failing to register the vehicle, or was not able to request information due to a State's restrictions on the release of registered owner information or because the license plate and/or vehicle identification number were unobtainable; and
4. Such towing is performed in compliance with Chapter 7.24 Private Property Impound Towing.

7.25.130 Complaint Handling Procedures.

(Amended by Ordinance Nos. 186267, 186746 and 189333, effective February 1, 2019.)

- 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 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 Division and the address for the Parking Penalty Notice Complaints webpage and a statement that the Parker or registered owner of the vehicle may submit a written complaint to the Division 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.
 5. The Operator must respond in writing within 10 days to inquiries from the Director regarding complaints or operations of a Registered Facility.
 6. Penalties must not increase from the time a complaint is received by the Operator or the Director, pending final resolution.
 7. 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.

8. If the Operator reported an unpaid Penalty to a credit agency, the Operator must notify the credit agency immediately upon voiding any Penalty.

B. Upon receipt of a complaint the Director shall conduct an investigation.

1. Upon a finding by the Director that there is a basis in Chapter 7.25 for the cancellation of Penalty, 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.

(Amended by Ordinance Nos. 186267 and 189333, effective February 1, 2019.)

- A.** 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.
- B.** For the purpose of investigating complaints and to aid in enforcement of the requirements of this Chapter, the Director may require the Operator to report financial and operating data listed in Subsection 7.25.140 A., in such form as the Director requires.
- C.** The Operator must compile the necessary data and submit reports to the Director within 10 days of a written request.

7.25.150 Insurance Required.

(Amended by Ordinance No. 189333, effective February 1, 2019.) 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.

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- 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.

(Amended by Ordinance No. 189333, effective February 1, 2019.) 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.

(Amended by Ordinance No. 189333, effective February 1, 2019.) 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

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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. 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.

(Amended by Ordinance No. 189333, effective February 1, 2019.) 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.

(Repealed by Ordinance No. 189333, effective February 1, 2019.)

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CHAPTER 7.26 - REGULATION OF PAYDAY LENDING

(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.

(Amended by Ordinance No. 186746, effective August 6, 2014.) 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 Division.
- D.** “Payday Lender” means a “lender” in the business of making payday loans as defined in ORS 725.600.
- 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.

(Amended by Ordinance No. 186746, effective August 6, 2014.)

- 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 Division 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 Division and the Office of the City Auditor in compliance with PCC

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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.
- 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.

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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.

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- E. When an emergency condition exists, the Director may issue a stop work order orally. The Director shall then issue a written notice under Subsection A. above within 24 hours.

10.70.040 Erosion, Sediment and Pollutant Control Plan for Non-Permitted Activities

If non-permitted ground disturbing activities violate provisions of this Title, the responsible party may be required to submit an ESPC Plan to demonstrate what measures will be revised or added to comply with the requirements of this Title.

10.70.050 Voluntary Compliance Agreement.

- A. General. When a violation of this Title has occurred, as an enforcement option, the Director may enter into a Voluntary Compliance Agreement with the responsible party.
- B. Contents. A Voluntary Compliance Agreement shall set forth the actions to be taken by the responsible party to correct violations of this Title. It may also set forth the actions to mitigate the impacts of violations. The agreement shall set forth a schedule for correction and completion of the mitigation.
- C. Effect of Agreement.
1. A Voluntary Compliance Agreement is not enforceable by any third party. By entering into a Voluntary Compliance Agreement, the responsible party waives the right to an appeal under Section 10.70.060.
 2. The Director may reduce or waive civil penalties if the responsible party performs all the terms of the Voluntary Compliance Agreement. The Director may not waive civil penalties in any case where the responsible party is a repeat violator. If the responsible party fails to perform according to the terms of the Voluntary Compliance Agreement, the Director shall assess civil penalties from the date the violation occurred for each violation addressed in the Agreement.
 3. Subject to the approval of the Director, the responsible party may elect to substitute in-kind services for up to 90% of the amount of all assessed penalties. The Director shall determine the actions that can be deemed in-kind services.

10.70.060 Civil Penalties

(Amended by Ordinance No. 189413, effective March 6, 2019.) Violations of this Title may result in any of the following penalties:

- A. Civil Penalties.

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1. For each violation, a civil penalty may be assessed of up to \$1,000 per day. Each day a violation exists shall be considered a separate violation.
2. The Director shall consider the following criteria in determining the amount of any civil penalty to be assessed under this Section:
 - a. The nature and extent of the person's involvement in the violation;
 - b. The benefits, economic, financial or otherwise, accruing or likely to accrue as a result of the violation;
 - c. Whether the violation was isolated and temporary, or repeated and continuous;
 - d. The magnitude and seriousness of the violation;
 - e. The City's costs of investigation and remedying the violation;
 - f. Whether any criminal charges have been issued against the person; and
 - g. Any relevant, applicable evidence bearing on the nature and seriousness of the violation.

B. Administrative Enforcement Fees.

1. The Director may charge a penalty in the form of a monthly enforcement fee for each project found in violation of this Title that meets the following conditions:
 - a. The project is subject to a notice of violation or stop work order as described in Sections 10.70.020 and 10.70.030;
 - b. A response period of 30 days has passed since the effective date of the notice of violation or stop work order; and
 - c. The project remains out of compliance with the initial notice of violation or stop work order or any subsequent notice of violation or stop work order.
2. The amount of the monthly enforcement fee shall be:
 - a. For projects with development in an Environmental Overlay Zone: \$800.00
 - b. For all other projects: \$400.00

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If all violations are not corrected within six months from the date of the initial notice of violation, subsequent enforcement fees shall be twice the amount stated above.

3. Once the monthly enforcement fees begin, they shall continue until all violations listed in the first or any subsequent notice of violation have been corrected, inspected and approved.
4. Whenever the responsible party believes that all violations listed in the first or any subsequent notice of violation have been corrected, they shall notify the Director. Upon receipt of such notice, the Director shall promptly schedule an inspection of the project and shall notify the responsible party if any violations remain uncorrected.
5. When a project meets the conditions for charging an enforcement fee as described in this Section, the Director shall file a statement with the Revenue Division that identifies the property, the amount of the monthly fee, and the date from which the charges are to begin. The Revenue Division shall then:
 - a. Notify the responsible party of the assessment of enforcement fees;
 - b. Record a property lien in the Docket of City Liens; and,
 - c. Bill the responsible party monthly for the full amount of the enforcement fees owing, plus additional charges to cover the administrative costs of the Revenue Division; and
 - d. Maintain lien records until:
 - (1) The lien and all associated interest, penalties, and costs are paid in full; and
 - (2) The Director certifies that all violations listed in the first or any subsequent notice of violation have been corrected.

10.70.070 Appeal of Notice of Violations and Penalties.

- A. Whenever the responsible party has been given a written notice or order pursuant to this title and has been directed to make any correction or to perform any act and the responsible party believes the finding of the notice or order was in error, the responsible party may have the notice or order reviewed by the Director. If a review is sought, the responsible party shall submit a written request to the Director within 10 days of the date of the notice or order. Such review shall be conducted by the Director. The responsible party requesting such review shall be given the opportunity to present evidence to the Director. Following a review, the Director

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shall issue a written determination. Nothing in this Section shall limit the authority of the Director to initiate a code enforcement proceeding under Title 22.

- B.** A responsible party may appeal a written notice of a violation or civil penalty to the Codes Hearings Officer in accordance with Title 22 of the City Code.

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CHAPTER 10.80 - NUISANCE ABATEMENT

Sections:

- 10.80.010 Summary Abatement Authorized.
- 10.80.020 Notification Following Summary Abatement.
- 10.80.030 Financial Responsibility.

10.80.010 Summary Abatement Authorized.

The Director may determine that the failure or non-existence of erosion, sediment and pollutant control measures as required by this Title constitute a nuisance presenting an immediate threat of injury to the public health, the environment, or public or private property. Such nuisances shall be subject to the requirements of this Chapter. In cases where the Director determines it is necessary to take immediate action in order to meet the purposes of this Title, summary abatement of such nuisance is authorized.

10.80.020 Notification Following Summary Abatement.

- A.** When summary abatement is authorized by this Title, the decision regarding whether or not to use summary abatement shall be at the Director's discretion. In case of summary abatement, notice to the responsible party prior to abatement is not required. However, following summary abatement, the Director shall post upon the development site liable for the abatement a notice describing the action taken to abate the nuisance.
- B.** Additional Notification by Mail.
 - 1.** Upon posting of the notice described in Subsection A above, the Director shall cause a notice to be mailed to the owner at the owner's address as recorded in the county assessment and taxation records for the property. The mailed notice shall include the content described in Subsection 10.70.020 B.
 - 2.** An error in the name of the property owner or address listed in the county assessment and taxation records shall not render the notice void but in such case the posted notice shall be deemed sufficient.

10.80.030 Financial Responsibility.

(Amended by Ordinance No. 189413, effective March 6, 2019.)

- A.** Whenever a nuisance is abated under this Title, the Director shall keep an accurate account of all expenses incurred including a civil penalty of \$500 plus 100% of contractor's costs for each nuisance abated. When the City has abated a nuisance maintained by an owner of real property, for each subsequent nuisance which is abated by the City within two consecutive calendar years concerning real property, owned by the same person, an additional civil penalty of 50 percent (minimum of

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\$100) of the cost of abatement shall be added to the costs charges and civil penalties provided for in this Subsection. The additional civil penalty shall be imposed without regard to whether the nuisances abated by the City involve the same real property or are of the same character.

- B.** When a property meets the conditions for costs or penalties as described in this Section, the Director shall file a statement of such costs or penalties with the Revenue Division. Upon receipt of the statement, the Revenue Division shall mail a notice to the property owner, stating the City's intent to assess the property in question the amount due plus charges to cover the costs of the Revenue Division. In the event that amount due set forth in the notice is not paid in full within 30 days of the date of notice, the Revenue Division shall enter the amount of the unpaid balance, plus charges to cover administrative costs of the Revenue Division, in the Docket of City liens which shall therefore constitute a lien against the property.

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the property owner or responsible party to correct the violation using any of the following remedies.

1. Tree Protection Re-inspection Fee. When an inspection of a site subject to development under an approved Tree Plan finds that tree protection measures have not been installed as required or are not properly maintained, the City may issue a correction notice and require the responsible party to pay a Tree Protection Re-inspection Fee. Payment of the fee is required prior to final inspection.
 2. Tree Plan Revision. For tree removal or injury which results in removal, and where the tree was not required to be preserved by virtue of a land use approval, the BDS Director may require the applicant to prepare a revision to the approved plans and demonstrate conformance with the applicable tree preservation and tree density standards in Chapter 11.50, including any additional tree planting, payments, or preservation of alternate trees.
- E. Additional remedies for Heritage Trees. In addition to the remedies provided by any other provision of this Chapter, when the City Forester determines that a violation of this Title has occurred involving a Heritage Tree, the City Forester may seek additional remedies as described below.
 1. Restoration Fees.
 - a. Private Heritage Trees. The City may require any person to pay into the City's Tree Planting and Preservation Fund for the damage or removal of a Heritage Tree, according to the City's adopted Title 11 Tree Fee Schedule.
 - b. City and Street Heritage Trees. The City may require any person to pay into the City's Urban Forestry Fund for the damage or removal of a Heritage Tree, according to the City's adopted Title 11 Tree Fee Schedule.

11.70.090 Enforcement Actions.

(Amended by Ordinance Nos. 188278 and 189413, effective March 6, 2019.)

- A. General. The following list of enforcement actions gives the City Forester and BDS Director additional means to obtain compliance with the requirements of this Title. The rights and remedies provided in this Chapter are cumulative, are not mutually exclusive, and are in addition to any other rights, remedies and penalties available to the City under any other provision of law. The City Forester or BDS Director may adopt administrative rules to establish priorities and guidelines for the following enforcement actions.

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- B.** Standard enforcement actions. Standard enforcement actions may be invoked for general violations of this Title, including conducting tree activities without a required tree permit. In addition to these standard actions, the City Forester may take additional actions for City and Street Tree violations as described in Subsection C.
- 1.** Civil penalties. The City Forester or BDS Director may issue a fee, penalty notice or citation, as applicable, to any person who cuts, removes, prunes or harms any tree without a permit as required by this Title or is otherwise in non-compliance with any term, condition, limitation or requirement of an approval granted under this Title, and require payment of a civil penalty up to \$1,000 per day. Each tree constitutes a separate violation, and each day that the person fails to obtain a permit or remains in non-compliance with a permit or tree plan may also constitute a separate violation.
 - 2.** Initiating a proceeding before the Code Hearings Officer. The City Forester and BDS Director are each authorized to initiate proceedings before the Code Hearings Officer, as stated in the procedures in Title 22 Hearings Officer, to enforce the provisions of this Section when the responsible person fails to respond to the City Forester or BDS Director's notice or citation as described in Subsection B.1, above. The Hearings Officer may order any party to:
 - a.** Abate or remove any nuisance;
 - b.** Install any equipment or plant trees necessary to achieve compliance;
 - c.** Pay to the City of Portland a civil penalty of up to \$1,000 per day. In determining the amount of any civil penalty to be assessed, the Code Hearings Officer will consider the following:
 - (1)** The nature and extent of the property owner or responsible party's involvement in the violation;
 - (2)** The benefits, economic, financial or otherwise, accruing or likely to accrue as a result of the violation;
 - (3)** Whether the violation was isolated and temporary, or repeated and continuing;
 - (4)** The magnitude and seriousness of the violation;
 - (5)** The City's cost of investigation and remedying the violation;
 - (6)** Any other applicable facts bearing on the nature and seriousness of the violation.

d. Undertake any other action reasonably necessary to correct the violation or mitigate the effects thereof.

a. Development permits or land use reviews. When a violation of this Title has occurred on a site, the BDS Director may refuse land use or development permit applications until the violation has been satisfactorily resolved.

b. Tree permits. When a violation of this Title has occurred, the City Forester may delay intake or review of applications for tree permits from the property owner or other applicant, as identified on the violated permit application, until the violation has been satisfactorily resolved.

4. Disqualification from City contracts. At their discretion, the City Forester or Responsible Engineer may refuse to consider any arborist, builder, landscaper, contractor, or tree service that has been cited for any tree activity in violation of this Title or submitted a falsified report for the criteria required in this Title, as a responsible bidder for any City contracts for a period of 2 years from the date of violation or falsified report.

5. Removal from City's list of local tree care providers. The City Forester may remove any arborist, builder, landscaper, contractor, or tree service that refuses to correct a violation, has been fined for any tree violation of this Title, or submitted a falsified report for the criteria required in this Title, from the list of contractors providing related services for a period of 2 years from the date of violation or report.

6. Abatement. Whenever a responsible party or property owner conducts a prohibited action per Section 11.70.050, the City may pursue abatement proceedings to remove the nuisance. Whenever the City has declared that such nuisance exists, the property liable for the nuisance will be directed to abate the nuisance by following the notice and abatement procedures outlined in this Chapter.

7. Stop Work Orders. When any work is being conducted in violation of this Title, and public health or safety is threatened, the City Forester or BDS Director may issue a stop work order as stated in the requirements of Section 3.30.080.

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- a.** The City may charge fees and penalties in the form of a monthly enforcement penalty for each property found in violation of this Title that meets the following conditions:
 - (1)** The property is a subject of a notice of violation of this Title as described in Section 11.70.070;
 - (2)** A response period of 30 days has passed since the effective date of the initial notice of violation; and
 - (3)** The property remains out of compliance with the initial notice of violation or any subsequent notice of violation.
- b.** The amount of the fees and penalties in the monthly enforcement penalty shall be charged as set forth in the Title 11, Trees Fee Schedule, as approved by the City Council.
- c.** Properties in violation for 3 months from the initial notice of violation will be assessed fees and penalties in the form of an enforcement penalty that is twice the amount as listed in the Title 11, Trees Fees Schedule, as approved by the City Council.
- d.** Whenever the owner believes that all violations listed in the first or any subsequent notice of violation have been corrected, they shall notify the Director. Upon receipt of such notice, the Director will promptly schedule an inspection of the property and notify the owner if any violations remain uncorrected.
- e.** Once monthly enforcement penalties begin, they will continue until all violations listed in the first or any subsequent notice of violation have been corrected, inspected and approved.
- f.** When a property meets the conditions for charging fees and penalties as described in this Section, the BDS Director or City Forester, as applicable, will file a statement with the Revenue Division that identifies the property, the amount of the monthly penalty, and the date from which the charges are to begin. The Revenue Division will then:
 - (1)** Notify the property owner of the assessment of enforcement penalties;
 - (2)** Record a property lien in the Docket of City Liens;
 - (3)** Bill the property owner monthly for the full amount of enforcement penalties owing, plus additional charges to cover administrative costs of the Revenue Division; and

- (4) Maintain lien records until the lien and all associated interest, fees, penalties, and costs are paid in full; and the BDS Director or City Forester, as applicable, certifies that all violations listed in the original or any subsequent notice of violation have been corrected.

C. Additional Enforcement Actions for City and Street Tree Violations. The City Forester may impose the following additional actions for City or Street Tree violations.

1. Criminal penalties. In addition to any other remedy provided in this Chapter, the City Attorney, acting in the name of the City, may seek Criminal Penalties in any court of competent jurisdiction. The court may require that any responsible party violating any provision of this Title will, upon conviction, be fined a sum not exceeding \$1,000 or will be imprisoned for a term not exceeding 6 months.
2. Institution of legal proceedings. In addition to any other remedy provided in this Chapter, the City Attorney, acting in the name of the City, may maintain an action or proceeding in any court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any provision of this Title.

11.70.100 Nuisance Abatement.

(Amended by Ordinance No. 188278, effective April 14, 2017.)

- A. Abatement. If, within the time limit set by the City in the notice of violation, any nuisance described in the notice has not been removed and abated, or cause shown, as specified in Sections 11.70.100 through .130 of this Title, why such nuisance should not be removed or abated, or where summary abatement is authorized, the BDS Director or City Forester may cause the nuisance to be removed and abated, including disposal in an approved manner.
- B. Warrants. The BDS Director or City Forester may request any Circuit Court judge to issue a nuisance abatement warrant whenever entry onto private property is necessary to remove and abate any nuisance, or whenever the BDS Director or City Forester has reasonable cause to believe that there exists upon any property any violation as described in Section 11.70.030 above.
- C. Grounds for issuance of nuisance abatement warrants; affidavit.

 1. Affidavit. A nuisance abatement warrant will be issued only upon cause, supported by affidavit, particularly describing the applicant's status in applying for the warrant, the statute, ordinance or regulation requiring or authorizing the removal and abatement of the nuisance, the property to be entered, the basis upon which cause exists to remove or abate the nuisance,

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and a statement of the general types and estimated quantity of the items to be removed or conditions abated.

2. Cause. Cause will be deemed to exist if reasonable legislative or administrative standards for removing and abating nuisances are satisfied with respect to any property, or if there is cause to believe that a nuisance violation exists, as defined in this Title, with respect to the designated property.

D. Procedure for issuance of a nuisance abatement warrant.

1. Examination. Before issuing a nuisance abatement warrant, the judge may examine the applicant and any other witness under oath and shall be satisfied of the existence of grounds for granting such application.
2. Issuance. If the judge is satisfied that cause for the removal and abatement of any nuisance exists and that the other requirements for granting the application are satisfied, the judge will issue the warrant, particularly describing the person or persons authorized to execute the warrant, the property to be entered, and a statement of the general types and estimated quantity of the items to be removed or conditions abated. The warrant will contain a direction that it be executed during business hours, or where the judge has specially determined upon a showing that it cannot be effectively executed between those hours, that it be executed at any additional or other time of the day or night.
3. Police assistance. In issuing a nuisance abatement warrant, the judge may authorize any peace officer, as defined in Oregon Revised Statutes, to enter the described property to remove any person or obstacle and to assist the representative of the bureau in any way necessary to enter the property and remove and abate the nuisance.
4. Return. A nuisance abatement warrant shall be executed within 10 working days of its issue and returned to the judge by whom it was issued within 10 working days from its date of execution. After the expiration of the time prescribed by this Subsection, the warrant unless executed is void.

E. Cost of nuisance abatement.

1. Whenever a nuisance is abated by the City, the BDS Director or City Forester shall keep an accurate account of all expenses incurred for each nuisance abated including but not limited to abatement costs, civil penalties, fees, administrative costs, recorders fees and title report charges as set forth in the Title 11, Trees Fee Schedule, as approved by City Council.

TITLE 14 - PUBLIC ORDER AND POLICE

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**CHAPTER 14B.10 - BURGLARY AND
ALARM SYSTEMS**

(Chapter replaced by Ordinance No. 189329,
effective February 1, 2019.)

Sections:

- 14B.10.010 Purpose and Scope.
- 14B.10.020 Definitions.
- 14B.10.030 Permitting Required; Application and Renewal; Violations and Remedies.
- 14B.10.040 Duty of an Alarm Business to Educate an Alarm User.
- 14B.10.050 Duties of the Alarm User.
- 14B.10.060 Duties of the Alarm System Monitoring Company.
- 14B.10.070 Requirement for Posting Notice of an Alarm; Violation; Remedy for Failure to Post.
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14B.10.010 Purpose and Scope.

- A.** The purpose of this chapter is to provide guidance and policy for alarm users and alarm businesses regarding responsible use of personal and business security and emergency alarms. The procedures herein ensure that owners or leasers of alarm systems and alarm companies know their responsibilities for maintaining the mechanical reliability and the proper use of alarm systems to prevent unnecessary police emergency response to false alarms. Proper use of alarms and accountability for improper use contributes to the protection of the emergency response capability of the City.

- B.** This chapter governs burglary and robbery alarm systems, states the requirements of permitting systems, provides guidance for excessive false alarm fines, provides for discontinuation and/or reactivation of police response to locations with excessive false alarm occurrences, and establishes a system of administration within the Portland Police Bureau (PPB). Other chapters of the Portland City Code will continue to govern other emergency alarm types, such as fire or environmental hazard alarms.

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14B.10.020 Definitions.

- A.** “Alarm business” means any individual, partnership, corporation, or other entity whose business objective, in whole or in part, as direct provider of parts and services or agent for the direct provider of parts and services, is the selling, leasing, maintaining, servicing, repairing, altering, replacing, moving or installing of any alarm system (as defined below).
- B.** “Alarm site” means the location at which a subscriber's alarm system is installed.
- C.** “Alarm system” means a device or series of devices, including, but not limited to, systems interconnected with a radio frequency method such as cellular or private radio signals, which emit or transmit a remote or local audible, visual, or electronic signal indicating an alarm condition and intended to summon law enforcement, including Local Alarm System. For purposes of this Chapter, “alarm system” shall be limited to alarms whose primary purposes is the detection or prevention of burglaries, robberies, or other acts generally requiring a police (as opposed to fire or medical) response.
- D.** “Alarm system monitoring company,” means any individual, partnership, corporation, or other form of association that engages in the business of monitoring property, burglary, or robbery alarm systems. For purposes of this Chapter, alarm system monitoring companies include those dealers and installers who contract with a property owner, subscriber, or customer, to perform alarm system monitoring services and then subcontract with another alarm system monitoring company to provide the actual monitoring service.
- E.** “Alarm system user” means a person having (whether through ownership or lease) or maintaining an alarm system or alarm device where such system is connected to or in communication with an alarm system monitoring company.
- F.** “Alarm user’s permit” means a document applied for by an alarm system user and issued by the System Administrator (as defined below) of their designee pursuant to the criteria established by this Chapter.
- G.** “Audio / Video verification” means the alarm incident has been verified by the alarm system monitoring company by means of audio and/or video, prior to the request to dispatch police.
- H.** "Automatic dialing device" means a device that is interconnected between an alarm system (as defined above) and a telephone line and is programmed to select a predetermined telephone number and transmit by voice message or code signal an emergency message indicating a need for emergency response.

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- I.** “Bureau of Emergency Communications” (BOEC) is the City/County Public Safety Answering Point entity that receives emergency and general information from the public, and then dispatches appropriate emergency services from respective police, fire, or medical agencies.
- J.** “Burglary alarm system” means an alarm system signaling an entry or attempted entry into the area protected by the system.
- K.** “Cancellation of alarm dispatch” means the process by which an alarm system monitoring company providing monitoring services verifies with the alarm user or responsible party that a false dispatch has occurred and that there is not an existing situation at the alarm site requiring law enforcement agency response.
- L.** “Chief” means the Chief of the City of Portland's Bureau of Police or their designated representative.
- M.** “Commercial properties” means any building or location used to operate a business that is not the alarm user’s primary dwelling.
- N.** “Days,” for purposes of calculating any time frames herein, shall mean calendar days (and not business days).
- O.** “Do It Yourself” (DIY) means the alarm system and components are purchased through a retail center or online provider by the alarm user and are typically installed by the alarm user.
- P.** “Duress alarm” means a silent alarm system signal generated by the manual activation of a device intended to signal a life-threatening situation or a crime in progress requiring law enforcement response.
- Q.** “Enhanced call verification” means a type of alarm verification in which an alarm monitoring company places two or more phone calls to different contact numbers in an attempt to verify that a real alarm has occurred and not a false alarm.
- R.** "False alarm" means a notification to the PPB from any source that any of the following scenarios have occurred:
 - 1.** If, once police arrive at the alarm site, the investigating police officer or first officer on-scene finds that there is no evidence of a crime or other activity that warrants the assistance of the Portland Police Bureau on the premises, as indicated by the investigation of a police officer on the scene or, if upon police arrival, by the property owner, or the property owner’s tenant(s) or employee(s), refuse cooperation with police or deny the need for police assistance;

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2. The person who contacted BOEC and requested a police response, and/or who set off an alarm system to alert emergency services and/or who confirmed a video communication is no longer on or near the premises of the alleged emergency and/or at the time of police arrival now denies the need for police response; or
 3. BOEC has already dispatched police to a call from an alarm system monitoring company, and the alarm system monitoring company later informs BOEC or police that the alarm was cancelled. A false alarm occurs regardless of whether it is before or after the arrival of police at the alarm site, so long as the dispatch has already occurred. A false alarm does not result if the alarm system monitoring company cancels a dispatch request before BOEC dispatches officers to an alarm site.
- S.** "Monitoring" means the process by which an alarm system monitoring company receives signals from an alarm system or alarm device.
- T.** "Multiple Device Triggers" means at least two sensors, devices or combination of both have been activated, prior to the request to dispatch police.
- U.** "Police Response" occurs when BOEC treats an alarm signal as a valid alarm and dispatches police resources.
- V.** "Primary trunk line" means a telephone line serving BOEC that is designated to receive emergency calls.
- W.** "Residential properties" means a dwelling where individuals are living. Residential property includes both private and rented accommodations.
- X.** "Robbery alarm system" means an alarm system signaling a robbery or attempted robbery. May be referred to as a "duress alarm" system generated by the manual activation of a device intended to signal a life threatening situation or a crime in progress requiring law enforcement response.
- Y.** "Sheriff" means Sheriff of Multnomah County or their designated representative.
- Z.** "Senior permit" means any alarm user who is over the age of 62 and provides documentation of proof of age whose primary address is the location of the alarm site.
- AA.** "System Administrator or Administrator" means the individual designated by the Chief of Police to manage the Alarms Administration Unit. The unit is responsible for permit issuance, assessments of charges, education of alarm system users, and the conducting of appeals hearings.

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- BB.** "Sound emission cutoff feature" means a feature of an alarm system which will cause an audible alarm to stop emitting sound.
- CC.** "Special permit" means any alarm site required by federal, state, county or municipal statute, regulation, rule or ordinance to install, maintain and operate an alarm system.
- DD.** "System becomes operative" means when the alarm system is capable of eliciting a response by police.
- EE.** "Unpreventable conditions" means those acts of nature which cause activation of an Alarm System without fault of the Alarm System, or Alarm User, criminal activity, or any other emergency. Such acts include, but are not limited to, earthquakes, floods, and high-speed winds, and acts of wild animals. Acts of domesticated animals, regardless of that animal's ownership, are not considered unpreventable conditions.

14B.10.030 Permitting Required; Application and Renewal; Violations and Remedies.

- A.** Every alarm system user shall obtain an alarm user's permit for each system installed in their home (owned or rented) or business from the Alarm Administration Office prior to the installation of a monitored alarm system. Each permit shall bear the signature of the Chief of Police and shall be valid for a 1-year period immediately following issuance of the permit. The permit shall be kept upon the premises using the alarm system and shall be available for inspection by responding law enforcement entities.
- B.** An alarm system monitoring company that establishes a new client account with any residential and/or business consumer shall ensure that an alarm user's permit has been issued through the Alarm Administration Office prior to activating a new alarm account. Requirement of this proof is a one-time requirement; responsibility for renewal transfers to the alarm user after initial activation of the alarm system.
- C.** A yearly alarm permit fee, permit surcharge, late payment fee, and permit renewal fee shall be established by PPB and provided with the bureau's annual budget submission subject to the City's Financial Policy FIN. 2.06 cost recovery methodology.
- D.** If a residential alarm user is over the age of 62 and resides where the permitted alarm is located and if no business is conducted in the residence, a senior's permit may be obtained from the Alarms Administration Office according to Subsection 14B.10.030 A. without the payment of a fee.
- E.** Calls for emergency response to an alarm event by an alarm business must include the corresponding alarm permit number.

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- F.** In addition to the fee provided in Subsection 14B.10.030 C., a surcharge penalty will be charged to any alarm service user that fails to obtain a permit within 30 days after the system becomes operative.
- G.** The alarm user will be in violation of Subsection 14B.10.030 A. if they fail to annually renew the alarm permit within 30 days after the permit expires. The alarm user may cure this violation and not face a code enforcement action if they renew their permit and pay all fees and fines within 45 days from the date of expiration.
- H.** Police will not respond to any alarm dispatches where the alarm system user's permit has expired and 45 days have passed since expiration with no attempt by the alarm system user to cure their defaults.
- I.** The remedy for a failure to cure after 45 days from permit expiration is the cancellation of the permit and notice by the System Administrator or designee to the alarm system monitoring company of the cancellation. Any reinstallations or reactivations after a cancellation under this Section will require a new permit application and the payment of fees for a new permit. If cancelled under this Subsection, the alarm system monitoring company will have to obtain proof of a new permit prior to reactivation.

14B.10.040 Duty of an Alarm Business to Educate an Alarm User.

- A.** In addition to an alarm business' duty to inspect permits prior to initial activation as outlined in Subsection 14B.10.030 B. above, every alarm business selling, leasing or furnishing to any user an alarm system that is installed on the premises located in the area subject to this Chapter shall furnish the user with instructions that provide information to enable the user to properly operate the alarm system at any time. Alarm businesses shall create and maintain a standard instruction form for this purpose and document the dissemination of this form to consumers.
- B.** All alarm businesses shall, on an annual basis, submit their standard instruction form to the System Administrator no later than January 31 of each year. If the System Administrator reasonably finds such instructions to be incomplete, misleading, unclear or inadequate, the System Administrator may require the alarm business to revise the instruction to comply with this Chapter and to re-distribute the revised instruction to its alarm users. Penalties for noncompliance should re-instruction be required may include, but not be limited to, fines, costs, or restrictions on local business licenses.

14B.10.050 Duties of the Alarm User.

All alarm users shall:

- A.** Obtain a permit from the Systems Administrator as outlined above and provide proof of same to the alarm system monitoring company before initial activation.

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- B.** Renew the permit annually for as long as the alarm systems remains at the alarm site.
- C.** Maintain the premises of the alarm site and the alarm system in a manner that will minimize or eliminate false alarms.
- D.** Personally come to the alarm site or cause a representative familiar with the system to respond to the alarm site's location within 30 minutes when notified by a representative of PPB to deactivate a malfunctioning alarm system, to provide access to the premises, and/or to provide alternative security for the premises, if necessary.
- E.** If a business, train all persons who activate the alarm system with its proper codes and operation.
- F.** If a homeowner or renter, train all adults residing in the home on proper codes and operation.
- G.** Ensure that an alarm system is repaired within seventy-two (72) hours of notification that the system is malfunctioning. The permit holder may cause the alarm system to be deactivated rather than having such system repaired. A deactivated system may not be reactivated until the user verifies that it has been repaired.
- H.** Not manually activate an alarm for any reason other than the occurrence of an event that the alarm system was intended to report.
- I.** Notify the alarm system monitoring company of any extended period of time away from the alarm site, such as vacation, and will leave a responsible person's name and phone numbers with the alarm system monitoring company. This responsible person must be fully trained in the use of the alarm system and have keys and access codes.
- J.** Adjust the mechanism or cause the mechanism to be adjusted so that an alarm signal audible on the exterior of an alarm site shall not sound for longer than 15 minutes after being activated.
- K.** Have a licensed alarm repair company inspect the alarm system after four false alarms within a one calendar year period. If the inspection company finds fault with the system, the alarm user shall ensure, at their own cost, modification or repair of the system to be more false alarm resistant. If the inspection company finds no fault with the system and finds likely user error, the alarm user shall seek additional user training from the manufacturer or seller of the alarm and/or better train other members of the household or business not to set off the alarm.

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- L.** Not use automatic voice dialers.
- M.** Maintain at each alarm site a set of written operating instructions for each alarm system, as well as a copy of the alarm permit.
- N.** Provide the alarm system monitoring company with the assigned permit number for the alarm site.
- O.** Retain the option to choose a (DIY) alarm. If their alarm is linked to an alarm monitoring service, then the following direction applies:
 - 1.** The alarm user must obtain a permit from the Alarms Administration Unit prior to activation of the monitoring service.
 - 2.** If their alarm is not linked to an alarm monitoring service, the alarm user does not need to obtain a permit from the System Administrator for an unmonitored system.
 - 3.** Alarm users choosing to have DIY systems with a monitoring service shall be required to have professional installation prior to activation. Proof of professional installation must be provided to the Alarms Administration Unit prior to the issuance of the alarm permit.

14B.10.060 Duties of the Alarm System Monitoring Company.

An alarm system monitoring company performing monitoring services shall:

- A.** Provide training on the proper use and disarming of the purchased alarm system at no additional cost to an alarm user. This training must be offered and, if accepted by the alarm user, provided during the first seven days after installation of an alarm system. If there is a false alarm in the first seven days after installation and prior to the time the alarm system monitoring company provides training, any fees or fines assessed for the false alarm will be charged against and paid by the alarm system monitoring company and not the alarm user. For this reason, alarm system monitoring companies should seek to and may provide this training contemporaneously with installation. If the alarm user declines the offered training, or once the alarm user has already received the training, any fines and fees as a result of a false alarm will be assessed against the alarm user.
- B.** Attempt to verify every alarm signal, except a duress and hold-up alarm activation, before requesting a law enforcement response to an alarm system signal by contacting at least two responsible parties for the alarm system, unless there is only one responsible party listed in customer documents. The first call placed should be to the alarmed premise for a request for the false alarm password. If there is no answer, the alarm system monitoring company must try one or more additional

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phone numbers in an attempt to reach the alarm user(s) or a designated responsible party.

- C. Ensure that all alarm users of alarm systems equipped with a duress or hold-up alarm are given adequate training as to the proper usage of these features.
- D. Communicate to BOEC operators and/or dispatchers any available information about the specific type and location of the alarm signal, e.g., north door, back door, second floor window east side, etc. (as opposed to “Zone 1” or a nondescript term that will not communicate to the responding officer where the problem occurred).
- E. Communicate to BOEC operators and/or dispatchers the type of alarm activation (silent, audible, interior, perimeter etc.) during an alarm event.
- F. Provide the alarm user permit number when requested by BOEC.
- G. Notify the permit holder or their designee of the activation of the alarm system.
- H. Obtain proof of an active alarm permit from the alarm user prior to installation or activation of the alarm system (or reinstallation or reactivation if the prior permit was canceled by PPB for nonrenewal or nonpayment), document same, and notify the Alarm Administration Unit that proof was supplied prior to installation.

14B.10.070 Requirement for Posting Notice of an Alarm; Violation; Remedy for Failure to Post.

- A. For a business alarm user (and not a homeowner alarm user), it is unlawful for a person having control of premises where a burglar alarm and/or robbery alarm system exists to fail to have conspicuously posted, where it may be plainly seen by persons outside the premises, notice of the existence of an alarm. The notice must include the name, address, and telephone number of a person who possesses a key and has access to the premises.
- B. A violation of this Section may subject the violator to a fine or other civil penalties at the discretion of the System Administrator; however, the System Administrator shall assess no penalties until or unless notice of the violation is provided to the business owner and they fail to cure the violation within 30 days of notification.

14B.10.080 Burglary, Robbery, and Other Police Alarm System Fines and Penalties.

- A. Fines shall be assessed by the System Administrator for excessive false alarms during a permit year. The fine and fee schedule shall be set through the annual budget process and subject to review by the City Budget Office with all Portland Police Bureau fees and charges. This is in accordance with guidelines provided in FIN-2.06.

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- B.** The Alarm Administration Unit will send a written notification of any false alarm incident to notify the alarm user, alarm business, and/or alarm system monitoring company. The notice will set forth the fine and the consequences of the failure to pay the fine. The notice shall also acquaint the recipient with the relevant appeals process and their right to appeal the validity of the false alarm to the Administrator or designee in case of absence or leave of service, as provided in Section 14B.10.120.
- C.** The first false alarm notice in a permit year will not be assessed a fine and instead will act as a warning. No further warnings without a fine may be assessed in a permit year.
- D.** If the payment of the fine has not been received in the Alarm Administration Unit within 30 days of the date the written notice of fine was mailed by the Administrator, and there is no appeal pending on the validity of the false alarm, the Administrator will send an overdue notice to the alarm user, alarm business, or alarm system monitoring company by certified mail, along with a notice of late fee.
- E.** If payment of all fines and late fees is not received within 10 days of the day the notice of late fee was mailed, the System Administrator will initiate the no response process according to Section 14B.10.090 and may initiate the enforcement of penalties according to Section 14B.10.150.
- F.** The payment of any fine shall not be deemed to extend the term of the permit.

14B.10.090 No Response to Excessive Alarms and/or Premises with Cancelled Permits.

- A.** After a second false alarm, the System Administrator shall send a notification to the alarm user by certified mail, which will contain the following information:
 - 1.** That a second false alarm has occurred.
 - 2.** That if four or more false alarms occur within the permit year, the System Administrator will direct the Bureau of Emergency Communications to suspend response to further alarm signals.
 - 3.** That the alarm user has the right to contest the validity of a false alarm determination by requesting a false alarm validity hearing, and that a request for such a hearing will stay the effect of a false alarm determination and must be in writing and filed within 10 days of the receipt of the notice of alarm.
- B.** After a third false alarm in a permit year, the System Administrator need only send to the alarm user via regular mail a Notice of False Alarm and appeal rights. No other communication or action is required of the System Administrator.

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- C.** After a fourth false alarm within the permit year, the System Administrator shall:
- 1.** Direct BOEC to suspend response to subsequent alarms unless instructed to respond by the Chief's Office or their designee pursuant to Section 14B.10.090.
 - 2.** Send a suspension notification to the alarm user by certified mail, indicating that PPB will no longer respond to alarms at the alarm site, but that PPB will resume alarm response services if the following conditions are met:
 - a.** Additional monitoring services are added to the permit location, consisting of either audio and/or video verification monitoring or multiple-device trigger systems;
 - b.** any outstanding fees and fines associated with the alarm permit account are paid in full; and
 - c.** the alarm user agrees in writing that a fifth or more false alarm in a permit year will result in a permanent cancellation of all premises use permits and the suspension of police response services for alarm calls for five years, plus triple the amount of fines and fees in the fines and fees schedule.
- D.** In addition to the notice provided to the alarm user, the System Administrator shall also send a copy of the notice of suspension to BOEC and the alarm system monitoring company.

14B.10.100 Special Permits.

An alarm user required by federal, state, county or municipal statute, regulation, rule or ordinance to install, maintain and operate an alarm system shall be subject to this Chapter, provided:

- A.** A permit shall be designated a special alarm user's permit. An alarm user seeking this type of special permit must submit proof of their eligibility for a special use permit (i.e., the federal, state, or local law requiring an alarm system) along with their permit application. Special alarm use permits shall be issued at the same cost as a regular alarm user permit (except for alarm users over age 62 as outlined in this Chapter).
- B.** A special alarm user's permit for a system which has four false alarms in a permit year shall not be subject to the no response procedure specified but shall pay any fines according to the regular fine schedule according to this Chapter.
- C.** The payment of any fine provided for in Subsection 14B.10.100 B. shall not be deemed to extend the term of the permit.

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14B.10.110 Automatic Dialing Device; Certain Interconnections Prohibited.

- A.** It is unlawful for any person to program an automatic dialing device to select a primary trunk line, and it is unlawful for an alarm user to fail to disconnect or reprogram an automatic dialing device which is programmed to select a primary trunk line within 12 hours of receipt of written notice from the Administrator that it is so programmed.
- B.** It is unlawful for any person to program an automatic dialing device to select any telephone line assigned to the City, and it is unlawful for an alarm user to fail to disconnect or reprogram such device within 12 hours of receipt of written notice from the Administrator that an automatic dialing is so programmed.
- C.** A violation of this Section may subject the violator to a fine or other civil penalties at the discretion of the System Administrator; however, the System Administrator shall assess no penalties until or unless notice of the violation is provided to the alarm user and they fail to cure the violation within 30 days of notification.

14B.10.120 Appeals.

- A.** An alarm user may challenge the validity of a false alarm determination by appealing the determination. The appeal request must be in writing (email or standard mail) and must be submitted to the System Administrator within ten days of the alarm user having received Notice of False Alarm. Failure to contest the determination in the required time period results in a conclusive presumption that the alarm was false and waiver of any claims or defenses regarding the false alarm or penalties therefore.

 - 1.** All first time offenses shall be considered a warning and no economic penalty will be applied. Because there are no economic damages, no appeal of a first offense warning will be allowed.
 - 2.** However, first offenses will count toward the cumulative number of offenses in any permit year. Should an alarm user wish to raise on appeal the impropriety of the first offense for purposes of having it not count toward the cumulative permit year total, the alarm user may challenge the validity of their first offense in addition to the validity of the offense that they are currently appealing. The effect of a finding that the first offense was improper shall only act to strike that offense from the permit year total; no economic or other relief is available.
- B.** Appeal requests must include all documentation that a cited alarm user wishes the System Administrator to review. An alarm user appellant may include in this documentation a written statement setting forth their arguments as to facts and defenses. Any written statement shall not exceed 15 pages.

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- C.** The Appeal request and all documentation will be reviewed and decided by the System Administrator or designee. In no event will the person reviewing and deciding the appeal also be the person that issued the false alarm determination. The appeal will be decided solely on the documentation presented without testimony, except as noted in Subsection D. below.
- D.** Alarm users over the age of 62 who have obtained a senior permit and alarm users with a verifiable disability may, as part of their Appeal Request, ask for a telephonic hearing in lieu of submitting written documentation. (Deaf persons or persons with a hearing impairment may also request additional accommodations such as an in-person hearing with the presence of a sign-language interpreter.)
- 1.** If the request for a telephonic hearing is made and approved, the Alarms Administration Unit will contact the requester by telephone or email to schedule a hearing. While the Alarm Administration Unit will schedule the hearing, the alarm user is obligated to attend or call in to the hearing. An alarm user's failure to do so waives their right to present any additional information for consideration of the appeal and will be justification for dismissal of the appeal.
 - 2.** In any case where a telephonic hearing (or in-person hearing as a reasonable accommodation) has been held, the appeal will be decided on the basis of the testimony provided and any other relevant documentation submitted, but alarm users will not also be allowed to present a written statement for consideration.
 - 3.** Any hearing held shall be informal and not subject to Oregon Rules of Civil Procedure or Oregon Rules of Evidence. The appellant is limited to giving a statement and/or submitting additional documentary evidence and will not engage in eliciting direct testimony or conducting cross-examination.
 - 4.** The hearing will be audio tape recorded, but not transcribed. The alarm user may request a copy of the audiotape to be transcribed at their own cost.
- E.** The System Administrator or designee deciding the appeal will render a decision within 30 days after receipt of the appeal request or after any hearing, as applicable. The System Administrator shall document the decision in writing, setting forth the reasons for the decision, and take any further steps necessary to effectuate their decision. The System Administrator shall, contemporaneously with rendering the written decision, send a copy of the written decision to the alarm user either via regular mail or email (as indicated in their permit application).
- F.** If the appeal is granted and it is determined that the false alarm at issue did not occur, then the findings will be waived and expunged from an alarm user's record as appropriate, and will not be counted toward the yearly permit amount for any

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other purposes of this Chapter. If the appeal is denied and the false alarm designation remains on the alarm user's record, the Administrator may pursue fine collection and/or permit cancellation as set out in this Chapter.

14B.10.130 Sound Emission Cutoff Feature.

- A.** Alarm systems which can be heard outside a building, structure or facility of the alarm user shall be equipped with a sound emission cutoff feature which will stop the emission of sound 15 minutes or less after the alarm is activated.
- B.** When an alarm system may be heard outside a building, structure or facility for more than 15 minutes continuously or intermittently, and the alarm owner or alarm system monitoring company is not readily available or able to silence the device, PPB is authorized to enter the premises and physically disconnect the sounding device. The alarm owner shall be liable for the cost of, or associated with, disconnecting and reconnecting the alarm. Neither the City nor its officers, agents or employees shall be liable for such costs.

14B.10.140 Confidentiality and Statistics.

- A.** All information submitted in compliance with this Chapter shall be deemed a public record. Applicable privacy and confidentiality exemptions pursuant to ORS 192.502 shall be applied to any requests to records regarding this Chapter. The Administrator shall be charged with the sole responsibility for the maintenance, disclosure, retention, and destruction after expiration of the retention schedule of all records of any kind whatsoever under this Chapter.
- B.** Subject to the requirements of confidentiality, the Administrator may develop and maintain statistics having the purpose of assessing alarm system, alarm business, and alarm system monitoring company performance and compliance.

14B.10.150 Code Enforcement Actions; Penalties.

- A.** Enforcement of this ordinance may be by civil action as provided in ORS 30.315, or by criminal prosecution.
- B.** Violation of this ordinance shall be punishable upon conviction by a fine of not more than \$500.
- C.** The failure or omission to comply with any Section of this ordinance shall be deemed a violation and may be so prosecuted, subject to the penalty provided in paragraph B. of this Section.

14B.10.160 Liability.

Law enforcement response to an alarm may be based on factors such as: availability of police units, priority of calls, weather conditions, traffic conditions, emergency conditions,

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staffing levels and other factors. For these reasons, the permitting of an alarm system and regulation thereof by PPB is not intended to, nor will it, create a contract, duty or obligation, or special relationship, either expressed or implied, between the City and an alarm user, assuring police response to the alarm. Any and all liability and consequential damages that may result from PPB's failure to respond to an alarm notification is subject to governmental immunity as provided by law and is retained.

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CHAPTER 14B.20 - DRUG-FREE ZONES

(Chapter replaced by Ordinance No. 179995,
effective date April 14, 2006)

Sections:

- 14B.20.010 Drug-Free Zones.
- 14B.20.020 Designation of Drug-Free Zones.
- 14B.20.030 Civil Exclusion.
- 14B.20.035 Violation of an Exclusion – Penalties.
- 14B.20.040 Issuance of Exclusion Notices.
- 14B.20.050 Procedure.
- 14B.20.060 Appeal, Review and Variances.
- 14B.20.070 Listing of Drug-Free Zones.

14B.20.010 Drug-Free Zones.

- A. For the purposes of this chapter, the following definitions apply:
 - 1. Arrest: to place a person under actual or constructive restraint or to take a person into custody for the purpose of charging that person with an offense.
 - 2. Essential needs: food, physical care, and medical attention.
 - 3. Reside: to occupy one's principal dwelling; including transient occupancy in a hotel or motel.
 - 4. Travel: the movement on foot or within or upon a vehicle within a drug-free zone from one point to another without delay other than to obey traffic control devices.
- B. Drug-free zones are those areas of the City as designated by the City Council under Chapter 14B.20 of this Code, which are areas where the number of arrests where there was probable cause to believe a person has committed any of the offenses enumerated in Section 14B.20.030 for a twelve (12) month period within the 18 months preceding its designation is significantly higher than that for other similarly sized geographic areas of the City that are not located within a drug-free zone.

14B.20.020 Designation of Drug-Free Zones.

(Amended by Ordinance No. 180884, effective April 11, 2007.)

- A. If the City Council designates an area meeting the criteria of Section 14B.20.010 of this Code to be a drug-free zone, Council shall do so by ordinance. The designation shall be valid for a period of three (3) years.

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- B.** The office of the Chief of Police of the Portland Police Bureau is directed to report to City Council at least ninety (90) days before the end of the period referred to in section 14B.20.020 A., as to whether there is a need to re-configure the drug-free zones enumerated in 14B.20.070.
- C.** This Chapter, and the procedures and exercise of exclusion authority it contains, are valid until September 30, 2007.
- D.** The office of the Chief of Police of the Portland Police Bureau is directed to report to City Council at least ninety (90) days before the expiration of this Chapter as to whether there is a need to re-authorize this Chapter.

14B.20.030 Civil Exclusion.

(Amended by Ordinance No. 180213, effective June 14, 2006.)

- A.** A person is subject to exclusion under the process described in this chapter for a period of ninety (90) days from any public right of way and park within a drug-free zone designated in Code Chapter 14B.20 if that person has been arrested and either cited to appear in court for charging or lodged in jail for presentation to a magistrate for charging based upon probable cause to believe that the person has committed any of the following offenses within that drug-free zone, unless the offense was committed entirely within a private residence:
 - 1.** Attempt to unlawfully possess a controlled substance, in violation of ORS 161.405;
 - 2.** Criminal solicitation to unlawfully possess a controlled substance in violation of ORS 161.435;
 - 3.** Criminal conspiracy to unlawfully possess a controlled substance in violation of ORS 161.450;
 - 4.** Any violation of any of the controlled substance offenses described in:
 - a.** ORS 475.840;
 - b.** ORS 475.846 through 475.894;
 - c.** ORS 475.904; or
 - d.** ORS 475.910; except
 - e.** Possession of less than an ounce of marijuana under ORS 475.864(3) shall not be a basis for exclusion.

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5. Criminal conspiracy to unlawfully deliver a controlled substance in violation of ORS 161.450;
 6. Attempt to unlawfully deliver an imitation controlled substance, in violation of ORS 161.405;
 7. Criminal conspiracy to unlawfully deliver an imitation controlled substance in violation of ORS 161.450; or
 8. Unlawful delivery of an imitation controlled substance, in violation of ORS 475.912.
- B.** A one (1) year exclusion from any public right of way and park within a drug-free zone shall take effect upon the day after conviction for any of the offenses enumerated in Subsection A of this Section if that offense was committed within that drug-free zone and the person was both given actual notice prior to the exclusion that the City would impose a one-year exclusion upon conviction and notified of the right of appeal and the process for initiating an appeal.
- C.** A person excluded from a drug-free zone under authority of this Section may not enter that drug-free zone except to travel to and from and be present at the events and locations listed below:
1. Attend a meeting with an attorney;
 2. Attend a scheduled initial interview with a social service provider;
 3. Comply with court-or corrections-ordered obligations;
 4. Contact criminal justice personnel at a criminal justice facility;
 5. Attend any administrative or judicial hearing relating to an appeal of:
 - a. the person's notice of exclusion; or
 - b. the denial, revocation, or amendment of the person's variance;
 6. Travel through that drug-free zone on a Tri-Met vehicle; or
 7. Travel through that drug-free zone on the I-5, I-84 or I-405 freeways within its boundaries;
 8. Reside in a dwelling or facility;
 9. Satisfy, or attempt to satisfy an essential need by accessing a public or private place that provides an essential need or service when the essential

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need cannot reasonably be satisfied by the excluded person without entering the drug-free zone;

10. Obtain social services when:

- a.** the excluded person is in need of social services;
- b.** the social services are sought for reasons relating to the health or well-being of the excluded person; and
- c.** the social services agency has written rules and regulations prohibiting the unlawful use and sale of controlled substances by their clients.

11. Obtain education by:

- a.** Enrolling as a student at an educational facility; or
- b.** attending school at an educational facility.

12. Work as the owner, principal, agent or employee at a place of lawful employment;

13. Perform work directly related to lawful employment;

14. Be present at any place or event as specified by a variance issued by the Chief of Police or designee pursuant to 14B.20.060 B.

D. An exclusion is valid only if the person to be excluded received actual notice of the exclusion as required by 14B.20.050; including notice of the limitations to the exclusion contained in 14B.20.020.

E. An exclusion is not valid if the probable cause on which it is based consists of mere use or effects of use of controlled substances rather than criminal acts concerning controlled substances as defined by Oregon statute, whether or not the person subject to exclusion pursues an appeal of the exclusion.

14B.20.035 Violation of an exclusion - penalties.

A. It is unlawful for a person to enter or remain in a drug-free zone in violation of a valid exclusion imposed pursuant to this Code. For violation of this subsection, a court may impose a fine of no more than \$500 or imprisonment of no more than 30 days, or both.

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- B.** A person who enters or remains in a drug-free zone in violation of a valid exclusion issued pursuant to this Code is subject to arrest for Criminal Trespass (ORS 164.245).

14B.20.040 Issuance of Exclusion Notices.

The Chief of Police and/or designees are the persons in charge of the public rights of way and parks in the drug-free zones for purposes of issuing notices of exclusion in accordance with this Chapter.

14B.20.050 Procedure.

- A.** If a person is arrested and either cited to appear in court for charging or lodged in jail for presentation to a magistrate for charging based upon probable cause to believe that the person has committed any of the offenses enumerated in Subsection A. of Section 14B.20.030 within a drug-free zone, the Chief of Police and/or designees may exclude that person from that drug-free zone. Every person excluded shall be provided a notice of exclusion and variances substantially similar to Exhibit C attached to Ordinance No. 179995. Additions to the notice of exclusion that increase the scope of the exclusion from that described in Exhibit C render the notice and the exclusion invalid.
- B.** At the time a person is issued a notice of exclusion from a drug-free zone, the Chief of Police and/or designees may discuss with the excluded person whether the person has a plausible need for a variance and may issue a variance pursuant to the process described in subsection B of Section 14B.20.060.
- C.** The notice of exclusion shall be in writing and a copy delivered to the excluded person. The notice of exclusion shall include the following:
 - 1.** A description of the areas designated as a drug-free zone in Section 14B.20.070 from which that person is excluded; and
 - 2.** Information concerning the right to appeal the exclusion to the Code Hearings Officer as provided in Chapter 22.10 of this Code.
 - 3.** Notice that conviction of the offense for which the person was arrested and excluded will result in a one-year exclusion and information concerning the right to appeal a conviction-based exclusion to the Code Hearings Officer as provided in Chapter 22.10 of this Code.

14B.20.060 Appeal, Review and Variances.

- A.** A ninety (90) day exclusion shall take effect at 12:01 a.m. on the 22nd calendar day following issuance of the notice of exclusion if the person issued the notice of exclusion has not filed an appeal as provided in this Chapter and a Code Hearing

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Officer has reviewed a police report documenting the exclusion notice and has found that the report presents credible evidence that supports probable cause to believe the person:

1. committed any of the offenses enumerated in Subsection A of Section 14B.20.030 within a drug-free zone.
 2. received the notice required by 14B.20.050 A.
- B.** If a person issued a notice of exclusion files an appeal as provided in this Chapter, imposition of a ninety (90) day exclusion shall be stayed pending a final, enforceable decision upholding the exclusion.
- C.** **APPEAL.** A person to whom notice of exclusion is issued shall have a right to appeal as follows:
1. Appeals shall be made to the Code Hearings Officer of the City of Portland. Any hearings regarding such appeals shall be conducted in accordance with Chapter 22.10 of this Code.
 2. Copies of documents in the City's control which are intended to be used at the hearing shall be made available, upon request, to the appellant.
 3. An appeal of a ninety (90) day notice of exclusion must be filed, in writing, by 5:00 p.m. of the fifteenth calendar day following issuance of the notice of exclusion.
 4. An appeal of a one (1) year conviction-based exclusion must be filed, in writing, by 5:00 p.m. of the fifth business day following the date of conviction.
 5. An appeal of:
 - a. a denial of a request for a variance; or
 - b. a denial of a request for an amendment to a variance; or
 - c. a revocation or amendment of a variance must be filed, in writing, by 5:00 p.m. of the fifth business day following the action regarding the variance.
 6. A ninety (90) day exclusion shall not take effect during the time that an appeal of the ninety (90) day exclusion is pending.
 7. A one (1) year conviction-based exclusion shall take effect at 12:01 a.m. on the calendar day following the date of conviction and, notwithstanding an

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appeal of the exclusion, shall remain in effect unless the Code Hearings Officer issues a contrary decision.

8. At the hearing on an appeal of a ninety (90) day exclusion, the City shall have the burden to show by a preponderance of the evidence that the appellant committed any of the offenses enumerated in Subsection A. of Section 14B.20.030, and that the conduct supporting the exclusion occurred within a drug-free zone.
9. At the hearing on an appeal of a one (1) year conviction-based exclusion, the City shall have the burden to show by a preponderance of the evidence that the appellant was convicted of any of the offenses enumerated in Subsection A. of Section 14B.20.030, and that the conduct supporting the conviction occurred within a drug-free zone.
10. At the hearing on an appeal of a denial of a request for a variance as provided in 14B.20.060 C.5.a., the City shall have the burden to show by a preponderance of the evidence that the denial was in accordance with this Section.
11. At the hearing on an appeal of a denial of a request for an amendment to a variance as provided in 14B.20.060 C.5.b., the City shall have the burden to show by a preponderance of the evidence that the denial was in accordance with this Section.
12. At the hearing on an appeal of a revocation or amendment of a variance as provided in 14B.20.060 C.5.c., the City shall have the burden to show by a preponderance of the evidence that any of the conditions enumerated in this Section supporting revocation or amendment existed at the time of revocation or amendment.
13. At the hearing on an appeal of a ninety (90) day exclusion, the following shall be prima facie evidence that the exclusion was based on probable cause to believe that the appellant committed any of the offenses enumerated in Section 14B.20.030 A.:
 - a. A determination by a court having jurisdiction over the offense that forms the basis for the exclusion, that probable cause existed to arrest the person to whom the initial ninety (90) day notice of exclusion was issued for violation of any of the offenses enumerated in Section 14B.20.030 A.; or
 - b. An accusatory instrument charging the person to whom a ninety (90) day notice of exclusion was issued, for violation of any of the offenses enumerated in Section 14B.20.030 A.

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14. At the hearing on an appeal of a one (1) year conviction-based exclusion, a judgment of conviction for any of the offenses that formed the basis for the exclusion, as enumerated in Section 14B.20.030 A., shall be conclusive evidence that the described conduct occurred, but, absent a finding of fact by the court of conviction, is not conclusive evidence that the conduct occurred in a drug-free zone.

D. VARIANCES. Variances modify an exclusion, and shall be granted, denied, amended or revoked in accordance with the following provisions:

1. All variances shall be in writing and shall state the purpose for which they are granted and the period of time during which they are effective. A variance that does not describe its period of effectiveness is effective for the duration of the exclusion. A variance allows relief from an exclusion only for travel to and from specified locations, activities or events, and presence at specified locations, activities and events within a drug-free zone.
2. All Police Bureau Precincts shall receive and process requests for Drug-Free or Prostitution Free Zone variances during regular business hours if they are otherwise open to the public. This capability will be maintained at the main precinct station or at a sub-station.
3. Variance. The Chief of Police and/or designees may, for any reason, grant an excluded person a variance from an exclusion at any time during an exclusion period. Except as described in 14B.20.050 B., the Chief of Police and/or designees shall grant an appropriate variance to an excluded person who presents a plausible need to engage in any non-criminal activity that is not associated with the behavior supporting the person's exclusion. A variance granted under this Subsection allows travel within the drug-free zone only in accordance with the terms specified in the variance. The Chief of Police or designees will ask a person requesting a variance to provide and update an address through which the person can be reached for the duration of the variance in the event the City determines there is a need to amend or revoke the variance.

E. REVOCATION OR AMENDMENT OF VARIANCES. A variance may be revoked or amended for the following reasons and in the following manner:

1. The excluded person provided false information in order to obtain the variance;
2. There is probable cause to believe the person has committed any of the offenses enumerated in Section 14B.20.030 A. in the drug-free zone subsequent to the issuance of the variance;

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3. The circumstances giving rise to the issuance of the variance no longer support a continuation of the variance or a term thereof;
4. If the person presents new circumstances that would support amending the variance; or
5. A revocation or amendment of a variance becomes effective at 5:00 p.m. of the fifth business day following mailing of notice of the action to the excluded person at the address provided pursuant to 14B.20.060 B.1. unless the excluded person appeals the determination by following the procedures in 14B.20.060 A.5.c.

14B.20.070 Listing of Drug-Free Zones.

(Amended by Ordinance No. 180125, effective May 10, 2006) The following descriptions shall comprise the boundaries of the drug-free zones listed, and the drug-free zones shall include the entire area on and within the listed boundaries.

- A. Central Zone: Beginning at a point on the north edge of the Steel Bridge directly above the west shore of the Willamette River; thence westerly along the north edge of the Steel Bridge and continuing along the north edge of the northern most off-ramp from the Steel Bridge until it intersects with the east curb line of N.W. 3rd Avenue; thence northerly along an extension of the east curb line of N.W. 3rd Avenue until that line intersects with an extension of the north curb line of N.W. Hoyt Street; thence westerly along the extension of the north curb line of N.W. Hoyt Street until it intersects with the east curb line of N.W. 4th Avenue; thence in a northwesterly direction along the east curb line becoming the north curb line of N.W. 4th Avenue as it intersects with N.W. 5th Avenue and becomes N.W. Irving Street; thence continuing westerly along the north curb line of N.W. Irving Street until it intersects with the west curb line of N.W. Broadway Avenue; thence southerly along the west curb line of N.W. Broadway Avenue until it intersects with the north curb line of N.W. Hoyt Street; thence westerly along the north curb line of N.W. Hoyt Street until it intersects with the west curb line of N.W. 15th Avenue; thence southerly along the west curb line of N.W. 15th Avenue until it intersects with north curb line of N.W. Glisan Street; thence westerly along the north curb line of N.W. Glisan Street until it intersects with the east curb line of N.W. 16th Avenue; thence northerly along the east curb line of N.W. 16th Avenue until it intersects with the north curb line of N.W. Irving Street; thence westerly along the north curb line of N.W. Irving Street until it intersects with the west curb line of N.W. 23rd Avenue; thence southerly along the west curb line of N.W. 23rd Avenue until it intersect with the south curb line of West Burnside Street; thence easterly along the south curb line of West Burnside Street until it intersects with the west curb line of S.W. King Avenue; thence southerly along the west curb line of S.W. King Avenue until it intersects with the south curb line of S.W. Salmon Street; thence easterly along the south curb line of S.W. Salmon Street until it intersects with the west curb line of S.W. 14th Avenue; thence southerly along the west curb

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line of S.W. 14th Avenue until it intersects with the south curb line of S.W. Columbia Street; thence easterly along the south curb line of S.W. Columbia Street until it intersects with the west curb line of S.W. 13th Avenue; thence southerly along the west curb line of S.W. 13th Avenue until it intersects with the south curb line of S.W. Market Street; thence easterly along the south curb line of S.W. Market Street to a point where the extension of the south curb line of S.W. Market Street intersects with the east curb line of S.W. Naito Parkway; thence easterly from that point continuing in a direct line due east to the west shore of the Willamette River; thence northerly along the west shore of the Willamette River until it intersects with the south edge of the Hawthorne Bridge; thence easterly along the south edge of the Hawthorne Bridge until it intersects with the east edge of the area known as the East Bank Esplanade, including the circular ramp on the east end and south side of the Hawthorne Bridge; thence northerly along the east edge of the area known as the East Bank Esplanade, including all of its floating walkways, until it intersects with the south side of the East Bank Esplanade pedestrian overpass to N.E. Lloyd Boulevard; thence easterly along the south edge of the area known as the East Bank Esplanade pedestrian overpass, including the walking ramp, until it intersects with the west curb line of N.E. Lloyd Boulevard; thence southeasterly along the south curb line of N.E. Lloyd Boulevard until it intersects with the west curb line of N.E. Martin Luther King Boulevard; thence southerly along the west curb line of N.E. Martin Luther King Boulevard until it intersects with the north curb line of N.E. Davis Street; thence westerly along the north curb line of N.E. Davis as it crosses N.E. 3rd Avenue and projects in a straight line to a point on the west curb of N.E. 2nd Avenue; thence southerly along the west curb line of N.E. 2nd Avenue as it passes under the Burnside Bridge, including the entire Burnside Bridge, until it intersects with the south curb line of S.E. Belmont Street; thence easterly along the south curb line of S.E. Belmont Street until it intersects with the east curb line of S.E. 12th Avenue; thence northerly along the east curb line of S.E. 12th Avenue as it crosses E. Burnside Street and becomes N.E. 12th Avenue; thence northerly along the east curb line of N.E. 12th Avenue until it intersects with the south curb line of N.E. Lloyd Boulevard; thence easterly along the south curb line of N.E. Lloyd Boulevard until it becomes N.E. 16th Avenue; thence northerly along the east curb line of N.E. 16th Avenue until it becomes N.E. 15th Avenue; thence northerly along the east curb line of N.E. 15th Avenue until it intersects with the north curb line of N.E. Halsey Street; thence westerly along the north curb line of N.E. Halsey Street until it intersects with the west curb line of N.E. Martin Luther King Boulevard; thence southerly along the west curb line of N.E. Martin Luther King Boulevard until it intersects with the north curb line of N.E. Multnomah Street; thence westerly along the north curb line of N.E. Multnomah Street as it merges onto the Steel Bridge; thence westerly along the north edge of the Steel Bridge to a point above the west shore of the Willamette River and continuing down to the point of the beginning.

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- B.** East Zone: Beginning at a point 1000 feet west of the intersection of the north curb line of N.E. Killingsworth and the west curb line of N.E. 82nd Avenue; thence southerly following a line that is at all times parallel to and 1000 feet from the west curb line of N.E. 82nd Avenue as it crosses E. Burnside Street and becomes S.E. 82nd Avenue; thence southerly following a line that is at all times parallel to and 1000 feet from the west curb line of S.E. 82nd Avenue to a point that is 1000 feet to the west of the southwest corner of S.E. Crystal Springs Boulevard; thence easterly along the south curb line of S.E. Crystal Springs Boulevard to a point that is 1000 feet to the east of the southeast corner of S.E. Crystal Springs Boulevard; thence northerly following a line that is at all times parallel to and 1000 feet from the east curb line of S.E. 82nd Avenue as it crosses E. Burnside Street and becomes N.E. 82nd Avenue; thence northerly following a line that is at all times parallel to and 1000 feet from the east curb line of N.E. 82nd Avenue to a point that is 1000 feet east of the north curb line of N.E. Killingsworth; thence westerly along the north curb line of N.E. Killingsworth continuing to the point of beginning.
- C.** North Zone: Beginning at a point on the southwest corner of N. Fremont Street as it intersects with N. Missouri Avenue; thence easterly along the south curb line of N. Fremont Street until it intersects with the west curb line of N. Vancouver Avenue; thence southerly along the west curb line of N. Vancouver Avenue until it intersects with the south curb line of N. Stanton Street; thence easterly along the south curb line of N. Stanton Street as it crosses N. Williams Avenue and becomes N.E. Stanton Street; thence easterly along the south curb line of N.E. Stanton Street until it intersects with the west curb line of N.E. Rodney Avenue; thence southerly along the west curb line of N.E. Rodney Avenue until it intersects with the south curb line of N.E. San Rafael Street; thence easterly along the south curb line of N.E. San Rafael Street until it intersects with the east curb line of N.E. 7th Avenue; thence northerly along the east curb line of N.E. 7th Avenue until it intersects with the south curb line of N.E. Wygant Street; thence easterly along the south curb line of N.E. Wygant Street until it intersects with the east curb line of N.E. 14th Avenue; thence northerly along the east curb line of N.E. 14th Avenue until it intersects with the south curb line of N.E. Wygant Street; thence easterly along the south curb line of N.E. Wygant Street until it intersects with the east curb line of N.E. 20th Avenue; thence northerly along the east curb line of N.E. 20th Avenue until it intersects with the north curb line of N.E. Killingsworth Street; thence westerly along the north curb line of N.E. Killingsworth Street until it intersects with the east curb line of N.E. 15th Avenue; thence northerly along the east curb line of N.E. 15th Avenue until it intersects with the north curb line of N.E. Ainsworth Street; thence westerly along the north curb line of N.E. Ainsworth Street until it intersects with the east curb line of N.E. 10th Avenue; thence northerly along the east curb line of N.E. 10th Avenue until it intersects with the north curb line of N.E. Portland Boulevard; thence westerly along the north curb line of N.E. Portland Boulevard until it intersects with the west curb line of N.E. 6th Avenue; thence southerly along the west curb line of N.E. 6th Avenue until it intersects with the north curb line of N.E.

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Portland Boulevard; thence westerly along the north curb line of N.E. Portland Boulevard until it intersects with the west curb line of N.E. Martin Luther King Jr. Boulevard; thence southerly along the west curb line of N.E. Martin Luther King Jr. Boulevard until it intersects with the north curb line of N.E. Ainsworth Street; thence westerly along the north curb line of N.E. Ainsworth Street as it crosses N. Williams Avenue and becomes N. Ainsworth Street; thence westerly along the north curb line of N. Ainsworth Street until it intersects with the west curb line of N. Missouri Avenue; thence southerly along the west curb line of N. Missouri Avenue until it intersects with the north curb line of N. Killingsworth Street; thence westerly along the north curb line of N. Killingsworth Street until it intersects with the west curb line of N. Concord Avenue; thence southerly along the west curb line of N. Concord Avenue, including all of the Going Street Pedestrian Bridge until it intersects with the south curb line of N. Skidmore Street; thence easterly along the south curb line of N. Skidmore Street until it intersects with a point extending in a straight line from the west curb line of N. Missouri Avenue where it meets Interstate 5; thence southerly along the west curb line of N. Missouri Avenue to the point of beginning.

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**CHAPTER 14B.30 - PROSTITUTION-FREE
ZONES**

(Chapter replaced by Ordinance No. 179996,
effective April 14, 2006)

Sections:

- 14B.30.010 Prostitution-Free Zones.
- 14B.30.020 Designation of Prostitution-Free Zones.
- 14B.30.030 Civil Exclusion.
- 14B.30.035 Violation of an Exclusion - Penalties.
- 14B.30.040 Issuance of Exclusion Notices.
- 14B.30.050 Procedure.
- 14B.30.060 Appeal, Review and Variances.
- 14B.30.070 Listing of Prostitution-Free Zones.

14B.30.010 Prostitution-Free Zones.

- A.** For the purposes of this chapter, the following definitions apply:
 - 1.** Arrest: to place a person under actual or constructive restraint or to take a person into custody for the purpose of charging that person with an offense.
 - 2.** Essential needs: food, physical care, and medical attention.
 - 3.** Reside: to occupy one's principal dwelling; including transient occupancy in a hotel or motel.
 - 4.** Travel: the movement on foot or within or upon a vehicle within a prostitution-free zone from one point to another without delay other than to obey traffic control devices.
- B.** Prostitution-free zones are those areas of the City as designated by the City Council under Chapter 14B.30 of this Code, which are areas where the number of arrests where there was probable cause to believe a person has committed any of the offenses enumerated in Section 14B.30.030 for a twelve (12) month period within the eighteen (18) months preceding its designation is significantly higher than that for other similarly sized geographic areas of the City that are not located within a prostitution-free zone.

14B.30.020 Designation of Prostitution-Free Zones.

(Amended by Ordinance No. 180885, effective April 11, 2007.)

- A.** If the City Council designates an area meeting the criteria of Section 14B.30.010 of this Code to be a prostitution-free zone, Council shall do so by ordinance. The designation shall be valid for a period of three (3) years.

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- B.** The office of the Chief of Police of the Portland Police Bureau is directed to report to City Council at least ninety (90) days before the end of the period referred to in section 14B.30.020 A., as to whether there is a need to re-configure the prostitution-free zones enumerated in 14B.30.070.
- C.** This Chapter, and the procedures and exercise of exclusion authority it contains, are valid until September 30, 2007.
- D.** The office of the Chief of Police of the Portland Police Bureau is directed to report to City Council at least ninety (90) days before the expiration of this Chapter as to whether there is a need to re-authorize this Chapter.

14B.30.030 Civil Exclusions.

- A.** A person is subject to exclusion under the process described in this chapter for a period of ninety (90) days from any public right of way and park within a prostitution-free zone designated in Code Chapter 14B.30 if that person has been arrested and either cited to appear in court for charging or lodged in jail for presentation to a magistrate for charging based upon probable cause to believe that the person has committed any of the following offenses within that prostitution-free zone, unless the offense was committed entirely within a private residence:
 - 1.** Attempted prostitution, in violation of ORS 161.405;
 - 2.** Prostitution, in violation of ORS 167.007;
 - 3.** Attempted promoting prostitution, in violation of ORS 161.405;
 - 4.** Promoting prostitution, in violation of ORS 167.012;
 - 5.** Attempted compelling prostitution, in violation of ORS 161.405;
 - 6.** Compelling prostitution, in violation of ORS 167.017;
 - 7.** Loitering to solicit prostitution, in violation of Portland City Code 14A.40.040; or
 - 8.** Unlawful prostitution procurement activity, in violation of Portland City Code 14A.40.050.
- B.** A one (1) year exclusion from any public right of way and park within a prostitution-free zone shall take effect upon the day after conviction for any of the offenses enumerated in Subsection A. of this Section if that offense was committed within that prostitution-free zone and the person was both given notice prior to the exclusion that the City would impose a one-year exclusion upon conviction and notified of the right of appeal and the process for initiating an appeal.

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- C.** A person excluded from a prostitution-free zone under authority of this Section may not enter that prostitution-free zone except to travel to and from and be present at the events and locations listed below:
- 1.** Attend a meeting with an attorney;
 - 2.** Attend a scheduled initial interview with a social service provider;
 - 3.** Comply with court-or corrections-ordered obligations;
 - 4.** Contact criminal justice personnel at a criminal justice facility;
 - 5.** Attend any administrative or judicial hearing relating to an appeal of:
 - a.** the person's notice of exclusion; or
 - b.** the denial, revocation, or amendment of the person's variance;
 - 6.** Travel through that prostitution-free zone on a Tri-Met vehicle;
 - 7.** Travel through that prostitution-free zone on the I-5, I-84, I-205 or I-405 freeways within its boundaries;
 - 8.** Reside in a dwelling or facility;
 - 9.** Satisfy, or attempt to satisfy an essential need by accessing a public or private place that provides an essential need or service when the essential need cannot reasonably be satisfied by the excluded person without entering the prostitution-free zone;
 - 10.** Obtain social services when:
 - a.** the excluded person is in need of social services;
 - b.** the social services are sought for reasons relating to the health or well-being of the excluded person; and
 - c.** the social services agency has written rules and regulations prohibiting the unlawful use and sale of controlled substances by their clients.
 - 11.** Obtain education by:
 - a.** Enrolling as a student at an educational facility; or
 - b.** Attending school at an educational facility.

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12. Work as the owner, principal, agent or employee at a place of lawful employment;
13. Perform work directly related to lawful employment;
14. Be present at any place or event as specified by a variance issued by the Chief of Police or designee pursuant to 14B.30.060 B.

- D.** An exclusion is valid only if the person to be excluded received actual notice of the exclusion as required by 14B.30.050; including notice of the limitations of the exclusion contained in 14B.30.020.

14B.30.035 Violation of an exclusion - penalties.

- A.** It is unlawful for a person to enter or remain in a prostitution-free zone in violation of an exclusion imposed pursuant to this Code. For violation of this subsection, a court may impose a fine of no more than \$500 or imprisonment of no more than 30 days, or both.
- B.** A person who enters or remains in a prostitution-free zone in violation of an exclusion issued pursuant to this Code is subject to arrest for Criminal Trespass (ORS 164.245).

14B.30.040 Issuance of Exclusion Notices.

The Chief of Police and/or designees are the persons in charge of the public rights of way and parks in the prostitution-free zones for purposes of issuing notices of exclusion in accordance with this Chapter.

14B.30.050 Procedure.

- A.** If a person is arrested and either cited to appear in court for charging or lodged in jail for presentation to a magistrate for charging based upon probable cause to believe that the person has committed any of the offenses enumerated in Subsection 14B.30.030 A. within a prostitution-free zone, the Chief of Police and/or designees may exclude that person from that prostitution-free zones. Every person excluded shall be provided a notice of exclusion and variances substantially similar to Exhibit C attached to Ordinance No.179996. Additions to the notice of exclusion that increase the scope of the exclusion from that described in Exhibit C render the notice and the exclusion invalid.
- B.** At the time a person is issued a notice of exclusion from a prostitution-free zone, the Chief of Police and/or designees may discuss with the excluded person whether the person has a plausible need for a variance and may issue a variance pursuant to the process described in 14B.30.060 B.

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- C. The notice of exclusion shall be in writing and a copy delivered to the excluded person. The notice of exclusion shall include the following:
 - 1. A description of the area designated as a prostitution-free zone in Section 14B.30.070 from which that person is excluded;
 - 2. Information concerning the right to appeal the exclusion to the Code Hearings Officer as provided in Chapter 22.10 of this Code; and
 - 3. Notice that conviction of the offense for which the person was arrested and excluded will result in a one-year exclusion and information concerning the right to appeal a conviction-based exclusion to the Code Hearings Officer as provided in Chapter 22.10 of this Code.

14B.30.060 Appeal, Review and Variances.

- A. A ninety (90) day exclusion shall take effect at 12:01 on the 22nd calendar day following issuance of the notice of exclusion if the person issued the notice of exclusion has not filed an appeal as provided in this Chapter and a Code Hearings Officer has reviewed a police report documenting the exclusion notice and has found that the report presents credible evidence that supports probable cause to believe the person:
 - 1. committed any of the offenses enumerated in Subsection A of Section 14B.30.030, and ;
 - 2. received the notice required by 14B.30.050 A.
- B. If a person issued a notice of exclusion files an appeal as provided in this chapter, imposition of a ninety (90) day exclusion shall be stayed pending a final, enforceable decision upholding the exclusion.
- C. APPEAL. A person to whom a notice of exclusion is issued shall have a right to appeal as follows:
 - 1. Appeals shall be made to the Code Hearings Officer of the City of Portland. Any hearings regarding such appeals shall be conducted in accordance with Chapter 22.10 of this Code.
 - 2. Copies of documents in the City's control which are intended to be used at the hearing shall be made available, upon request, to the appellant.
 - 3. An appeal of a ninety (90) day notice of exclusion must be filed, in writing, by 5:00 p.m. of the fifteenth calendar day following issuance of the notice of exclusion.

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4. An appeal of a one (1) year conviction-based exclusion must be filed, in writing, by 5:00 p.m. of the fifth business day following the date of conviction.
5. An appeal of:
 - a. a denial of a request for a variance; or
 - b. a denial of a request for an amendment to a variance; or
 - c. a revocation or amendment of a variance must be filed, in writing, by 5:00 p.m. of the fifth business day following the action regarding the variance.
6. A ninety (90) day exclusion shall not take effect during the time that an appeal of the ninety (90) day exclusion is pending.
7. A one (1) year conviction-based exclusion shall take effect at 12:01 a.m. on the calendar day following the date of conviction and, notwithstanding an appeal of the exclusion, shall remain in effect unless the Code Hearings Officer issues a contrary decision.
8. At the hearing on an appeal of a ninety (90) day exclusion, the City shall have the burden to show by a preponderance of the evidence that the appellant committed any of the offenses enumerated in Subsection 14B.30.030 A., and that the conduct supporting the exclusion occurred within a prostitution-free zone.
9. At the hearing on an appeal of a one (1) year conviction-based exclusion, the City shall have the burden to show by a preponderance of the evidence that the appellant was convicted of any of the offenses enumerated in Subsection 14B.30.030 A., and that the conduct supporting the conviction occurred within a prostitution-free zone.
10. At the hearing on an appeal of a denial of a request for a variance as provided in 14B.30.060 C.5.a., the City shall have the burden to show by a preponderance of the evidence that the denial was in accordance with this Section.
11. At the hearing on an appeal of a denial of a request for an amendment to a variance as provided in 14B.30.060 C.5.b., the City shall have the burden to show by a preponderance of the evidence that the amendment was in accordance with this section.
12. At the hearing on an appeal of a revocation or amendment of a variance as provided in 14B.30.060 C.5.c., the City shall have the burden to show by a

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preponderance of the evidence that any of the conditions enumerated in this Section supporting revocation or amendment existed at the time of revocation or amendment.

- 13.** At the hearing on an appeal of a ninety (90) day exclusion, the following shall be prima facie evidence that the exclusion was based on probable cause to believe that the appellant committed any of the offenses enumerated in Subsection 14B.30.030 A.:

- a.** A determination by a court having jurisdiction over the offense that forms the basis for the exclusion, that probable cause existed to arrest the person to whom the initial ninety (90) day notice of exclusion was issued for violation of any of the offenses enumerated in Subsection 14B.30.030 A.; or
- b.** An accusatory instrument charging the person to whom a ninety (90) day notice of exclusion was issued, for violation of any of the offenses enumerated in Subsection 14B.30.030 A.

- 14.** At the hearing on an appeal of a one (1) year conviction-based exclusion, a judgment of conviction for any of the offenses that formed the basis for the exclusion, as enumerated in Subsection 14B.30.030 A., shall be conclusive evidence that the described conduct occurred but, absent a finding of fact by the court of conviction, is not conclusive evidence that the conduct occurred in a prostitution-free zone.

- D.** **VARIANCES.** Variances modify an exclusion, and shall be granted, denied, amended, or revoked in accordance with the following provisions:

- 1.** All variances shall be in writing and shall state the purpose for which they are granted and the period of time during which they are effective. A variance that does not describe its period of effectiveness is effective for the duration of the exclusion. A variance allows relief from an exclusion only for travel to and from specified locations, activities or events, and presence at specified locations, activities and events within a prostitution-free zone.
- 2.** All Police Bureau Precincts shall receive and process requests for Drug-Free or Prostitution-Free Zone variances during regular business hours if they are otherwise open to the public. This capability will be maintained at the main precinct station or at a sub-station.
- 3.** Variance. The Chief of Police and/or designees may, for any reason, grant an excluded person a variance from an exclusion at any time during an exclusion period. Except as described in 14B.30.050 B., the Chief of Police and/or designees shall grant an appropriate variance to an excluded person

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who presents a plausible need to engage in any non-criminal activity that is not associated with the behavior supporting the person's exclusion. A variance granted under this Subsection allows travel within the prostitution-free zone only in accordance with the terms specified in the variance. The Chief of Police or designees will ask a person requesting a variance to provide and update an address through which the person can be reached for the duration of the variance in the event the City determines there is a need to amend or revoke the variance.

E. REVOCATION OR AMENDMENT OF VARIANCES. Variances may be revoked or amended for the following reasons and in the following manner:

1. The excluded person provided false information in order to obtain the variance;
2. There is probable cause to believe the person has committed any of the offenses enumerated in Subsection 14B.30.030 A. in the prostitution-free zone subsequent to the issuance of the variance;
3. If the circumstances giving rise to the issuance of the variance no longer support a continuation of the variance or a term thereof;
4. If the person has new circumstances that would support amending the variance; or
5. A revocation or amendment of a variance becomes effective at 5:00 p.m. of the fifth business day following mailing of notice of the action to the excluded person at the address provided pursuant to 14B.30.060 B.1. unless the excluded person appeals the determination by following the procedures in 14B.30.060 A.5.c.

14B.30.070 Listing of Prostitution-Free Zones.

The following descriptions shall comprise the boundaries of the prostitution-free zones listed, and the prostitution-free zones shall include the entire area on and within the listed boundaries.

- A.** West Prostitution-Free Zone: Beginning at a point on the northeast corner of N.W. 14th Avenue as it intersects with N.W. Johnson Street; thence westerly along the north curb line of N.W. Johnson until it intersects with the west curb line of N.W. 23rd Avenue; thence southerly along the west curb line of N.W. 23rd Avenue as it crosses West Burnside Street and becomes S.W. Vista Avenue; thence southerly in a straight line to a point that is 500 feet from the intersection of the south curb line of West Burnside Street and the west curb line of S.W. Vista Avenue; thence easterly following a line that is at all times parallel to and 500 feet from the south curb line of West Burnside Street until it intersects with the east curb line of N.W.

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14th Avenue; thence northerly along the east curb line of N.W. 14th Avenue continuing along to the point of the beginning.

- B.** East Prostitution-Free Zone: Beginning at a point at the intersection of the west curb line of N.E. 82nd and the north curb line of N.E. Skidmore; thence westerly along the north curb line of N.E. Skidmore to a point 1000 feet from the point of beginning; thence southerly following a line that is at all times parallel to and 1000 feet from the west curb line of N.E. 82nd Avenue as it crosses E. Burnside Street and becomes S.E. 82nd Avenue; thence southerly following a line that is at all times parallel to and 1000 feet from the west curb line of S.E. 82nd Avenue to a point that is 1000 feet to the west of the southwest corner of S.E. Crystal Springs Boulevard; thence easterly along the south curb line of S.E. Crystal Springs Boulevard to a point that is 1000 feet to the east of the southeast corner of S.E. Crystal Springs Boulevard; thence northerly following a line that is at all times parallel to and 1000 feet from the east curb line of S.E. 82nd Avenue as it crosses E. Burnside Street and becomes N.E. 82nd Avenue; thence northerly following a line that is at all times parallel to and 1000 feet from the east curb line of N.E. 82nd Avenue to a point that is 500 feet to the south of the south curb line of N.E. Sandy Boulevard; thence easterly following a line that is at all times parallel to and 500 feet from the south curb line of N.E. Sandy Boulevard until it intersects with the west curb line of N.E. 92nd Avenue; thence northerly along the west curb line of N.E. 92nd Avenue until it intersects with the north curb line of N.E. Sandy Boulevard; thence easterly along the north curb line of N.E. Sandy Boulevard to a point that is 200 feet to the east of the centerline of N.E. 92nd Avenue; thence southerly along a line that is at all times parallel to and 200 feet to the east from the centerline of N.E. 92nd Avenue to a point that is 500 feet from the south curb line of N.E. Sandy Boulevard; thence easterly following a line that is at all times parallel to and 500 feet from the south curb line of N.E. Sandy Boulevard to the east curb line of N.E. 122nd Avenue; thence northerly along the east curb line of N.E. 122nd Avenue to a point 500 feet north of the north curb line of N.E. Sandy Boulevard; thence westerly following a line that is at all times parallel to and 500 feet from the north curb line of N.E. Sandy Boulevard until it intersects with the west curb line of N.E. 82nd; thence southerly along the west curb line of N.E. 82nd to the point of beginning.

**CHAPTER 14B.40 - IMPOUNDMENT AND
INVESTIGATION FOR DUII**

Sections:

- 14B.40.010 Impoundment.
- 14B.40.020 Investigation.
- 14B.40.030 Administration and Fees.

14B.40.010 Impoundment.

A vehicle used by a person arrested in the City of Portland for the offense of Driving Under the Influence of Intoxicants may be seized and impounded. The period of impoundment shall be sufficient to give the Bureau of Police a reasonable period of time to determine whether the person arrested has been previously convicted of or forfeited bail or security for Driving Under the Influence of Intoxicants in violation of the laws of Oregon or of any other jurisdiction, or has been previously convicted of or forfeited bail or security for murder, manslaughter, criminally negligent homicide or assault that resulted from the operation of a motor vehicle in Oregon or another jurisdiction. The vehicles of persons with such a criminal record are subject to forfeiture under state law.

14B.40.020 Investigation.

The Bureau of Police is authorized to initiate an investigation in pertinent state and national records databases for information relevant to making the determination described in 14B.40.010 and to compile that information in a readily accessible database.

14B.40.030 Administration and Fees.

The Bureau of Police is authorized to develop implementing procedures under this Chapter and to develop a fee structure which ensures that to the extent possible, the Bureau's costs and expenses in undertaking impoundment and investigation are paid by the person arrested for DUII, or other person or entity seeking to recover the vehicle.

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CHAPTER 14B.50 - FORFEITURE

Sections:

- 14B.50.010 Certain Vehicles as Nuisances.
- 14B.50.020 Forfeiture Proceedings.
- 14B.50.030 Prostitution.
- 14B.50.035 Disbursement of Proceeds from Prostitution Forfeiture.
- 14B.50.040 Gambling.
- 14B.50.050 Money Laundering.
- 14B.50.055 Distribution of Proceeds from Money Laundering Forfeiture.
- 14B.50.060 Unlawful Operation of Private For-Hire Vehicle.
- 14B.50.065 Disbursement of Proceeds from Unlawful Operation of Private For-Hire Vehicle Forfeiture.

14B.50.010 Certain Vehicles as Nuisances.

(Amended by Ordinance Nos. 184197 and 184648, effective June 8, 2011.) The following motor vehicles are hereby declared to be nuisances and subject to seizure and in rem civil forfeiture:

- A. A motor vehicle operated by a person whose operator's license is criminally suspended or revoked under ORS 811.182.
- B. A motor vehicle used to commit Driving Under the Influence of Intoxicants in violation of ORS 813.010, to the extent forfeiture of such vehicle is permitted under state law.
- C. A motor vehicle used to commit prostitution as defined in ORS 167.007(1)(b).
- D. A motor vehicle used to commit Fleeing or Attempting to Elude Police under ORS 811.540.

14B.50.020 Forfeiture Proceedings.

(Amended by Ordinance Nos. 180260 and 184197, effective October 27, 2010.) All civil forfeitures conducted pursuant to this Chapter are subject to the procedures and limitations set forth in ORS Chapter 131A except that the distribution of proceeds in 131A.360 is not applicable.

14B.50.030 Prostitution.

(Amended by Ordinance Nos. 184197 and 184648, effective June 8, 2011.) Conduct involving violation of, solicitation to violate, attempt to violate or conspiracy to violate any provision of ORS 167.002 to 167.027, excluding 167.007(1)(a) is hereby declared to be prohibited conduct, and any property that is used to commit or which is proceeds of the prohibited conduct is hereby declared to be subject to forfeiture, as limited by the provisions of Section 14B.50.020.

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14B.50.035 Disbursement of Proceeds from Prostitution Forfeiture.

(Replaced by Ordinance No. 184648, effective June 8, 2011.)

- A.** Forfeiture proceeds arising out of the prohibited conduct as defined by Section 14B.50.030 shall be separately accounted for.
- B.** After entry of a judgment of forfeiture for any assets forfeited under Section 14B.50.030, the forfeiting agency shall distribute or apply the proceeds in the following order:
 - 1.** To the satisfaction of any foreclosed liens, security interests, and contracts, in order of their priority;
 - 2.** To the seizing and forfeiting agencies for actual and reasonable expenses related to the costs of the forfeiture proceeding, including but not limited to
 - a.** the costs incurred by seizing and forfeiting agencies in investigating and prosecuting the case, such as costs, disbursements and attorney fees as defined in ORCP 68 A;
 - b.** special expenses such as the provision of currency for undercover law enforcement operations, the cost of disabling a hidden compartment in a motor vehicle, and storage or maintenance of the seized property; and
 - c.** expenses arising in connection with the sale of any forfeited property.
 - 3.** The forfeiting agency may not pay expenditures made in connection with the ordinary maintenance and operation of a seizing or forfeiting agency under this Subsection.
- C.** After payment of costs under Subsection 14B.50.035 B., the forfeiting agency shall use seventy-five percent of the remaining proceeds to provide services, including but not limited to shelter services, for victims of human trafficking. The remaining twenty-five percent of the proceeds from any assets forfeited under or Section 14B.50.030 may be used by the Portland Police Bureau for law enforcement purposes relating to the provisions of ORS 167.002, 167.007(1)(b), 167.012 and 167.017.

14B.50.040 Gambling.

Conduct involving violation of, solicitation to violate, attempt to violate or conspiracy to violate any provision of ORS 167.117 to 167.166 is hereby declared to be prohibited conduct, and any property that is used to commit or which is proceeds of the prohibited

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conduct is hereby declared to be subject to forfeiture, as limited by the provisions of 14B.50.020.

14B.50.050 Money Laundering.

(Added by Ordinance No. 185503, effective August 17, 2012.) Conduct involving a violation of, solicitation to violate, attempt to violate or conspiracy to violate any provision of ORS 164.170 and 164.172 is hereby declared to be prohibited conduct, and any property that is used to commit or which is proceeds of the prohibited conduct is hereby declared to be subject to forfeiture, as limited by the provisions of Section 14B.50.020.

14B.50.055 Distribution of Proceeds from Money Laundering Forfeiture.

(Added by Ordinance No. 185503, effective August 17, 2012.)

- A.** Forfeiture proceeds arising out of the prohibited conduct as defined by Section 14B.50.050 shall be separately accounted for.
- B.** After entry of a judgment of forfeiture for any assets forfeited under Section 14B.50.050, the forfeiting agency shall distribute or apply the proceeds in the following order:
 - 1.** To the satisfaction of any foreclosed liens, security interests, and contracts, in order of their priority;
 - 2.** To the seizing and forfeiting agencies for actual and reasonable expenses related to the costs of the forfeiture proceeding, including but not limited to
 - a.** the costs incurred by seizing and forfeiting agencies in investigating and prosecuting the case, such as costs, disbursements and attorney fees as defined in ORCP 68 A;
 - b.** special expenses such as the provision of currency for undercover law enforcement operations, the cost of disabling a hidden compartment in a motor vehicle, and storage or maintenance of the seized property; and
 - c.** expenses arising in connection with the sale of any forfeited property.
- C.** To the extent not addressed by a claim filed under ORS 131A.165, restitution awarded under ORS 137.103 et seq. and compensatory fines awarded under ORS 137.101 shall be paid to any victim of the prohibited conduct or similar crime.
- D.** After payment of costs under Subsection 14B.50.055 B. and C., the forfeiting agency shall use any remaining proceeds for law enforcement purposes.

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14B.50.060 Unlawful Operation of Private For-Hire Vehicle.

(Added by Ordinance No. 187092, effective April 21, 2015.) Conduct involving violation of Portland City Code Sections 16.40.090 A., 16.40.130 A., 16.40.150 A., 16.40.190 A., 16.40.190 B., 16.40.560, 16.40.720, 16.40.730, or 16.40.740 is hereby declared to be prohibited conduct, and any property that is used to commit or which is proceeds of the prohibited conduct is hereby declared to be subject to forfeiture, as limited by the provisions of 14B.50.020. A motor vehicle may be seized for forfeiture under this section if the person operating the vehicle is arrested or issued a citation for Sections 16.40.090 A., 16.40.130 A., 16.40.150 A., 16.40.190 A., 16.40.190 B., 16.40.560, 16.40.720, 16.40.730, or 16.40.740 and the person, within three years prior to the arrest or issuance of the citation, has twice been convicted of any of the listed offenses at either a misdemeanor or violation-level.

14B.50.065 Disbursement of Proceeds from Unlawful Operation of Private For-Hire Vehicle Forfeiture.

(Added by Ordinance No. 187092, effective April 21, 2015.)

- A.** Forfeiture proceeds arising out of the prohibited conduct as defined by Section 14B.50.060 shall be separately accounted for.
- B.** After entry of a judgment of forfeiture for any assets forfeited under Section 14B.50.060, the forfeiting agency shall distribute or apply the proceeds in the following order:
 - 1.** To the satisfaction of any foreclosed liens, security interests, and contracts, in order of their priority;
 - 2.** To the seizing and forfeiting agencies for actual and reasonable expenses related to the costs of the forfeiture proceeding, including but not limited to
 - a.** the costs incurred by seizing and forfeiting agencies in investigating and prosecuting the case, such as costs, disbursements and attorney fees as defined in ORCP 68 A;
 - b.** special expenses such as the provision of currency for undercover law enforcement operations, the cost of disabling a hidden compartment in a motor vehicle, and storage or maintenance of the seized property; and
 - c.** expenses arising in connection with the sale of any forfeited property.
- C.** After payment of costs under Subsection B., the forfeiting agency shall use any remaining proceeds for enforcement of the provisions of Chapter 16.40.

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**CHAPTER 14B.60 - CHRONIC NUISANCE
PROPERTY**

Sections:

- 14B.60.010 Definitions.
- 14B.60.020 Violation.
- 14B.60.030 Procedure.
- 14B.60.040 Commencement of Actions; Remedies; Burden of Proof.
- 14B.60.050 Summary Closure.
- 14B.60.060 Enforcement.
- 14B.60.070 Attorney Fees.

14B.60.010 Definitions.

A. Chronic Nuisance Property.

1. Property on which three or more Nuisance Activities exist or have occurred during any thirty (30) day period; or,
2. Property on which or within 200 feet of which any Person Associated With the Property has engaged in three or more Nuisance Activities during any thirty (30) day period; or,
3. Property which, upon request for execution of a search warrant, has been the subject of a determination by a court that probable cause that possession, manufacture, or delivery of a controlled substance or related offenses as defined in ORS 167.203, 475.005 through 475.285 and/or 475.940 through 475.995 has occurred within the previous thirty (30) days, and the Chief of Police or a Precinct Commander has determined that the search warrant was based on evidence of continuous or repeated Nuisance Activities at the Property; or,
4. Property on which continuous or repeated Nuisance Activities as defined in Portland City Code 14B.60.010 D.7.,8.,13., and/or 14. exist or have occurred.

B. Commissioner in Charge. The Portland City Commissioner assigned responsibility for the Bureau of Police.

C. Control. The ability to regulate, restrain, dominate, counteract or govern Property, or conduct that occurs on a Property.

D. Nuisance Activities. Any of the following activities, behaviors or conduct:

1. Harassment as defined in ORS 166.065(1)(a).

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2. Intimidation as defined in ORS 166.155 through 166.165.
3. Disorderly conduct as defined in ORS 166.025.
4. Assault or menacing as defined in ORS 163.160 through ORS 163.190.
5. Sexual abuse, contributing to the delinquency of a minor, or sexual misconduct as defined in ORS 163.415 through ORS 163.445.
6. Public indecency as defined in ORS 163.465.
7. Prostitution or related offenses as defined in ORS 167.007 through ORS 167.017.
8. Alcoholic liquor violations as defined in ORS Chapter 471.105 through 471.482.
9. Offensive littering as defined in ORS 164.805.
10. Criminal trespass as defined in ORS 164.243 through 164.265.
11. Theft as defined in ORS 164.015 through 164.140.
12. Arson or related offenses as defined in ORS 164.315 through 164.335.
13. Possession, manufacture, or delivery of a controlled substance or related offenses as defined in ORS 167.203, ORS 475.005 through 475.285, and/or 475.940 through 475.995.
14. Illegal gambling as defined in ORS 167.117, and/or ORS 167.122 through ORS 167.127.
15. Criminal mischief as defined in ORS 164.345 through 164.365.
16. Any attempt to commit (as defined in ORS 161.405), and/or conspiracy to commit (as defined in ORS 161.450), any of the above activities, behaviors or conduct.
17. Fire or discharge of a firearm as defined in Portland City Code 14A.60.020.
18. Unlawful operation of sound producing or reproducing equipment as defined in Portland City Code 14A.30.010 and/or excessive noise as defined in Portland City Code Chapters 18.04 and/or 18.14.
19. Unlawful drinking in public places as defined in Portland City Code 14A.50.010.

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20. Curfew as defined in Portland City Code 14A.80.010.

21. Indecent exposure as defined in Portland City Code 14A.40.030.

- E.** Person. Any natural person, agent, association, firm, partnership, corporation or other entity capable of owning, occupying or using Property in the City of Portland.
- F.** Person Associated With. Any Person who, on the occasion of a Nuisance Activity, has entered, patronized, visited, or attempted to enter, patronize or visit, or waited to enter, patronize or visit a Property or Person present on a Property, including without limitation any officer, director, customer, agent, employee, or any independent contractor of a Property, Person in Charge, or owner of a Property.
- G.** Person in Charge. Any Person, in actual or constructive possession of a Property, including but not limited to an owner or occupant of Property under his or her ownership or Control.
- H.** Precinct Commander. Any Commander of the Portland Police Bureau in charge of a Precinct.
- I.** Property. Any property, including land and that which is affixed, incidental or appurtenant to land, including but not limited to any business or residence, parking area, loading area, landscaping, building or structure or any separate part, unit or portion thereof, or any business equipment, whether or not permanent. For Property consisting of more than one unit, Property may be limited to the unit or the portion of the Property on which any Nuisance Activity has occurred or is occurring, but includes areas of the Property used in common by all units of Property including without limitation other structures erected on the Property and areas used for parking, loading and landscaping.

14B.60.020 Violation.

- A.** Any Property determined by the Chief of Police or a Precinct Commander to be Chronic Nuisance Property is in violation of this Chapter and subject to its remedies.
- B.** Any Person in Charge of Property determined by the Chief of Police or a Precinct Commander to be a Chronic Nuisance Property is in violation of this Chapter and subject to its remedies.

14B.60.030 Procedure.

- A.** When the Chief of Police or a Precinct Commander receives two or more police reports documenting the occurrence of Nuisance Activities on or within 200 feet of a Property, the Chief of Police or Precinct Commander shall independently review such reports to determine whether they describe the activities, behaviors or conduct

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enumerated under Portland City Code 14B.60.010 D.1.-21. Upon such a finding, the Chief of Police or a Precinct Commander may notify the Person in Charge in writing that the Property is in danger of becoming Chronic Nuisance Property. The notice shall contain the following information:

1. The street address or a legal description sufficient for identification of the Property.
 2. A statement that the Chief of Police or Precinct Commander has information that the Property may be Chronic Nuisance Property, with a concise description of the Nuisance Activities that exist, or that have occurred. The Chief of Police or the Precinct Commander shall offer the Person in Charge an opportunity to propose a course of action that the Chief of Police or the Precinct Commander agrees will abate the Nuisance Activities giving rise to the violation.
 3. Demand that the Person in Charge respond to the Chief of Police or the Precinct Commander within ten (10) days to discuss the Nuisance Activities.
- B.** When the Chief of Police or Precinct Commander receives a police report documenting the occurrence of additional Nuisance Activity on or within 200 feet of a Property after notification as provided by Portland City Code 14B.60.030 A.1.; or, in the case of Chronic Nuisance Property as defined in Portland City Code 14B.60.010 A.3. or 4., for which notice under Portland City Code 14B.60.030A is not required, the Chief of Police or the Precinct Commander shall notify the Person in Charge in writing that the Property has been determined to be a Chronic Nuisance Property. The notice shall contain the following information:
1. The street address or a legal description sufficient for identification of the Property.
 2. A statement that the Chief of Police or the Precinct Commander has determined the Property to be Chronic Nuisance Property with a concise description of the Nuisance Activities leading to his/her determination.
 3. Demand that the Person in Charge respond within ten (10) days to the Chief of Police or the Precinct Commander and propose a course of action that the Chief of Police or the Precinct Commander agrees will abate the Nuisance Activities giving rise to the violation.
 4. Service shall be made either personally or by first class mail, postage prepaid, return receipt requested, addressed to the Person in Charge at the address of the Property determined to be a Chronic Nuisance Property, or

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such other place which is likely to give the Person in Charge notice of the determination by the Chief of Police or the Precinct Commander.

5. A copy of the notice shall be served on the owner at the address shown on the tax rolls of the county in which the Property is located, and/or the occupant at the address of the Property, if these Persons are different than the Person in Charge, and shall be made either personally or by first class mail, postage prepaid.
- C. If the Person in Charge fails to respond as required by Portland City Code 14B.60.030 B.3., the Chief of Police or the Precinct Commander may refer the matter to the Commissioner in Charge and the City Attorney. Prior to referring the matter to the Commissioner in Charge and the City Attorney, the notice required by Portland City Code 14B.60.030 B. shall also be posted at the property.
- D. If the Person in Charge responds as required by Portland City Code 14B.60.030 B.3. and agrees to abate Nuisance Activities giving rise to the violation, the Chief of Police or the Precinct Commander may postpone referring the matter to the Commissioner in Charge and the City Attorney. If an agreed course of action does not result in the abatement of the Nuisance Activities within sixty (60) days; or, if no agreement concerning abatement is reached within sixty (60) days, the Chief of Police or the Precinct Commander may refer the matter to the Commissioner in Charge and the City Attorney.
- E. When a Person in Charge makes a response to the Chief of Police or the Precinct Commander as required by Portland City Code 14B.60.030 A.3. or B.3. any conduct or statements made in connection with the furnishing of that response shall not constitute an admission that any Nuisance Activities have occurred or are occurring. This Subsection does not require the exclusion of any evidence which is otherwise admissible or offered for any other purpose.
- F. The failure of any Person to receive notice as provided by Portland City Code 14B.60.030 A. or B. shall not invalidate or otherwise affect the proceedings under this Chapter.

14B.60.040 Commencement of Actions; Remedies; Burden of Proof.

- A. The Commissioner in Charge may authorize the City Attorney to commence legal proceedings in the Circuit Court to abate Chronic Nuisance Property and to seek closure, the imposition of civil penalties against any or all of the Persons in Charge thereof, and, any other relief deemed appropriate.
- B. If the Court determines Property to be Chronic Nuisance Property, the Court shall order that the Property be closed and secured against all unauthorized access, use and occupancy for a period of not less than six (6) months, nor more than one (1)

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year. The order shall be entered as part of the final judgment. The Court shall retain jurisdiction during any period of closure.

- C.** If the Court determines a Property to be Chronic Nuisance Property, the Court may impose a civil penalty of up to \$100 per day for each day Nuisance Activities occurred on the Property, following notice pursuant to Portland City Code 14B.60.030 B.; or, the cost to the City to abate the Nuisance Activities at the Property whichever is greater. The amount of the civil penalty shall be assessed against the Person in Charge and/or the Property and may be included in the City's money judgment.
- D.** If satisfied of the good faith of the Person in Charge, the Court shall not award civil penalties if the Court finds that the Person in Charge at all material times could not, in the exercise of reasonable care or diligence, determine that the Property had become Chronic Nuisance Property.
- E.** In establishing the amount of any civil penalty, the Court may consider any of the following factors and shall cite those found applicable:

 - 1. The actions taken by the Person in Charge to mitigate or correct the Nuisance Activities at the Property;
 - 2. The financial condition of the Person in Charge;
 - 3. Repeated or continuous nature of the problem;
 - 4. The magnitude or gravity of the problem;
 - 5. The cooperation of the Person in Charge with the City;
 - 6. The cost to the City of investigating and correcting or attempting to correct the Nuisance Activities;
 - 7. Any other factor deemed relevant by the Court.
- F.** The City shall have the initial burden of proof to show by a preponderance of the evidence that the Property is Chronic Nuisance Property.
- G.** Evidence of a Property's general reputation and/or the reputation of persons residing in or frequenting it shall be admissible.

14B.60.050 Summary Closure.

Any summary closure proceeding shall be based on evidence showing that Nuisance Activities exist or have occurred on the Property and that emergency action is necessary to avoid an immediate threat to public welfare and safety. Proceedings to obtain an order of summary closure shall be governed by the provisions of ORCP 79 for obtaining temporary

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restraining orders. In the event of summary closure, the City is not required to comply with the notification procedures set forth in Portland City Code 14B.60.030 A. and B.

14B.60.060 Enforcement.

- A.** The Court may authorize the City to physically secure the Property against all unauthorized access, use or occupancy in the event that the Person in Charge fails to do so within the time specified by the Court. In the event that the City is authorized to secure the Property, the City shall recover all costs reasonably incurred by the City to physically secure the Property as provided by this Section. The City Bureau(s) physically securing the Property shall prepare a statement of costs and the City shall thereafter submit that statement to the Court for its review as provided by ORCP 68.
- B.** The Person in Charge shall pay reasonable relocation costs of a tenant as defined by ORS 90.100(28), if, without actual notice, the tenant moved into the Property after either:

 - 1.** A Person in Charge received notice of the determination of the Chief of Police or any Precinct Commander pursuant to Portland City Code 14B.60.030 B.; or
 - 2.** A Person in Charge received notice of an action brought pursuant to Portland City Code 14B.60.050.
- C.** A lien shall be created against the Property for the amount of the City's money judgment. In addition, any Person who is assessed penalties under Portland City Code 14B.60.040 C. and/or costs under Portland City Code 14B.60.060 A. shall be personally liable for payment thereof to the City. Judgments imposed by this Chapter shall bear interest at the statutory rate.

14B.60.070 Attorney Fees.

The Court may, in its discretion, award attorneys' fees to the prevailing party.

**CHAPTER 14B.70 - SHORT TERM MOTEL
RENTAL**

Sections:

- 14B.70.010 Definitions.
- 14B.70.020 Rental of Rooms.
- 14B.70.030 Procedure.
- 14B.70.040 Appeals Process.
- 14B.70.050 City Remedies.

14B.70.010 Definitions.

For the purposes of this Chapter, the following definitions shall apply:

- A.** Person in control: an employee or owner with the ability to regulate, restrain, dominate, counteract or govern conduct that occurs on or at the motel, hotel, inn, or other facility designed for overnight rental.
- B.** Customer: any person who pays valuable consideration to occupy any room or rooms in a motel, hotel, inn, or other facility designed for overnight rental.
- C.** Employee: any officer, director, agent, or employee of a motel, or any independent contractor who works on or at the rental property.
- D.** Fee: the consideration charged by the operator for the occupancy of space in a motel, valued in money, goods, labor, credits, or other consideration.
- E.** Motel: any structure, or portion of any structure, which is occupied or intended or designed for dwelling, lodging, or sleeping purposes and includes but is not limited to any hotel, inn, tourist home, studio hotel, bachelor hotel, lodging house, and rooming house.
- F.** Occupancy: the use or possession, or the right to the use or possession, for lodging or sleeping purposes of any room or rooms in a motel.
- G.** Operator: the person who is the proprietor of the motel in any capacity.
- H.** Owner: any person, agent, firm, or corporation having a legal or equitable interest in a motel, and includes, but is not limited to a mortgagee in whom possession is vested all or part of the legal title to the property or all or part of the beneficial ownership and a right to present use and enjoyment of the property.
- I.** Renting by the hour: the use or possession for lodging or sleeping purposes of any room for an amount less than one-half of the minimum daily rental rate.

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14B.70.020 Rental of Rooms.

- A.** A motel becomes a public nuisance when any motel employee or person in control permits on three or more occasions during any thirty (30) day period or twelve (12) or more occasions during any twelve (12) month period, a customer to rent a room designed for dwelling, lodging, or sleeping purposes, by the hour, or rents the same room more than twice within a 24 hour period.
- B.** Any motel which becomes a public nuisance is subject to the remedies provided for in this Chapter.

14B.70.030 Procedure.

When the City believes the motel property has become a public nuisance as defined in this Chapter, the City shall attempt to notify the owner(s) of record and the person, firm, or corporation in possession of the property, in writing that the property has been determined to be a public nuisance. The notice shall contain the following information:

- A.** The street address and a legal description sufficient for identification of the property.
- B.** A statement that the City has found the property to be a public nuisance, together with a concise description of the events or conditions leading to this finding, including the date and time of the events or conditions.
- C.** Demand that the owner or rightful possessor of the motel property respond within twenty (20) days to the Chief of Police or the Precinct Commander and appeal the City's determination or propose an abatement plan that the Chief of Police or the Precinct Commander agrees will abate the nuisance activities giving rise to the violation.
- D.** The City shall attempt to serve a copy of the notice personally on the owner, rightful possessor, or agent, if known, at least ten (10) days before the commencement of any judicial action by the City. In addition, the notice shall be mailed certified mail, return receipt requested, postage prepaid, and addressed to the owner of the business at the address of the property believed to be a public nuisance and to such other address as is shown on Multnomah County tax rolls, or such other place which is believed to give the owner of the business and of the property actual notice of the City's determination.
- E.** The failure of any person or owner to receive actual notice of the finding of a public nuisance as defined in this Chapter shall not invalidate or otherwise affect the proceedings under this Chapter.

14B.70.040 Appeals Process

- A.** If the owner, business, agent, or rightful possessor of the property disagrees with the City's findings and determination, the owner or other rightful possessor may file an appeal with Bureau of Police within twenty (20) days of the City's determination that the motel property is a public nuisance.
- B.** The request for the appeal shall be in writing, and include the owner or rightful possessor's full name, street address and legal description sufficient for identification of the property determined a public nuisance, and the reason(s) for disagreement with the City's findings and determination.
- C.** Should the owner or rightful possessor of the property be dissatisfied with the outcome of the appeal, the owner or rightful possessor may issue a further appeal to the City Code Hearings Officer pursuant to Chapter 22.10 of this Code.

14B.70.050 City Remedies.

- A.** The Chief of Police or the Precinct Commander may refer the matter to the City Attorney where:

 - 1.** The owner or rightful possessor fails to respond within twenty (20) days from the determination that the motel property constitutes a public nuisance by the Chief of Police or Precinct Commander, either by appealing the City's determination or by submitting a proposed abatement plan as provided in this Chapter;
 - 2.** No agreeable written abatement plan for abatement is reached within thirty (30) days from determination of a public nuisance by the Chief of Police or the Precinct Commander;
 - 3.** The owner or rightful possessor fails to execute commencement of the abatement plan within a reasonable amount of time, not to exceed sixty (60) days of the plan's enactment; or
 - 4.** The owner or rightful possessor fails to comply and maintain compliance with all conditions of the written abatement plan for one year.
- B.** Failure to respond or failure to propose an abatement plan shall be prima facie evidence of the owner or rightful possessor's lack of cooperation. Failure to execute or comply with any abatement plan shall be prima facie evidence of lack of good faith in mitigating or correcting the situation.
- C.** When the owner or rightful possessor makes a response to the Chief of Police or the Precinct Commander as required by this Chapter, any conduct or statements made in connection with the response does not constitute an admission that any

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nuisance activities have occurred or are occurring. This Subsection does not require the exclusion of any evidence which is otherwise admissible or offered for any other purpose.

- D.** If a court determines a motel to be a public nuisance within the meaning of this Chapter, the court may order any remedy it deems appropriate to abate the nuisance, including a civil penalties not to exceed \$500 for the first occasion and not to exceed \$2,500 for the second occasion, and closure of the motel for up to six months for the third occasion.

**CHAPTER 14B.80 - GRAFFITI NUISANCE
PROPERTY**

Sections:

- 14B.80.010 Declaration of Purpose.
- 14B.80.020 Graffiti Nuisance Property.
- 14B.80.030 Definitions.
- 14B.80.040 Procedures.

14B.80.010 Declaration of Purpose.

- A.** It is the purpose and intent of this ordinance to provide for a procedure for removal of graffiti from buildings, walls and other structures in order to reduce social deterioration within the City and to promote public safety and health.
- B.** The Manager may adopt procedures, forms, and written policies for administering and implementing the provisions of this Chapter.

14B.80.020 Graffiti Nuisance Property.

- A.** Any property, building or structure within the City of Portland which becomes a graffiti nuisance property is in violation of this Chapter and is subject to its remedies.
- B.** Any person who permits property under their control to become a graffiti nuisance property shall be in violation of this Chapter and subject to its remedies.

14B.80.030 Definitions.

For the purposes of this Chapter, the following definitions shall apply:

- A.** Graffiti: Any unauthorized markings of paint, ink, chalk, dye or other similar substance which is visible from premises open to the public, and that have been placed upon any real or personal property such as buildings, fences, structures, or the unauthorized etching or scratching of such described surfaces where the markings are visible from premises open to the public, such as public rights of way or other publicly owned property.
- B.** Manager: The Graffiti Abatement Manager is the City official, or designated representative, who is responsible for the administration of the Graffiti Nuisance Abatement program under this Chapter. In accordance with adopted procedures, the Manager may appoint such officers, employees and agents as shall be authorized and necessary to enforce the provisions of this Chapter.
- C.** Graffiti Nuisance Property: Property upon which graffiti has been placed and such graffiti has been permitted to remain for more than ten (10) days after the property

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owner of record has been issued written notification pursuant to Section 14B.80.040 B.

- D.** Occupant: Any person or sublessee, successor or assignee who has control over property.
- E.** Owner: Any person, agent, firm or corporation having a legal or equitable interest in a property and includes but is not limited to:
 - 1.** A mortgagor in possession in whom is vested all or part of the legal title to the property or all or part of the beneficial ownership and a right to present use and enjoyment of the premises; or
 - 2.** An occupant who has control over the property/premises.
- F.** Permit: Knowingly to suffer, allow, or acquiesce by any failure, refusal or neglect to abate.
- G.** Property: Any real or personal property and that which is affixed incidental or appurtenant to real property but not limited to any premises, house, building, fence, structure or any separate part thereof, whether permanent or not.
- H.** Unauthorized: Without the consent of the owner or the occupant.

14B.80.040 Procedures.

(Amended by Ordinance No. 178352, effective May 28, 2004.)

- A.** Required Graffiti Removal. The owner or occupant of any property in the City shall remove any graffiti from such property within ten (10) days of the graffiti's appearance.
- B.** Notification
 - 1.** Whenever the Manager determines that graffiti exists on any structure in the City of Portland, the Manager may issue an abatement notice.
 - 2.** The Manager shall cause the notice to be served upon the property owner and any occupant. The owner or occupant shall have ten (10) days after the date of service of the notice in which to remove the graffiti. The Graffiti Abatement Manager shall have the sole discretion to grant the property owner the option of giving the City written permission to enter on the property and remove the graffiti.
 - 3.** Service shall be accomplished by addressing the notice to the owner and occupant and sending it by personal service, registered mail or certified

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mail. Service on the occupant may also be accomplished by posting the notice in a clearly visible location on the subject property.

4. If graffiti is not removed or written permission is not given to the City to remove the graffiti, the costs of removal may be assessed to the owner and will become a lien on the affected property. For each instance of graffiti abatement, the Manager shall keep an accurate account of all expenses incurred, including an overhead charge of 25 percent for program administration and a civil penalty of \$250 for each abatement. In the event that the measures taken are deemed by the Code Hearings Officer to be appropriate, the cost for the same may be made as an assessment lien upon the property.

C. Appeal

1. Within ten (10) days of the receipt of the notice, the property owner or occupant may appeal the notice from the Manager to the Code Hearings Officer of the City of Portland, as set out in Chapter 22.10 of this Code.
2. Upon receipt of the appeal request, the Code Hearings Officer shall set the matter for hearing within ten (10) business days. If the Code Hearings Officer finds the property to be a Graffiti Nuisance Property, and the owner or responsible party has been given notice in accordance with Subsection B. above, the Code Hearings Officer shall specify when and under what conditions the graffiti shall be abated.

D. Removal of Graffiti

1. The Manager may summarily abate any graffiti on any utility poles and cabinets, on exterior walls and fences immediately abutting public streets or property, or on any public property, including but not limited to traffic signs and lights.
2. Whenever the Manager has reasonable cause to believe that there exists upon any building or structure any graffiti requiring abatement under this Chapter, the Manager may enter upon the graffiti nuisance property at all reasonable times to perform any duty imposed on the Manager under this Chapter, and to enforce the provisions of this Chapter. Upon the failure to comply with the notice of abatement by the designated compliance date, and if the property owner or occupant has not appealed the notice as provided under Subsection C., the following steps may be taken if the graffiti nuisance property is plainly enclosed to create privacy and prevent access by unauthorized persons:

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- a.** If the graffiti nuisance property is occupied, the Manager shall first present proper credentials and demand entry to cause the graffiti to be abated. If entry is refused, the Manager may attempt to secure entry by any legal means.
- b.** If the graffiti nuisance property is unoccupied, the Manager shall first make a reasonable attempt to locate the owner or occupant and demand entry. Such demand may be included in the initial notice sent to the owner or occupant under Subsection B. above. If entry is refused, the Manager may attempt to secure entry by any legal means.

 - (1)** If the Manager has first obtained an administrative search warrant to secure entry onto the graffiti nuisance property to abate the graffiti, no owner or occupant shall refuse, fail or neglect, after proper request, to promptly permit entry by the Manager to abate the graffiti.
 - (2)** It shall be unlawful for any owner or occupant to refuse to permit entry by the Manager to abate graffiti under this Chapter after an administrative search warrant has been obtained. Any violation of this Subsection is punishable upon conviction by a fine of not more than \$500 and a jail sentence of up to six months.
- c.** If the graffiti is not removed and abated, or cause shown, as specified above, the Manager may cause the graffiti to be removed and abated upon issuance of an Administrative Search warrant.

 - (1)** Graffiti Abatement. If the graffiti is not removed and abated, or cause shown, as specified above, the Manager may cause the graffiti to be removed and abated.
 - (2)** Warrants. The Manager may request any Circuit Court judge to issue a graffiti abatement warrant whenever entry onto private property is necessary to remove and abate any graffiti.
 - (3)** Grounds for Issuance of Graffiti Abatement Warrants; Affidavit.

 - (a)** Affidavit. A graffiti abatement warrant shall be issued only upon cause, supported by affidavit, particularly describing: the applicant's status in applying for the warrant; the ordinance or regulation

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requiring or authorizing the removal and abatement of the graffiti; the building or property to be entered; the basis upon which cause exists to remove or abate the graffiti, and a statement of the graffiti to be removed or abated.

- (b) Cause. Cause shall be deemed to exist if there is reasonable belief that a graffiti violation exists, as defined in this Chapter, with respect to the designated property, and that the property owner has been given notice and an opportunity to abate the graffiti, and has not responded in a timely fashion.
- (4) Procedure for Issuance of a Graffiti Abatement Warrant.

 - (a) Examination. Before issuing a graffiti abatement warrant, the judge may examine the applicant and any other witness under oath and shall be satisfied of the existence of grounds for granting such application.
 - (b) Issuance. If the judge is satisfied that cause for the removal and abatement of any graffiti nuisance exists and that the other requirements for granting the application are satisfied, the judge shall issue the graffiti abatement warrant, particularly describing the person or persons authorized to execute the warrant, the property to be entered, and a statement of the general types and estimated quantity of the items to be removed or conditions abated. The warrant shall contain a direction that it be executed on any day of the week between the hours of 8:00 a.m. and 6:00 p.m., or where the judge has specially determined upon a showing that it cannot be effectively executed between those hours, that it be executed at any additional or other time of the day or night.
 - (c) Police Assistance. In issuing a graffiti abatement warrant, the judge may authorize any peace officer, as defined in Oregon Revised Statutes, to enter the described property to remove any person or obstacle and to assist the representative of the bureau in any way necessary to enter the property and, remove and abate the graffiti.

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(5) Execution of Graffiti Abatement Warrants.

- (a)** Occupied Property. Except as provided in 14B.80.040 D.2., in executing a graffiti abatement warrant, the person authorized to execute the warrant shall, before entry into the occupied premises, make a reasonable effort to present the person's credentials, authority and purpose to an occupant or person in possession of the property designated in the warrant and show the occupant or person in possession of the property the warrant or a copy thereof upon request. A copy of the warrant shall be left with the occupant or the person in possession.
- (b)** Unoccupied Property. In executing a graffiti abatement warrant on unoccupied property, the person authorized to execute the warrant need not inform anyone of the person's authority and purpose, as prescribed in 14B.80.040 D.2.c.(5)(a), but may promptly enter the designated property if it is at the time unoccupied or not in the possession of any person or at the time reasonably believed to be in such condition. In such case a copy of the graffiti abatement warrant shall be conspicuously posted on the property.
- (c)** Return. A graffiti abatement warrant must be executed within 10 working days of its issue and returned to the judge by whom it was issued within 10 working days from its date of execution. After the expiration of the time prescribed by this subsection, the warrant unless executed is void.

E. Graffiti Abatement Consent Forms.

- 1.** The Manager shall develop consent forms allowing the Manager to enter onto property to abate the graffiti without prior notice from the Manager. The Manager shall make these consent forms available to the public.
- 2.** Property owners and occupants may request and sign consent forms for allowing graffiti abatement. The Graffiti Abatement Manager shall renew the consent forms at least biannually.

**CHAPTER 14B.85 - GRAFFITI MATERIALS
AND SALES**

(Chapter added by Ordinance No. 181231, effective
September 28, 2007.)

Sections:

- 14B.85.010 Definitions
- 14B.85.020 Sales and Display of Graffiti Materials.
- 14B.85.030 Civil Penalties.
- 14B.85.040 Criminal Penalties.

14B.85.010 Definitions.

For the purposes of this Chapter, the terms used in this Chapter shall be defined as provided in this Section:

- A. Manager:** means the Manager is the City official, or designated representative, responsible for the administration of the Graffiti Nuisance Abatement program under Chapter 14B.80.
- B. Paint pen.** A tube, marker, or other pen-like instrument with a tip of one-quarter (1/4) inch in diameter or greater that contains paint or a similar fluid and an internal paint agitator.
- C. Graffiti material.** Any can of spray paint, spray paint nozzle, paint pen, glass cutting tool, or glass etching tool or instrument.
- D. Spray paint.** Any aerosol container that is made or adapted for the purpose of applying paint or other substance capable of defacing property.
- E. Spray paint nozzle.** A nozzle designed to deliver a spray of paint of particular width or flow from a can of spray paint.

14B.85.020 Sale and Display of Graffiti Materials.

A. Picture Identification and Tracking.

- 1.** Any person who owns, conducts, operates, or manages a business where graffiti materials are sold shall obtain current and acceptable identification when selling graffiti material to any person. The purchaser shall sign a sales form that tracks the graffiti material by lot number. The seller completing the transaction shall initial the sales form, confirming that the purchaser is presenting acceptable identification that belongs to and is the same person as the purchaser. The entire sales form is subject to disclosure pursuant to Oregon Public Records Law.

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2. The seller shall maintain a log of all sales of graffiti materials. The log shall include the names of purchasers, a description of the graffiti material sold to the purchaser, the invoice or sales form number for the sale and the date of the sale. The seller shall maintain the log for a period of two years from the date of the sale. Upon presentation of official identification, any representative of the Portland Police Bureau or any designated representative of the Manager may enter the business location of a business where graffiti materials are sold to ensure compliance with the provisions of this Chapter. The inspection shall be for the limited purpose of inspecting the business location, and the log maintained by the seller to determine compliance with the requirements of this Chapter. Any inspection under this Section shall be authorized to occur only during normal business hours of the business location.
3. For purposes of this Chapter, “acceptable identification” shall mean either a valid driver’s license, a State of Oregon Identification Card issued by the Department of Motor Vehicles, or a valid government-issued identification card and a second piece of identification one of which has a photograph of the purchaser. The employee completing the transaction must visually confirm that the photograph on the identification document is of the person presenting the identification and to whom the graffiti materials are being sold.

- B. Display and Storage.** As of November 1, 2007, it shall be unlawful for any person who owns, conducts, operates, or manages a business where graffiti materials are sold or who sells or offers for sale any graffiti material to store or display, or cause to be stored or displayed graffiti material in an area that is accessible to the public without employee assistance in the regular course of business pending legal sale or other disposition. This Ordinance shall not be construed to preclude or prohibit the storage or display of graffiti material in an area viewable by the public so long as such items are not accessible to the public without employee assistance.

14B.85.030 Civil Penalties.

- A.** The Manager may file a complaint with the Code Hearings Officer, as provided under Section 22.03.020, for any violation of the provisions of this Chapter, asking the Code Hearings Officer to impose civil penalties as provided in this Section. Having made a determination to ask that the Code Hearings Officer to impose civil penalties as provided by this Section, the Manager shall give the person written notice of the determination by causing notice to be served upon the person at their business or residence address. Service of the notice shall be accomplished by mailing the notice by regular mail, or at the option of the Manager, by personal service in the same manner as a summons served in an action at law. Mailing of the notice by regular mail shall be prima facie evidence of receipt of the notice.

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Service of notice upon the person apparently in charge of a business during its hours of operation shall constitute prima facie evidence of notice to the business owner.

- B.** The Code Hearings Officer may impose civil penalties of up to \$5,000 for any person's first violation of this Chapter. The Code Hearings Officer may impose civil penalties of up to \$15,000 for second violations of this Chapter by the same person. The Code Hearings Officer may impose civil penalties of up to \$25,000 for third or additional violations of this Chapter by the same person.
- C.** In determining the amount of the civil penalty to be imposed for violations of the provisions of this Chapter, the Code Hearings Officer shall consider:

 - 1. The extent and nature of the person's involvement in the violation;
 - 2. The economic or financial benefit accruing or likely to accrue as a result of the violations;
 - 3. Whether the violations were repeated or continuous, or isolated and temporary;
 - 4. The magnitude and seriousness of the violation;
 - 5. The City's costs of investigating the violations and correcting or attempting to correct the violation; and,
 - 6. Any other factors the Code Hearings Officer may deem to be relevant.
- D.** The Manager's decision to file a complaint under subsection A seeking civil penalties for any violations of this Chapter shall be an exclusive choice of remedies for enforcement of the requirements of this Chapter for those violations. In such cases, no criminal penalties may be imposed under Section 14B.85.040.

14B.85.040 Criminal Penalties.

Except as provided in Section 14B.85.030, the intentional or knowing violation of any provision of this Chapter is punishable upon conviction by a fine of not more than \$500 or by imprisonment for not more than 6 months, or both.

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CHAPTER 14B.90 - SECONDHAND DEALERS

(Chapter replaced by Ordinance No. 181303,
effective October 26, 2007.)

Sections:

- 14B.90.010 Purpose.
- 14B.90.020 Definitions.
- 14B.90.030 Permit Required.
- 14B.90.035 Minimum Standards.
- 14B.90.040 Application for Permit.
- 14B.90.050 Issuance and Renewal of Permit.
- 14B.90.060 Permit Fees.
- 14B.90.070 Subsequent Locations.
- 14B.90.080 Reporting of Secondhand Dealer Transactions.
- 14B.90.090 Regulated Property Sale Limitations.
- 14B.90.095 Release of Held or Seized Property.
- 14B.90.100 Tagging Regulated Property for Identification.
- 14B.90.110 Inspection of Property and Records.
- 14B.90.120 Prohibited Acts.
- 14B.90.130 Penalties.
- 14B.90.140 Revocation or Suspension of Permit.
- 14B.90.150 Appeals.
- 14B.90.170 Authority of Director to Adopt Rules, Procedures and Forms.

14B.90.010 Purpose.

(Amended by Ordinance No. 188976, effective June 29, 2018.) The Council's purpose in adopting this Chapter is to regulate certain business activities that present an extraordinary risk of being used by criminals to dispose of stolen property. The Council finds that this risk is present despite the best efforts of legitimate secondhand dealer businesses because these businesses process large volumes of goods and materials that are frequently the subject of theft. This Chapter is intended to reduce this type of criminal activity by providing timely police awareness of such property transactions and by regulating the conduct of Persons engaged in this business activity. The Council finds that these regulations are necessary and the need for the regulations outweighs any anti-competitive effect that may result from their adoption.

14B.90.020 Definitions.

(Amended by Ordinance Nos. 186746 and 188976, effective June 29, 2018.) As used in this Chapter, unless the context requires otherwise:

A. "Acceptable Identification" means either:

1. A current driver's license or a State of Oregon Identification Card issued by the Department of Motor Vehicles; or

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2. Two current United States, state or local government-issued identification cards, one of which has a photograph of the Seller; or
 3. One of the following, when the transaction report includes the Seller's thumbprint:
 - a. A current United States, state, or local government-issued identification card which has a photograph of the Seller; or
 - b. A current passport from any country; or
 - c. A current Consulate Identity Card.
- B.** "Acquire" means to take or transfer any interest in personal property in a voluntary transaction, including but not limited to: sales; consignments; memoranda between a Dealer and a private party Seller; leases; trade-ins; loans; and abandonments. Any acquisition of Regulated Property by a Dealer will be presumed to be an acquisition on behalf of the Secondhand Dealer business. Notwithstanding the foregoing, "acquire" does not include:
1. Any loans made in compliance with state laws by Persons licensed as Pawnbrokers by the State of Oregon; or
 2. Memoranda between a Dealer and a Person engaged in the business of selling Regulated Property.
- C.** "Business Location" means any physical location where the Dealer conducts business.
- D.** "Chief of Police" means the Chief of the Portland Police Bureau or designee.
- E.** "Consulate Identity Card" means a Mexican Matricula Consular issued after 2014 or an identity card issued by a foreign consulate located in the United States with an application process and cards that meet the following criteria:
1. The applicant must be a citizen of the country served by the consulate and must apply for the card in person; and
 2. In addition to fingerprints and digital photographs, the applicant must provide:
 - a. A birth certificate from the country served by the consulate; and
 - b. An official identification from that country, such as a voter identification card; and

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- c. Proof of address within the issuing consulate's consular district.
- 3. The consulate's identification database must be linked to a national security database in the home country; and
- 4. The issuance of the consulate identification card is supported by a centralized system to avoid duplications and confirm the authenticity of required documents and information; and
- 5. Consulates must have access to an electronic consular identification database.
- 6. The identity cards must be printed on plastic and incorporate security features including but not limited to:
 - a. Visible and invisible marks;
 - b. A background design with high quality print and micro test frames;
 - c. Text with different colors of ink;
 - d. Embedded identity data on a cryptographic chip;
 - e. A clear photograph;
 - f. A laser engraved unique card number.

A Dealer should contact the Portland Police Bureau if there are questions about whether an identity card from a country other than Mexico will serve as Acceptable Identification for Secondhand transactions.

- F. "Criminal Arrests or Convictions" refers to any offense defined by the statutes of the State of Oregon or ordinances of the City of Portland, unless otherwise specified. Any arrest or conviction for conduct other than that denoted by the statutes of the State of Oregon or ordinances of the City of Portland, as specified herein, will be considered to be equivalent to one of such offenses if the elements of such offense for which the Person was arrested or convicted would have constituted one of the above offenses under the applicable Oregon statutes or Portland ordinance provisions.
- G. "Dealer".
 - 1. Means any:
 - a. Sole proprietorship, partnership, limited partnership, family limited partnership, joint venture, association, cooperative, trust, estate,

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corporation, personal holding company, limited liability company, limited liability partnership or any other form of organization for doing business and that:

- b.** Either:
 - (1)** Acquires Regulated Property at or from Business Locations within the City of Portland, or on behalf of such a business regardless of where the acquisition occurs, or
 - (2)** Offers for sale Regulated Property.
- 2.** Dealers that acquire or offer for sale not more than 50 items of Regulated Property in any one-year period will be categorized as an "Occasional Secondhand Dealer." The term "Dealer" in this Chapter and all regulations herein refer to Secondhand Dealers, Occasional Secondhand Dealers and Pawnbrokers unless specifically stated otherwise.
- 3.** "Dealer" does not include:
 - a.** A business whose acquisitions of Regulated Property consist exclusively of donated items and/or purchases from 501(c)3 organizations; or
 - b.** A Person whose only business transactions with Regulated Property in the City of Portland consist of the sale of personal property acquired for household or other personal use; or
 - c.** A Person whose only business transactions with Regulated Property in the City of Portland consist of a display space, booth, or table maintained for displaying or selling merchandise at any Trade Show, convention, festival, fair, circus, market, flea market, swap meet or similar event for less than 14 days in any calendar year.
- H.** "Director" means the Director of the Bureau of Revenue and Financial Services Revenue Division or designee.
- I.** "Held Property" means any Regulated Property that cannot be sold, dismantled or otherwise disposed of for a proscribed period of time as more specifically enumerated in 14B.90.090.
- J.** "Investment Purposes" means the purchase of personal property by businesses and the retention of that property in the same form as purchased, for resale to persons who are purchasing the property primarily as an investment.

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- K.** "Medication" means any substance or preparation, prescription or over-the-counter, used in treating or caring for ailments and/or conditions in humans or animals.
- L.** "New" means anything conspicuously not Used.
- M.** "Pawnbroker" means any business required by Oregon Revised Statute 726.040 to hold an Oregon Pawnbroker's license. Pawnbrokers are required by Chapter 14B.90 to have a Secondhand Dealer Permit. As a Dealer, all transactions occurring within their business (loans, buys, or consignments) are subject to all requirements within this Chapter unless otherwise stated.
- N.** "Person" means a natural Person.
- O.** "Principal" means any Person who will be directly engaged or employed in the management or operation of the Secondhand Dealer business, including any owners and any shareholders with a 5 percent or greater interest in the company.
- P.** "RAPID" means the Regional Automated Property Information Database, which is used by Dealers to report acquisitions of Regulated Property to the Police Bureau.
- Q.** "Receive" means to take property into the inventory, possession, or control of a Dealer.
- R.** "Registered Business" means an entity that is:

 - 1.** Registered with the Oregon Secretary of State Corporation Division or its equivalent in the state where the business is located; and
 - 2.** Compliant with the City of Portland Tax Division business registration requirements.
- S.** "Regulated Property" means property of a type that has been determined by the Portland Police Bureau to be property that is frequently the subject of theft, including New items as defined in Section 14B.90.020 as well as Used items such as precious metals, precious gems, watches, sterling silver, electronic equipment, photography equipment, tools, musical instruments and cases, firearms, sporting equipment, and household appliances. A list of Regulated Property is included in the Administrative Rules and may be updated at any time in order to enhance the Bureau's ability to reduce property crimes and recover stolen goods.
- T.** "Remanufactured" means that an item has been altered to the degree that the main components are no longer identifiable as the original item.
- U.** "Seller" means any Person who:

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1. Offers items of Regulated Property in exchange for money or other property; or as collateral for a loan; or
 2. Donates or abandons items of Regulated Property.
- V. "Trade Show" means an event open to the public, held in a venue other than a Dealer's Business Location, at which vendors of a specific type of merchandise may exhibit, buy, sell, or trade items that may include Regulated Property.

Events commonly known as flea markets or swap meets, in which goods of many types are exhibited, sold or traded, are not considered Trade Shows for the purpose of this Chapter.

- W. "Transaction Report" means the record of the information required by 14B.90.080, transmitted to the Police Bureau by the means required in the Administrative Rules.
- X. "Used" means anything that has been put into action or service.

14B.90.030 Permit Required.

(Amended by Ordinance Nos. 186746 and 188976, effective June 29, 2018.)

- A. No Person or business shall engage in, conduct or carry on a secondhand dealer business in the City without a valid Secondhand Dealer Permit issued by the Revenue Division.
- B. Upon acquiring or offering for sale more than 50 items of Regulated Property during any one-year period, an Occasional Secondhand Dealer shall apply for and obtain a Secondhand Dealer Permit before acquiring any more items of Regulated Property.
- C. Any Person or business that advertises or otherwise holds him/herself out to be acquiring or offering for sale Regulated Property within the City will be presumed to be operating as a Dealer subject to the terms of Chapter 14B.90.
- D. The sale of Regulated Property at events commonly known as "garage sales," "yard sales," or "estate sales," is exempt from these regulations if all of the following are present:
1. No sale exceeds a period of 72 consecutive hours; and
 2. No more than four sales are held at the same location in any twelve-month period.

14B.90.035 Minimum Standards.

(Amended by Ordinance No. 188976, effective June 29, 2018.)

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- A.** No Person or business may operate as a Dealer within the City of Portland unless the Person or business maintains a fixed physical Business Location, and is a Registered Business.
- B.** Dealers shall comply with all applicable federal, state, and local regulations.

14B.90.040 Application for Permit.

(Amended by Ordinance Nos. 186746 and 188976, effective June 29, 2018.)

- A.** An applicant for a Secondhand Dealer Permit shall complete and submit an application (including required personal history forms) that sets forth the following information:
 - 1.** The name, address, telephone number, birth date and principal occupation of all owners and any Person who will be directly engaged or employed in the management or operation of the business or the proposed business;
 - 2.** The name, address and telephone number of the business or proposed business and a description of the exact nature of the business to be operated;
 - 3.** The web address of all web pages used to acquire or offer for sale Regulated Property on behalf of the Dealer, and any and all internet auction account names used to acquire or offer for sale Regulated Property on behalf of the Dealer.
 - 4.** Written proof that all Principals are at least 18 years of age;
 - 5.** Each Principal's business occupation or employment for the 3 years immediately preceding the date of application;
 - 6.** The business license and permit history of the applicant in operating a business identical to or similar to those regulated by Chapter 14B.90;
 - 7.** A brief summary of the applicant's business history in any jurisdiction including:
 - a.** The business license or permit history of the applicant; and,
 - b.** Whether the applicant or any Principal has ever had any business-related license or permit revoked or suspended, the reasons therefor, and the business activity or occupation of the applicant or Principal subsequent to the suspension or revocation.
 - 8.** Whether the applicant will be a sole proprietorship, partnership, limited partnership, family limited partnership, joint venture, association, cooperative, trust, estate, corporation, personal holding company, limited

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liability company, limited liability partnership or any other form of organization for doing business.

- a.** If a partnership, the application must set forth the names, birth dates, addresses, telephone numbers, and principal occupations, along with all other information required of any individual applicant, of each partner, whether general, limited, or silent, and the respective ownership shares owned by each;
 - b.** If a corporation, or limited liability company, the application must set forth the corporate or company name, copies of the articles of incorporation or organization and the corporate by-laws or operating agreement, and the names, addresses, birth dates, telephone numbers, and principal occupations, along with all other information required of any individual applicant, of every officer, director, members or managers, and shareholder (owning more than five percent of the outstanding shares) and the number of shares held by each;
 - 9.** If the applicant does not own the business premises, a true and complete copy of the executed lease (and the legal description of the premises to be permitted) must be attached to the application;
 - 10.** All Criminal Arrests or Convictions of each Principal enumerated in paragraphs 1 through 7 of this Subsection;
 - 11.** Upon request, Principals and employees shall submit fingerprints and passport size photographs to the Portland Police Bureau. Principals and employees must submit new photos if requested to do so by the Portland Police Bureau;
 - 12.** Any other information that the Director may reasonably feel is necessary to accomplish the goals of this Chapter.
- B.** The Dealer shall notify the Revenue Division of any changes in the information required in Subsection A. within ten business days.
- C.** New employees of Dealers shall complete and submit the personal history form as required in Subsection A. Employees may not acquire Regulated Property until all required information has been reviewed and approved by the Portland Police Bureau. The criteria used to review a new employee will be the same as those used in the review of an initial application in Subsection 14B.90.050 B.

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- D.** The personal and business information contained in the application forms required pursuant to Subsection 14B.90.040 A. are subject to the requirements of the Oregon Public Records Law, ORS 192.410 et seq.

14B.90.050 Issuance and Renewal of Permit.

(Amended by Ordinance Nos. 186746 and 188976, effective June 29, 2018.)

- A.** Upon the filing of an application for a permit and payment of the required fee, the Chief of Police shall conduct an investigation of the applicant and all principals and employees listed according to the requirements in Subsection 14B.90.040 A. The Director shall issue the permit within 90 days of receiving the application if no cause for denial exists.
- B.** Except as provided in Subsection 14B.90.050 C. the Director shall deny an application for a permit if any of the following apply:
- 1.** The applicant, or any Person who will be directly engaged in the management or operation of the business, or any Person who owns a five percent or more interest in the business, has previously owned or operated a business regulated by Chapter 14B.90; and
 - a.** the license or permit for the business has been revoked for cause that would be grounds for revocation pursuant to Chapter 14B.90; or
 - b.** the business has been found to constitute a public nuisance and abatement has been ordered.
 - 2.** Any Person listed on the initial application or renewal application has been convicted of one or more of the offenses listed below or has violated any section of Chapter 14B.90. The offenses include:
 - a.** Any felony.
 - b.** Any misdemeanor or violation involving either bribery, controlled substances, deception, dishonesty, forgery, fraud, or theft, or any attempt or conspiracy to commit any of the listed offenses.
 - 3.** The Director finds by a preponderance of the evidence that the applicant or any Principal or employee has committed any offense relating to fraud, theft or any attempt or conspiracy to commit theft, or any offense listed in Section 14B.90.120;
 - 4.** The Director finds by a preponderance of the evidence that the applicant or any Principal or employee who will be involved in the business has violated any law where the elements of such law are equivalent to the provisions of Chapter 14B.90;

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5. Any statement in the application is false or any required information is withheld; or
 6. The Director finds by a preponderance of the evidence that the applicant, or any person who will be directly engaged or employed in the management or operation of the business, or any Person who owns a five percent or more interest in the business, has previously owned or operated a business regulated by Chapter 14B.90 or any laws or statutes equivalent to the provisions of Chapter 14B.90, and the business has violated applicable State, Federal or local requirements, including permitting requirements.
- C. Notwithstanding Subsection 14B.90.050 B., the Director may grant a permit after consulting with the Chief of Police despite the presence of one or more of the enumerated factors if the applicant establishes to the Director's reasonable satisfaction that:
1. The behavior evidenced by such factor is not likely to recur; or,
 2. The behavior evidenced by such factor is remote in time; or,
 3. The behavior evidenced by such factor occurred under circumstances that diminish the seriousness of the factor as it relates to the purpose of Chapter 14B.90.
- D. Permits are valid for a term of one year and expire on the first anniversary of their issuance. The permits are nontransferable and are valid only for a single Business Location. When the Business Location is to be changed, the permit holder shall provide the address of the new location in writing to the Revenue Division for approval at least 14 days prior to the change.
- E. Permits must be displayed at the Business Location in a manner readily visible to patrons.
- F. Upon denial of an application for a permit, the Director shall give the applicant written notice of the denial.
1. Service of the notice will be accomplished by mailing the notice to the applicant by certified mail, return receipt requested.
 2. Mailing of the notice will be prima facie evidence of receipt of the notice.
 3. The denial will be effective the date the notice is sent.
- G. Denial of a permit may be appealed by filing written notice of an appeal within 10 days of the date of denial in accordance with Section 14B.90.150.

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14B.90.060 Permit Fees.

(Amended by Ordinance No. 186746, effective August 6, 2014.) Every Dealer shall complete and submit all required forms to the Revenue Division and pay a nonrefundable fee as required by the Administrative Rules.

14B.90.070 Subsequent Locations.

(Amended by Ordinance Nos. 186746 and 188976, effective June 29, 2018.)

- A. Dealers must file an application for a permit for a subsequent or additional Business Location with the Revenue Division and pay a non-refundable fee as set forth in the Administrative Rules of Chapter 14B.90, provided the information required for the subsequent or additional Business Location is identical to that provided in the application for the prior location with the exception of that required by Subsection 14B.90.040 A.2.
- B. Permits issued for subsequent or additional Business Locations will be subject to all the requirements of this Chapter, and the term of the permit issued for a subsequent or additional location will expire on the same date as the initial permit.

14B.90.080 Reporting of Secondhand Dealer Transactions.

(Amended by Ordinance No. 188976, effective June 29, 2018.)

- A. Dealers shall provide to the Portland Police Bureau all required information as described in the Administrative Rules for each Regulated Property transaction (not including sales). The Chief of Police may designate the format for the transfer of this information and may direct that it be communicated by means of mail, the internet, or other computer media as provided in the Administrative Rules.
 - 1. In any such case that the Chief directs that the information be transmitted via computer media, the Chief may also direct the system that will be utilized in order to ensure conformity among all Dealers.
 - 2. If, after establishing the format and requirements for the transmission of computerized reports of transactions, the Chief of Police alters the required format, Dealers will be given at least 60 days to comply with the new format requirements. If unable to implement the reporting system before the deadline, a Dealer must submit a written request for additional time to the Chief of Police before the deadline.
 - 3. Upon approval by the Chief of Police, a Dealer that acquires less than 25 items of Regulated Property in a year may use forms provided by the Portland Police Bureau to report transactions.
 - 4. Pawnbrokers are required to report only new transactions. Loan renewals do not need to be reported.

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- B.** The Declaration of Proof of Ownership will be considered to be included in references in this Chapter to the transaction record, as appropriate.

14B.90.090 Regulated Property Sale Limitations.

(Amended by Ordinance Nos. 186746 and 188976, effective June 29, 2018.)

- A.** Regulated Property is subject to the following limitations:
- 1.** Holding Period: Regulated Property acquired by any Dealer must be held for a period of 30 full days from the date of acquisition. Pawnbroker loan transactions are exempt from the 30-day hold requirements of Section 14B.90.090 because of the redeemable nature of the loans and the holding requirements in ORS 726. However, if the loan is converted to a buy by the pawnbroker within 30 days from the date of the pawn transaction, the difference between the original date of the pawn and the buy will count toward the 30-day hold requirement. All other provisions of Section 14B.90.090 remain in effect.
 - 2.** Requirements of Held Property: All Held Property must remain in the same form as when received, must not be sold, dismantled or otherwise disposed of, and must be kept separate and apart from all other property during the holding period to prevent theft or accidental sale and to allow for identification and examination by the Revenue Division or Police Bureau. Held Property must be kept at the Business Location during this holding period so that it can be inspected during normal business hours (as provided in Section 14B.90.110). Held Property, other than property on Police Hold, may be held in a place within public view, as long as the other requirements of the Subsection are met.
- B.** Notwithstanding Subsection 14B.90.090 A., the Director may determine that certain types of transactions pose a reduced risk of being an outlet for the sale of stolen property and therefore may modify the hold period and/or reporting requirements for those types of transactions. Those transactions and the modified requirements are described in the Administrative Rules.
- C.** Upon reasonable belief that an item of Regulated Property is the subject of a crime, any peace officer may provide notice to any Dealer that a specifically described item of Regulated Property must be held in a separate Police Hold area for a period not to exceed 30 days from the date of notification, and is subject to the requirements of Subsection 14B.90.090 A.2 above. The hold may be extended an additional 30 days upon notice provided to the Dealer that additional time is needed to determine whether a specific item of Regulated Property is the subject of a crime. The Dealer shall comply with the hold notice and notify the Chief of Police of the hold notice not later than five calendar days from the day the notice was received, either by telephone, fax, email, or in person. A Dealer must notify the Chief of

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Police of their intent to dispose of any item of Regulated Property under Police Hold at least 10 days prior to doing so.

1. A Police Hold area must meet the following criteria:
 - a. Located out of public view and access, and
 - b. Marked "Police Hold," and
 - c. Contain only items that have been put on Police Hold.
 2. Dealers may maintain up to three Police Hold areas as necessary for the safe storage of high value items, physically large items, and general merchandise put on Police Hold.
 3. If it is not possible or practical to move an item to or store an item in the Police Hold area, a Dealer may submit a written request to the Chief of Police for approval to keep the item with other Held Property. Approval may be granted with the understanding that the item will be clearly marked as being on Police Hold and kept from public view and access.
- D.** Upon probable cause that an item of property is the subject of a crime, the Chief of Police may take physical custody of the item or provide written notice to any Dealer to hold such property for a period of time as determined by the Chief of Police, not to exceed the statute of limitations for the crime being investigated. Any property placed on hold pursuant to this subsection is subject to the requirements found in Subsection 14B.90.090 A.2., and will be maintained in the Police Hold area unless seized or released by the Police. Seizure of property will be carried out in accordance with Oregon Revised Statutes.
- E.** If a Dealer acquires Regulated Property with serial numbers, personalized inscriptions or initials, or other identifying marks which have been destroyed or are illegible due to obvious normal use, the Dealer must continue to hold the property at the Business Location for a period of 90 full days after acquisition. The Dealer must notify the Portland Police Bureau by adding "90 day hold" to the description of the item in the transaction record, along with a notation of what kind of information has been destroyed or is illegible. The Held Property must conform to all the requirements found in Subsection 14B.90.090 A.2.
- F.** If a Dealer receives information that leads to an objectively reasonable basis to believe that any property already at his/her Business Location has been previously lost or stolen, he/she must report that belief to the Portland Police Bureau by day's end. The notice must include the RAPID item number and any additional information regarding the name of the owner, if known.

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- G.** If a peace officer seizes any property from a Dealer; the Dealer must notify the Portland Police Bureau of the seizure not later than five calendar days from the day the seizure occurs. The Dealer must provide the name of the agency, the name of the peace officer, the number of the receipt left for the seizure, and the seized property information. Notification to the Police Bureau may be given by telephone, fax, email, or in person.

14B.90.095 Release of Held or Seized Property.

(Added by Ordinance No. 188976, effective June 29, 2018.) Items held or seized under Subsection 14B.90.090 D. may not be released to anyone other than the Dealer unless the property is released to:

- A.** Another law enforcement agency that has provided documentation to the satisfaction of the Chief of Police of the stolen status of the property, or
- B.** A Person who reported the property as stolen; and
- 1.** A stolen property report has been filed with a law enforcement agency where making an untruthful report is a violation of the law, and
 - 2.** A notice has been delivered to the Dealer holding the property or from whom the property was seized.
 - a.** The required notice will state that the property will be released to the Person who has filed the stolen property report unless the Dealer or pawnor/Seller files a motion for return of seized property within 10 days of the date of the notice and in the manner set forth in the notice.
 - b.** The notice will be sent electronically with a request for acknowledgement, or delivered in person to the Dealer at the email or physical address shown on the Dealer's permit application or most recent permit renewal application, and to the pawnor/Seller at the address shown in the transaction report required by Section 14B.90.080.
 - c.** The notice will provide the information necessary to submit a motion for return of seized property.
 - d.** The failure of any Person to receive the required notice will not invalidate or otherwise affect the proceedings of this Section.

14B.90.100 Tagging Regulated Property for Identification.

(Amended by Ordinance No. 188976, effective June 29, 2018.) Dealers shall affix a tag to every item of Regulated Property, which must contain a unique, legible number. That

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unique number must either be the item number from the RAPID transaction record or be referenced to the Transaction Report required by the Portland Police Bureau. After the hold period has expired, the unique number must remain identifiable on the property until the sale of the property.

- A. After the applicable hold period has expired, hand tools, or items that are sold with other like items and have no identifiable numbers or markings need not remain tagged.
- B. After the applicable hold period has expired, items that are Remanufactured need not remain tagged.

14B.90.110 Inspection of Property and Records.

(Amended by Ordinance Nos. 186746 and 188976, effective June 29, 2018.) Upon presentation of official identification, a Dealer must allow any representative of the Portland Police Bureau or the Revenue Division to enter the Business Location to ensure compliance with the provisions of Chapter 14B.90. The inspection will be for the limited purpose of inspecting the Business Location, Regulated Property, and related records as provided in this Chapter and the Administrative Rules. Except by mutual agreement with the Dealer or by court order, any inspection under this Section will occur only during the Dealer's normal business hours.

14B.90.120 Prohibited Acts.

(Amended by Ordinance No. 188976, effective June 29, 2018.)

- A. It is unlawful for any Person regulated by Chapter 14B.90:
 - 1. To receive any property from any Person
 - a. Known to the Principal, employee or Dealer to be prohibited from selling by a court order,
 - b. Under the age of 18 years unless the Person's parent or guardian complete the applicable information on the Declaration of Proof of Ownership,
 - c. About whom the Principal, employee or Dealer has been given notice by law enforcement as having been convicted of burglary, robbery, theft or possession of or receiving stolen property within the past ten years whether the Person is acting in his or her own behalf or as the agent of another who meets the above criteria;
 - 2. To receive property prohibited by this Chapter or the Administrative Rules, including
 - a. Medications;

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- b. Property with serial numbers, personalized inscriptions or initials or other identifying marks that appear to have been intentionally altered or rendered illegible.
 3. To receive property that a reasonable Person under similar circumstances would believe is more likely than not stolen, except as allowed by the Administrative Rules. A later determination regarding whether or not an item is found to be stolen will not be used as a factor to determine whether a Dealer has violated this Subsection.
- B. Any violation of Subsection 14B.90.120 A. is punishable, upon conviction, by a fine of not more than \$500 and a jail sentence of up to six months.
- C. Notwithstanding Subsection 14B.90.120 A., a Dealer may receive property for which the Dealer has an objectively reasonable basis to believe is more likely than not stolen if the Dealer is doing so with the intention of recovering the item for a specifically identified victim. The Dealer must notify the Portland Police Bureau of the acquisition and the name of the specific Person or entity believed to be the victim by the end of the business day that the acquisition is made. Notification may be made by phone or email. An item acquired under this Subsection must be immediately placed under a 30-day Police Hold.

14B.90.130 Penalties.

(Amended by Ordinance No. 188976, effective June 29, 2018.)

- A.** The Director may assess civil penalties in an amount up to \$500 for each violation of Chapter 14B.90.
- B.** Procedure.
- 1.** The Director, having made a determination to seek civil penalties as provided by this Section, shall give the Dealer written notice of the determination.
 - 2.** Service of the notice will be accomplished by mailing the notice by regular and certified mail, return receipt requested.
 - 3.** Mailing of the notice will be prima facie evidence of receipt of the notice.
 - 4.** The civil penalty will be due ten days from the date of the notice unless such civil penalty is appealed in accordance with Section 14B.90.150.
- C.** Any Principal of a Dealer that has been assessed civil penalties in excess of \$2,000 in the previous 12 months who subsequently violates Chapter 14B.90 may be punished, upon conviction, by a fine of up to \$500 and a jail sentence of up to 6 months.

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14B.90.140 Revocation or Suspension of Permit.

(Amended by Ordinance Nos. 186746 and 188976, effective June 29, 2018.)

- A.** Along with the other regulatory enforcement authority granted under this Chapter, the Director may, after consulting with the Chief of Police, revoke or suspend any permit issued pursuant to this Chapter:

 - 1.** For any cause that would be grounds for denial of a permit; or
 - 2.** Upon a finding that any violation of the provisions of this Chapter, federal, state or other local law has been committed and the violation is connected with the operation of the permitted Business Location so that the Person in charge of the Business Location knew, or should reasonably have known, that violations or offenses were permitted to occur at the location by the Dealer or any Principal or employee engaged or employed in the management or operation of the Business Location; or
 - 3.** A lawful inspection has been refused; or
 - 4.** If payment of civil penalties has not been received by the Revenue Division within ten business days after the penalty becomes final; or
 - 5.** If any statement contained in the application for the permit is false.
- B.** The Director, upon revocation or suspension of any permit issued pursuant to this Chapter, shall give the Dealer written notice of the revocation or suspension.

 - 1.** Service of the notice will be accomplished by mailing the notice by regular and certified mail, return receipt requested.
 - 2.** Mailing of the notice by regular mail will be prima facie evidence of receipt of the notice.
- C.** Revocation will be effective and final ten days after the giving of notice unless the revocation is appealed in accordance with Section 14B.90.150.
- D.** Suspension will be effective immediately upon the giving of notice, for the period of time set in the notice not to exceed 30 days.
- E.** Any Principal of a Dealer whose permit has been revoked who subsequently violates Chapter 14B.90 may be punished, upon conviction, by a fine of up to \$500 and a jail sentence of up to 6 months.

14B.90.150 Appeals.

(Amended by Ordinance Nos. 186746 and 188976, effective June 29, 2018.)

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- A.** Any Dealer or Person whose initial application or renewal application for a Dealer permit has been denied, or whose permit has been revoked or suspended, or who has been directed to pay a civil penalty by the Director, may appeal the action of the Director to the Code Hearings Officer of the City of Portland, as set out in Chapter 22.10 of the Portland City Code. Requests for appeal hearings must be filed with the Code Hearings Office or as specified by Section 22.10.030.
- B.** The filing of a notice of appeal of revocation or suspension of a permit, or of a civil penalty imposed by the Director under this Chapter, will stay the effective date of the action until the Code Hearings Officer issues an opinion.

14B.90.170 Authority of Director to Adopt Rules, Procedures and Forms.
(Amended by Ordinance No. 186746, effective August 6, 2014.)

- A.** The Director may adopt rules, procedures and forms to implement the provisions of this Chapter.
- B.** Adoption of Rules.

 - 1.** The Director may adopt rules pertaining to matters within the scope of this Chapter.
 - 2.** 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 ten 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.
 - 3.** The Director will consider oral and/or written testimony during the public hearing. The Director shall adopt the proposed rule, 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 Revenue Division. Copies of all rules will be made available to the public upon request.
 - 4.** Notwithstanding paragraphs 2 and 3 of this Section, the Director may adopt an interim rule without prior public notice upon a finding 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 paragraph will be effective for a period of not longer than 180 days.

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**CHAPTER 14B.100 - LIQUOR LICENSE
RECOMMENDATIONS**

Sections:

- 14B.100.010 Purpose.
- 14B.100.020 Delegation of Application Recommendation Authority.
- 14B.100.030 Application Procedure.
- 14B.100.040 Reconsideration of Applications.
- 14B.100.050 Notification of OLCC Proceedings.
- 14B.100.060 Impact Areas.

14B.100.010 Purpose.

The purpose of this Chapter is to establish a fair, effective and efficient process which shall be used by the Chief of Police in making recommendations to the Oregon Liquor Control Commission (OLCC) for liquor licenses for premises within the City limits. This Chapter is necessary to ensure that all premises licensed to sell or dispense liquor in any form meet the high expectations of this community and that all licensed premises are conducted in a lawful manner that does not unreasonably disturb the peace and tranquility of this City and its neighborhoods.

14B.100.020 Delegation of Application Recommendation Authority.

In order to expedite service to license applicants and the citizens of the City, the Council, as the governing body of the City, hereby delegates to the Chief of Police its authority to make liquor license application recommendations to the OLCC. Any responsibility delegated to the Chief of Police by this Chapter may also be performed by the designee of the Chief of Police.

14B.100.030 Application Procedure.

(Amended by Ordinance Nos. 179351 and 189078, effective July 18, 2018.)

- A.** Any applicant for any license who is required by the OLCC to have a recommendation from the City of Portland concerning the suitability of the application shall present the license application forms prescribed by the OLCC to the Office of Community & Civic Life, or its designee, for the purpose of obtaining the recommendation of the Chief of Police concerning the license.
- B.** The Office of Community & Civic Life shall accept liquor license applications only when the following conditions are met:
 - 1.** All required forms are properly completed and in order; and
 - 2.** The applicant has obtained a valid City business license; and
 - 3.** The processing fee has been paid. Fees shall be in the maximum amount allowed by Oregon law and shall be nonrefundable.

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- C.** The Office of Community & Civic Life shall forward liquor license applications to the Chief of Police with a copy of the City of Portland Liquor Outlet Information form to the Bureau of Licenses within one business day of receipt.
- D.** Except for applications for new licensed premises for railroads, public passenger carriers or boats, health care facilities, or all OLCC wholesale type licenses, in addition to the posting of a conspicuous notice on the licensed premises as required by the OLCC, Office of Community & Civic Life shall:

 - 1.** Notify the following persons by mail that an application has been filed:

 - a.** Property owners and property occupants within 300 feet of the proposed licensed premises;
 - b.** The neighborhood association within whose boundaries the licensed premises will be located.
 - 2.** Post the proposed new licensed premises with a notice indicating the process for public comment.
 - 3.** Request a response in writing from the neighborhood association, property owners and property occupants and allow at least 20 days after the mailing or posting of notification as provided in this Section, to provide a response in writing to Office of Community & Civic Life. Office of Community & Civic Life shall notify any person who responds pursuant to this Section of the recommendation made by the Chief of Police to the OLCC.
- E.** The Chief of Police shall conduct an investigation of each application for the purpose of determining the recommendation that shall be made to the OLCC. In addition to the information required by the OLCC application forms, the Chief of Police is authorized to require from the applicant any other pertinent information that the Chief of Police deems appropriate.
- F.** The Chief of Police shall coordinate with Office of Community & Civic Life and the City Noise Control Officer prior to issuance of a recommendation to determine if there is substantial neighborhood concern or opposition to the application, or if there is evidence that noise is or will be a significant and persistent problem at the licensed premises.

 - 1.** If the Chief of Police finds that there are valid grounds to make an unfavorable recommendation to OLCC as provided by Oregon liquor laws, the Chief of Police shall forward an unfavorable recommendation directly to the OLCC.

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2. If there is substantial neighborhood concern or opposition to the application, or there is evidence that noise is or will be a significant and persistent problem at the licensed premises, but the Chief of Police, because of time constraints or other factors, does not find sufficient basis for an unfavorable recommendation as provided by Oregon liquor laws, the Chief of Police shall forward a no endorsement recommendation directly to the OLCC, with supporting documentation of neighborhood concern or opposition and/or evidence of noise as provided by Office of Community & Civic Life, and shall request that the OLCC hear testimony from the neighborhood. Office of Community & Civic Life shall coordinate neighborhood testimony for OLCC hearings.
 3. If the Chief of Police finds no basis for an unfavorable recommendation as provided by Oregon liquor laws, and there is no substantial neighborhood concern or opposition or evidence that noise is or will be a significant and persistent problem at the licensed premises, the Chief of Police shall forward a favorable recommendation directly to the OLCC. The Chief of Police may also attach conditions or restrictions to a favorable recommendation, such as allowing sales only during limited hours, restricting the sale of alcoholic beverages associated with street drinkers, or other conditions or restrictions consistent with the Oregon liquor laws.
- G.** The Chief of Police shall notify the applicant of the recommendation.
- H.** The process for renewal applications shall be as provided by this Section except that the notification requirements of Subsection D shall not apply.
- I.** If Office of Community & Civic Life believes a good neighbor agreement will alleviate substantial neighborhood concern or opposition, Office of Community & Civic Life shall attempt to work with the licensed premises and the neighborhood to achieve a good neighbor agreement. Office of Community & Civic Life shall notify the Chief of Police and the OLCC of any completed good neighbor agreements, or, of its attempts to achieve a good neighbor agreement, in the event Office of Community & Civic Life is unable to complete a good neighbor agreement within a reasonable period of time.

14B.100.040 Reconsideration of Applications.

Except as provided by this Section, after having made a recommendation other than favorable on any new license application, the Chief of Police shall not reconsider an application for the same location by the same or substantially the same applicant for a period of at least 6 months, or during the period the applicant has an appeal relating to the license pending in court or in a state administrative agency, whichever is longer. However, the Chief of Police may reconsider an application in less than 6 months if no appeal relating to the license is pending in court or in a state administrative agency, and the Chief of Police

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reasonably determines that the circumstances which caused the Chief of Police to make a recommendation other than favorable have substantially changed.

14B.100.050 Notification of OLCC Proceedings.

(Amended by Ordinance No. 189078, effective July 18, 2018.) Office of Community & Civic Life shall notify Council of OLCC hearing dates, places and times, and advise Council of applications that will receive unfavorable recommendations, no endorsements recommendations, or favorable recommendations with conditions or restrictions. Office of Community & Civic Life shall advise Council of the OLCC's decisions on applications.

14B.100.060 Impact Areas.

- A. It shall be the responsibility of the Chief of Police to review, from time to time, the locations, types and quantities of liquor licenses that have been issued for premises located in geographical areas, neighborhoods or sectors of the City. If the Chief of Police, upon inquiry, or at the request of citizens or groups finds: that some area of the City is saturated with certain types of licensed premises selling or serving alcoholic beverages and that the placement of additional licensed premises within that area will likely be deleterious to that area; or, that excessive criminal acts, traffic congestion, or litter problems are present or will increase due in part to the licensed premises; or, additional licensed premises are not justified by public interest or convenience, then the Chief of Police shall make a recommendation to Council that the area be designated as an impact area, and that liquor licenses of certain types should not be granted or renewed in that area for a specific period of time, or until the number of current licenses is reduced to the point that licensed premises can be permitted that will not be deleterious to the area, or, will not lead to additional criminal acts, traffic congestion or litter problems, or, are justified by public interest or convenience.
- B. If Council declares an area to be an impact area based upon findings that valid grounds exist as provided by Oregon liquor laws, the Chief of Police shall notify OLCC so that OLCC may ensure that liquor license applicants are put on notice of the impact area.
- C. Within any area declared to be an impact area as provided by this Chapter, the Chief of Police is authorized, on behalf of Council:
 - 1. To present an unfavorable recommendation to the OLCC on any application for a new licensed premises located in the impact area; or,
 - 2. To present a favorable recommendation for any existing licensed premises located in the impact area, subject to certain conditions or restrictions, such as allowing liquor sales only during limited hours, restricting the sale of alcoholic beverages associated with street drinkers, or other restrictions consistent with the Oregon liquor laws.

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- D.** Impact area recommendations shall not apply to licensed premises wherein the sale of alcoholic beverages is incidental to full service restaurant facilities, with meals prepared on the licensed premises, provided that the liquor license applicant(s) and the restaurant owner(s) are one and the same.
- E.** The following areas are declared by Council to be impact areas:
- 1.** Burnside District Impact Area. The Burnside District, as herein defined, is declared an impact area with regard to new licensed premises applications and existing licensed premises. For purposes of this Section, the Burnside District is defined as that area bounded by the Willamette River on the East and North, by NW Ninth Avenue to West Burnside Street, by West Burnside Street to SW Fourth Avenue, by SW Fourth Avenue to SW Ankeny Street, by SW Ankeny Street to the Willamette River.
 - 2.** Central Eastside Industrial District Impact Area. The portion of the Central Eastside Industrial Area, as herein defined, is declared an impact area with regard to new licensed premises applications and existing licensed premises. For the purposes of this Section, the Central Eastside Industrial Area is defined as that area bounded by the Banfield Freeway to the North, by SE 12th Avenue to the East, by SE Clay Street to the South, and by the Willamette River on the West.
 - 3.** Inner North/Northeast Neighborhood Impact Area. The Inner North/Northeast Neighborhood, as herein defined, is declared an impact area with regard to new licensed premises applications and existing licensed premises. For purposes of this Section, the Inner North/Northeast Neighborhood is defined as that area bounded by NE Columbia Blvd. on the North, NE Broadway Blvd. on the South, and Interstate 5 on the West. The area's boundary on the East is NE 42nd Avenue from NE Columbia Blvd. to NE Prescott Street, NE 23rd Avenue from NE Prescott Street to NE Mason Street, NE 21st Avenue from NE Mason Street to NE Fremont Street and NE 7th Avenue from NE Fremont Street to NE Broadway Blvd.

**CHAPTER 14B.110 - AMUSEMENT DEVICES,
GAMES AND MACHINES**

Sections:

- 14B.110.010 Purpose.
- 14B.110.020 Definitions.
- 14B.110.030 Authorization.
- 14B.110.040 Permits Required for Certain Amusement Devices.
- 14B.110.050 Permits Required, Fees.
- 14B.110.060 Permit Application, Issuance, Denial.
- 14B.110.070 Requirements of Permit Holders.
- 14B.110.080 Inspection of Amusement Devices, Records, and Premises.
- 14B.110.090 Prohibited Conduct.
- 14B.110.100 Permit Suspension, Revocation.
- 14B.110.110 Violations, Sealing Prohibited Amusement Devices.
- 14B.110.120 Civil Penalties.
- 14B.110.130 Criminal Penalties.
- 14B.110.140 Appeals.

14B.110.010 Purpose.

The purpose of this Chapter is to provide for the strict regulation of amusement devices, games and machines in order to reduce the potential for unlawful gambling, adverse neighborhood impacts, and adverse impacts on the welfare and education of children in the City, and to raise revenue.

14B.110.020 Definitions.

(Amended by Ordinance No. 186746, effective August 6, 2014.) As used in this Chapter, unless the context requires otherwise:

- A.** “Amusement device” means any machine, device, or game, including foosball or table soccer games, billiards or pool tables, shuffleboard, shooting gallery devices, miniature bowling games, electronic games of skill, video games, and other similar machines, devices, or games:
 - 1.** Which are made available for display or operation; and,
 - 2.** Which require the payment of money or other valuable consideration.
 - 3.** “Amusement device” shall not include:
 - a.** Ping pong tables, music devices, vending machines, or any rides where no element of chance, bonus, or prize is involved; or
 - b.** Video lottery games, game terminals and equipment operated directly by the Oregon Lottery Commission as a state agency.

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- B.** “Amusement Center” means any location where a person makes seven or more amusement devices available for operation or play at any one time, but excluding any location that:
- 1.** Derives at least 50 percent of its gross income from the sale of food; or,
 - 2.** Possesses a current, valid license authorizing the on-premises consumption of alcoholic beverages; or,
 - 3.** Is operated primarily as a movie theater, bowling alley, skating rink, or other similar establishment, which displays or operates amusement devices only during the hours that such establishment makes its primary service or activity available to the public.
- C.** “Director” means the Director of the Bureau of Revenue and Financial Services Revenue Division, or his or her designee.
- D.** “Display or operation” means to make any amusement device available to the public for use or play, for the purposes of displaying or exercising skill or for amusement, at any public or private location.
- E.** “Location” means any business establishment, public or private club, association, or any other site where a person makes any amusement device available for display or operation, excepting only private residences in which such amusement devices are available only for display or operation at no cost to the player.
- F.** “Person” means any real person, or any partnership, association, corporation, or other form of business organization.

14B.110.030 Authorization.

- A.** Enforcement. The Director is authorized to enforce all provisions of this Chapter.
- B.** Procedures and forms. The Director may adopt procedures and forms to implement the provisions of this Chapter.

14B.110.040 Permits Required for Certain Amusement Devices.

- A.** It shall be unlawful for any person to make available for display or operation any amusement device in which the outcome does not depend in a material degree upon an element of chance, unless all required permits have been obtained, and the display or operation of the amusement device comply with all applicable provisions of this Chapter and of the statutes of the State of Oregon.

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- B.** The provisions the this Section shall not exempt any amusement device from any applicable provisions of the Internal Revenue Code requiring federal gaming device tax stamps, or any applicable provisions of the statutes of the State of Oregon.

14B.110.050 Permits Required, Fees.

- A.** It shall be unlawful for any owner of a location to display or make available for operation any amusement device described in Subsection 14B.110.040 without first obtaining a valid Location Permit for the location. Location Permits shall be classified with respective nonrefundable fees, as follows:

Type of Permit	Number of Devices	Fee Per Location
Class I	1 - 3	\$ 50.00
Class II	4 - 6	100.00
Class III	7 - 9	200.00
Class IV	10 - 19	500.00
Class V	20 or more	1000.00

- B.** It shall be unlawful for any owner of an amusement center to display or make available for operation any amusement device described in Section 14B.110.040 without first obtaining a valid Amusement Center Permit. Amusement Center Permits shall be classified with nonrefundable fees according to the number of devices at the location as set forth above.
- C.** In lieu of all other permits required by this Chapter, any person may make any amusement device described in Section 14B.110.040 available for display or operation, for one continuous time period not exceeding 90 days in any calendar year, by obtaining a Temporary Location Permit, which shall require the payment of a nonrefundable fee of \$250.
- D.** All permits issued under this Chapter, except Temporary Location Permits, shall be valid for the calendar year of issue, and shall expire on December 31 of that year. All permits shall contain information regarding the permittee's identity. No permit issued under this Chapter shall be transferable or assignable under any circumstances.
- E.** No provision in this Chapter shall be construed to permit the use of any amusement device in violation of State or federal law, or of any of the other provisions of this Code other than those specifically referred to herein.

14B.110.060 Permit Application, Issuance, Denial.

(Amended by Ordinance No. 186746, effective August 6, 2014.)

- A.** Applications for all permits required by this Chapter shall be made to the Revenue Division on forms provided by the Revenue Division. The applicant shall provide all the information relating to the purposes of this Chapter required on the form by

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the Revenue Division. Failure to provide any information requested on this form may be cause to deny the requested permit.

- B.** The Director shall approve issuance of permits after payment of the required fee, completion of the application form and following an investigation of the applicant. However, the Director shall deny a permit application if:
1. The applicant has been convicted of any offense related to minors, juveniles, gambling, obscenity, controlled substances, prostitution or alcoholic beverages;
 2. Any person has been convicted of any offense relating to minors, juveniles gambling, obscenity, controlled substances, prostitution or alcoholic beverages occurring at the location for which the permit is to be obtained;
 3. Any statement in the application is found to be false;
 4. The applicant has been a principal owner, operator, manager or supervisor of an amusement location and the activities or patrons of such business caused a significant increase in harassing, disorderly or violent acts, criminal activity, vandalism, litter, liquor law violations, noise or traffic congestion in or around such business;
 5. In the Director's opinion, after investigation of the proposed location of an amusement location, the proposed site would be reasonably likely to result in an increase in those acts noted in part (4) of this Subsection;
 6. The business operation as proposed by the applicant would not comply with all applicable requirements of this Code, including, but not limited to, the Building, Health, Planning and Zoning and Fire Codes of the City;
 7. The permitted amusement center would be located within 100 feet of any residential zone established by the Planning and Zoning Code or any location within 500 feet of any public or private elementary, junior high or high school or playground, this distance to be measured in a straight line without regard to intervening structures or obstacles from the nearest point of the school property or residential zone to the nearest point of the structure in which the permitted amusement devices would be operated; or,
 8. The proposed location of the business operation requiring a Location Permit, would be a detriment to the immediate vicinity due to congregation of pedestrian or vehicular traffic.

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- C. Notwithstanding Subsection B. above, the Director with the concurrence of the Chief of Police may issue a conditional permit if the applicant establishes to the Director's satisfaction that:
1. The behavior evidenced by such factor is not likely to recur;
 2. The behavior evidenced by such factor is remote in time; or,
 3. The behavior evidenced by such factor occurred under circumstances which diminish the seriousness of the factor as it relates to the purpose of this Chapter.
 4. Under this Subsection, the Director may only issue a permit containing conditions directed at ensuring that such factor shall not recur.
- D. Denial of a permit may be appealed by the applicant by filing written notice of an appeal as provided in Section 14B.110.140.

14B.110.070 Requirements of Permit Holders.

- A. Any person issued any permit for any amusement device shall supervise the use and operation of such device to prevent its use or operation for any purposes contrary to the provisions of this Chapter or any other violation of the provisions of the City Code or applicable State statutes.
- B. Displaying Permits.
1. All location, amusement center, and temporary location permits issued under this Chapter shall either be:
 - a. Securely affixed to the permitted amusement device;
 - b. Displayed so as to be visible to the public at all times such device is in a location open to the public; or,
 - c. Visible to the public in the same room as the permitted amusement device.
 2. If affixed to the amusement device, the permit must be visible for inspection without removing any portion of the amusement device, or any other obstacle, and without physically moving the amusement device from its normal operating position.
 3. The entire face of any displayed permit shall be visible. The permit shall be displayed or affixed during its entire term.

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- C. Any person issued a Location Permit, or a permit to operate an amusement center, shall operate, maintain and supervise the permitted business and its premises, including parking facilities, to prevent:
 - 1. Violations of the provisions of the Portland City Code, state, or federal law, relating to juveniles, minors, alcoholic beverages, gambling, obscenity, controlled substances, prostitution, or crimes against persons or property as defined by the Oregon Revised Statutes, that are connected in a time and manner with the operation and proximity of such premises;
 - 2. Harassing or disorderly acts on, in, or around such premises; and,
 - 3. Any significant increase in litter, noise, vehicular or pedestrian traffic congestion, or other locational problems in the area around such business.

14B.110.080 Inspection of Amusement Devices, Records, and Premises.

(Amended by Ordinance No. 186746, effective August 6, 2014.)

- A. Any person issued permits under this Chapter, or who controls any location in which a permitted amusement device is located, shall permit any Revenue Division representative or Bureau of Police officer upon presentation of official identification, to enter such location for the limited purposes of inspecting all records, amusement devices and premises regulated under this Chapter, to which the public has access, to ensure compliance with the provisions of this Chapter.
- B. Inspections under this Section shall be authorized only during normal business hours.
- C. Failure to permit an inspection authorized under this Section shall be grounds for suspension or revocation of any permit required under this Chapter.

14B.110.090 Prohibited Conduct.

- A. It shall be unlawful for any person to make an amusement device available for use or operation without first obtaining all permits required pursuant to this Chapter.
- B. It shall be unlawful for any person in control of an amusement device to display an expired permit.
- C. It shall be unlawful for any person to possess or control an amusement device which has any paper, sticker, tag or other device affixed, attached or placed on the device which purports to be a permit issued by the City or implies that the City has issued a permit when the paper, sticker, tag or other device was not issued by the City.
- D. It shall be unlawful to knowingly or intentionally use or permit the use or operation of an amusement device for any gambling purposes, whether by operation of the

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amusement device or based upon results obtained through use or operation of the device.

- E.** It shall be unlawful for any owner to transfer ownership of any amusement location permitted under this Chapter without first removing the permit from the location.
- F.** It shall be unlawful for any person to sell, rent, give, loan or otherwise assign or transfer any permit issued under this Chapter.
- G.** It shall be unlawful for any person to operate an amusement center without having a permit issued pursuant to this Chapter.

14B.110.100 Permit Suspension, Revocation.

- A.** The Director may suspend or revoke any permit issued under this Chapter upon finding reasonable grounds to believe, based upon an investigation, that:
 - 1.** Cause exists which would otherwise be grounds for the denial of such permit;
 - 2.** An intentional or knowing violation by the permittee of any provision of this Chapter has occurred; or,
 - 3.** Any violation by any person of any City ordinance or state or federal statute has occurred relating to gambling while using, operating or playing any such amusement device. Persons holding permits shall be considered to be responsible for any gambling activity of any employee relating to any permitted amusement device. Pursuant to this Section, permits may be suspended or revoked for any violation of law relating to gambling activity relating to permitted amusement devices or premises.
- B.** A suspension or revocation ordered by the Director shall not become effective until the permittee is served with written notice of the suspension or revocation, the reasons therefor, and the limited right of appeal pursuant to Section 14B.110.140, either personally or by delivery or posting of the notice at the location of the involved amusement device or business. The suspension or revocation may be appealed by filing written notice of an appeal as provided in Section 14B.110.140.

14B.110.110 Violations, Sealing Prohibited Amusement Devices.

(Amended by Ordinance No. 186746, effective August 6, 2014.)

- A.** Upon a determination that any provision of this Chapter has been violated, the Director shall issue a written Notice of Violation and assess civil penalties. The notice shall state the nature of the violation, the date of the violation, and the date by which such violation must be corrected and any civil penalties which must be

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paid to prevent the amusement device from being sealed. The person responsible for the violations shall be allowed 5 days in which to correct the violation.

B. Sealing of Amusement Devices.

1. If a violation is not corrected and civil penalties paid within the time period allowed in Subsection A. above, the Director may seal the coin slot of any amusement device involved in the violation. If an amusement device is sealed, the Director may remove the seal only if the person responsible for the violations has corrected the violations and paid any penalties imposed under this Chapter.
2. It shall be unlawful for any other person other than the Director to remove or alter a seal. If a seal is unlawfully removed or altered, the sealed amusement device shall be subject to seizure and destruction pursuant to this Section.
3. If within a single calendar year a permittee has been issued a Notice of Violation, the Director may seal any amusement device and impose penalties for all further violations by that permittee within that calendar year without first issuing a Notice of Violation or allowing time to correct the violations.

C. A sealed amusement device shall be subject to seizure and destruction as a public nuisance if:

1. The violation is not corrected and all penalties paid within 5 days of sealing; or
2. Upon the occurrence of any subsequent violations of this Section by any one owner or lessor within any calendar year.

D. The Bureau of Police shall assist the Revenue Division in the seizure of the amusement device. The City Attorney is authorized to bring any suit or action for the destruction of the amusement device as a public nuisance.

E. The owner of any amusement device seized for destruction may, within 10 days of the permittee being served with written notice of such seizure, file a written notice of appeal as provided in Section 14B.110.140.

14B.110.120 Civil Penalties.

A. The Director may impose civil penalties for violations of the provisions of this Chapter according to the following schedule:

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1. Sealed amusement device removed from location: the penalty shall be up to \$50 per amusement device.
2. Failure to obtain proper location permit: the penalty shall be up to \$50 per amusement device.
3. The unlawful removal of seal from amusement device: the amusement device shall be subject to seizure and destruction pursuant to Section 14B.110.110.

B. Calculation of Civil Penalties.

1. In calculating the amount of the civil penalty to be imposed for violations of the provisions of this Chapter, the Director shall consider:
 - a. The extent and nature of the person's involvement in the violation;
 - b. The economic or financial benefit accruing or likely to accrue as a result of the violations;
 - c. Whether the violations were repeated or continuous, or isolated and temporary;
 - d. The magnitude and seriousness of the violation;
 - e. The City's costs of investigating the violations and correcting or attempting to correct the violation; and,
 - f. Any other factor the Director deems to be relevant.
2. The Director shall provide notice of the assessment of civil penalties in the Notice of Violation under Section 14B.110.110 A.

- C. No person assessed a penalty under this Section shall be issued a permit under this Chapter until all such penalties have been paid in full.
- D. Civil penalties imposed pursuant to this Section shall be the only penalties authorized for such violations.
- E. Any person assessed a penalty may, within 10 days of receiving such written order, file a written notice of appeal as provided in Section 14B.110.140.

14B.110.130 Criminal Penalties.

Except as provided in Section 14B.110.120, the intentional or knowing violation of any provision of this Chapter is punishable upon conviction by a fine of not more than \$500 or by imprisonment for not more than 6 months, or both.

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14B.110.140 Appeals.

- A.** The filing of a notice of appeal to the Code Hearings Officer, as set out in Chapter 22.10 of this Code, of revocation or suspension of a permit, or of any civil penalty imposed by the Director under this Chapter, or of any seizure of an amusement device for destruction, shall stay the effective date of the action until the appeal is determined by the Code Hearings Officer.
- B.** The notice of appeal shall be in writing. The notice shall state the name and address of the appellant to which all required notices may be mailed. The notice shall also indicate the reasons why the appealed action was wrong and what the correct determination should be.

**CHAPTER 14B.120 - TIME, PLACE AND
MANNER REGULATION OF
ESTABLISHMENTS THAT SELL AND
SERVE ALCOHOLIC BEVERAGES**

(Chapter added by Ordinance No. 178201, effective
March 19, 2004.)

Sections:

- 14B.120.010 Purpose.
- 14B.120.020 Definitions
- 14B.120.025 Authority to Adopt Rules, Procedures and Forms.
- 14B.120.030 Nuisance Activity Violations.
- 14B.120.040 Notice.
- 14B.120.050 Nuisance Abatement Plan.
- 14B.120.055 Responsible Neighbor Program.
- 14B.120.060 Enforcement.
- 14B.120.070 Hearings.
- 14B.120.080 Remedies.

14B.120.010 Purpose.

The Oregon Legislature has authorized Oregon cities and counties to adopt reasonable time, place and manner regulations of the nuisance aspects of establishments serving alcoholic beverages, ORS 471.164. In adopting the provisions of this Chapter, the City Council's intent is to provide for reasonable time, place and manner regulations of the nuisance aspects of those establishments that serve alcoholic beverages where adverse effects occur with regard to the surrounding community. By requiring that the nuisance violations be brought before the Code Hearings Officer, the City Council's intent is that there will be specific findings made regarding the occurrence of adverse effects. The City Council also intends that the remedies imposed by the Code Hearings Officer under the authority of this Chapter will solely address the time, place and manner aspects of the nuisance activities. In addition, to create the most effective program, this Chapter establishes the Responsible Neighbor Program. The purpose of the Responsible Neighbor Program is to encourage the owners of establishments serving alcoholic beverages to act to ensure that the operation of their establishment does not create nuisances and thereby negatively impact neighborhood livability.

14B.120.020 Definitions.

(Amended by Ordinance Nos. 184870 and 189078, effective July 18, 2018.) As used in this Chapter, unless the context requires otherwise:

- A. "Alcoholic Beverage" means any liquid or solid containing more than one-half of one-percent alcohol and capable of being consumed by a human being.

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- B.** "Director" means the Director of the Office of Community & Civic Life, or the Director's designee.
- C.** "Chief of Police" means the Chief of Police of the Portland Police Bureau.
- D.** "Licensee" means any person holding a license issued by the Oregon Liquor Control Commission.
- E.** "Establishment" means any location licensed under ORS Chapter 471 and includes all enclosed areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms, including all public and private areas where patrons are permitted to be present. "Establishment" also includes areas outside of a building that the Oregon Liquor Control Commission has specifically approved for serving alcoholic beverages.
- F.** "Nuisance activity" means any of the following:
 - 1.** Operation of sound producing equipment, as prohibited by City Code Section 14A.30.020.
 - 2.** Disorderly conduct as defined in ORS 166.025 (2003).
 - 3.** Offensive littering as defined in ORS 164.805 (2003).
 - 4.** Drinking on public rights of way, unless officially authorized, as prohibited by City Code Section 14A.50.010.
 - 5.** Interference with vehicle ingress and egress as prohibited by City Code Section 14A.50.035.
 - 6.** Alcoholic beverage violations in parks, as prohibited by City Code Section 20.12.040, where the violation relates to a specific licensee.
 - 7.** Discharge of a firearm at the establishment, as prohibited by City Code Section 14.A.60.020.
 - 8.** Illegal Drug activity as defined by ORS Chapter 475.840 sections (1) – (4).
 - 9.** Unlawful Prostitution Procurement Activities or loitering for the purpose of prostitution as defined in City Code Sections 14A.40.040 or 14A.40.050 or Illegal prostitution as defined in ORS 167.007.
 - 10.** Criminal homicide as defined in ORS 163.005(2) and 163.095-163.149.

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11. Assault by means of a weapon or motor vehicle as defined in ORS 163.160(1)(b), 163.165(1)(a), 163.165(1)(c), 163.175(b)-(c), 163.185(a) and 163.185(d).
12. Assault that causes serious physical injury as defined in ORS 163.165(b) and 163.175(a).
13. Recklessly endangering another person as defined in ORS 163.195.
14. Any felony sexual offense in the first degree as defined in ORS 163.375-163.427.
15. Unlawful Use of a Weapon as defined in ORS 166.220.

G. "Serve" or "serving" means to furnish, provide or supply alcoholic beverages to patrons or customers.

14B.120.025 Authority to Adopt Rules, Procedures and Forms.

The Director and Chief of Police are authorized to adopt rules, procedures and forms to implement the provisions of this Chapter.

14B.120.030 Nuisance Activity Violations.

(Amended by Ordinance No. 184870, effective September 14, 2011.) It shall be a violation of this Chapter if:

- A.** During any continuous sixty (60) day period, any combination of three or more nuisance activities as defined in Subsections 14B.120.020 F.1.-9. occurs that is related to or arising out of an establishment that serves alcoholic beverages.
- B.** One or more nuisance activities as defined in Subsections 14B.120.020 F.10-15. occur that are related to or arising out of an establishment that serves alcoholic beverages.

14B.120.040 Notice.

(Amended by Ordinance No. 184870, effective September 14, 2011.)

- A.** The Director and the Chief of Police shall appoint a Liquor License Team to review and substantiate the occurrences of nuisance activities.
- B.** If the Director or the Chief of Police determines that a nuisance activity has occurred at an establishment, the Director or the Chief of Police will send a written notice to the licensee. The notice shall contain a description of the nuisance activity, the date and the time of its occurrence.
- C.** Upon determining that there is reasonable belief that a violation of this Chapter has occurred as provided under Section 14B.120.030, the Director or the Chief of Police

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shall send written notice to the licensee. The written notice shall contain at least the following information:

1. The street address or legal description of the establishment, as reflected in the records of the Oregon Liquor Control Commission.
 2. A concise statement setting forth the date and time of nuisance activities, and the possible remedies that may be imposed under this Chapter by the Code Hearings Officer; and,
 3. A request that the licensee provide a written response within ten (10) business days either disputing the occurrence of the nuisance activities or providing specific proposals to abate the nuisance activities and preventing such nuisance activities from reoccurring.
- D.** If the licensee's response does not satisfy the Director or the Chief of Police's concerns, they may attempt to develop a nuisance abatement plan with the licensee. The Director or the Chief of Police may file a complaint with the Code Hearings Officer as provided under Section 14B.120.060 if:
1. The licensee refuses to actively and meaningfully participate in the process of developing a nuisance abatement plan; or,
 2. The effort by the Director or the Chief of Police to develop a nuisance abatement plan with the licensee fails.

14B.120.050 Nuisance Abatement Plan.

- A.** If the licensee responds to the Director or the Chief of Police within ten (10) business days of the date of the notice, with a proposed course of action for abating the nuisance activities, the Director or the Chief of Police shall review the proposal. If the Director or the Chief of Police determines that the proposal will reasonably abate the nuisance activities, the Director or the Chief of Police and the licensee shall enter into an enforceable agreement, specifying the terms and conditions of the abatement plan.
- B.** At a minimum, the agreement shall identify the nature of the nuisance activities, the specific steps the licensee will undertake to abate the nuisance activity and the related resources the licensee will commit to the abatement, if applicable, and a mechanism for the Director or the Chief of Police to monitor compliance with the plan.
- C.** Any such agreement shall be executed by the licensee and the Director or the Chief of Police within thirty (30) days of the date of the licensee's written response to the Director or the Chief of Police's notice. The Director or the Chief of Police may,

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upon request, extend this thirty-day period if it appears that the parties are working diligently to come to agreement.

14B.120.055 Responsible Neighbor Program.

(Amended by Ordinance No. 178898, effective November 24, 2004.) Qualified licensees may request to participate in a Responsible Neighbor Program as administered by the Director.

- A. The Director shall approve a licensee for participation in the Responsible Neighbor Program, if the licensee meets all of the following qualifications:
 - 1. The licensee is licensed solely for off premises sales; and
 - 2. The licensee is currently certified for participation in the Responsible Vendor Program provided in ORS 471.344 (2003).
- B. If any licensee participating in the Responsible Neighbor Program has three (3) nuisance activities in violation of Section 14B.120.030, or fails to comply with any of the qualifications under Subsection 14B.120.030 A., the Director shall issue a written notice to the licensee and initiate a proceeding before the Code Hearings Officer as set out in Chapter 22.03 of the City Code for suspension of the licensee from participation in the Responsible Neighbor Program for a period of one year.
- C. If a licensee is removed from the Responsible Neighbor Program, any subsequent nuisance activity violations under Section 14B.120.030, the Director or the Chief of Police will follow the processes and remedies as provided in Sections 14B.120.040 through 14B.120.080

14B.120.060 Enforcement.

(Amended by Ordinance No. 184870, effective September 14, 2011.) Upon making a determination that a violation of this Chapter has occurred as provided under Section 14B.120.030, the Director or the Chief of Police may file a complaint before the Code Hearings Officer to initiate a code enforcement proceeding only if any of the following have first occurred:

- A. The licensee has failed to submit a timely written response to the Director or the Chief of Police's notice; or
- B. The licensee fails to propose or enter into an abatement plan that is acceptable to the Director or the Chief of Police; or
- C. The licensee does not operate the establishment in compliance with the written abatement plan.
- D. The licensee has been found to be in violation of this Chapter within the preceding 12 months.

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14B.120.070 Hearings.

The initiation and procedures of any code enforcement proceeding to determine whether nuisance activities have occurred as provided in Section 14B.120.030 and to impose remedies under Section 14B.120.080 shall follow the provisions of Chapter 22.03 of the City Code.

14B.120.080 Remedies.

(Amended by Ordinance No. 184870, effective September 14, 2011.) If the Code Hearings Officer determines that a violation has occurred, as provided in Section 14B.120.030, the Code Hearings Officer shall make findings regarding the occurrence of the nuisance activities and any related adverse effects. Time, place and manner abatement remedies imposed by the Code Hearings Officer to address the occurrence of the nuisance activities may include any of the following:

- A.** Limiting the hours or days during which the establishment may operate.
- B.** Requiring the establishment to provide resources to monitor, control and respond to patron behavior at and around the establishment, including but not limited to, hiring adequate security personnel to patrol the establishment.
- C.** Restricting the activities at the establishment to prevent the reoccurrence of nuisance activities, including but not limited to restrictions upon the time and manner in which entertainment is offered.
- D.** Ordering the licensee to undertake other actions reasonably necessary to abate the nuisance activities or mitigate the effects thereof, including but not limited to, modifying the establishment to include noise insulation to prevent and abate nuisance activities related to noise.

**CHAPTER 14B.130 - MARIJUANA
REGULATORY LICENSE PROCEDURE AND
REQUIREMENTS**

(Chapter added by Ordinance No. 187359, effective
September 30, 2015.)

Sections:

- 14B.130.010 Purpose.
- 14B.130.020 Definitions.
- 14B.130.030 License Required.
- 14B.130.040 Minimum Standards.
- 14B.130.050 Application Procedure.
- 14B.130.055 Social Equity Program.
- 14B.130.060 Notice.
- 14B.130.070 Issuance and Renewal of the License.
- 14B.130.080 Requirements.
- 14B.130.090 Inspection of Property and Records.
- 14B.130.100 Penalties.
- 14B.130.110 Revocation or Suspension of License.
- 14B.130.120 Review by the Director and Appeals to the Code Hearings Officer.
- 14B.130.130 Severability.

14B.130.010 Purpose.

The purpose of this Chapter is to protect and preserve the public health, safety, and general welfare of Portland communities by setting requirements for the licensing and siting of businesses that produce, process, sell or transfer marijuana and marijuana items. The standards and procedures exercise the City's authority in accordance with applicable Oregon statutes and administrative rules. This Chapter is adopted pursuant to authority under Oregon statutes, as well as in exercise of the City Charter home rule authority, to regulate business operations in producing, processing, selling or transferring marijuana and marijuana items within the City. Nothing in this Chapter is intended to promote or condone the sale, transfer, distribution, possession or use of marijuana in violation of applicable laws.

14B.130.020 Definitions.

(Amended by Ordinance Nos. 187557, 188178, 188329, 188602, 189078 and 189183, effective September 26, 2018.) As used in this Chapter, unless the context requires otherwise, the following definitions apply:

- A.** "Applicant" means any individual that is directly involved in the management and operation of, or has at least 10 percent ownership interest in, the marijuana business or medical dispensary in the City.

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- B.** “Cannabinoid concentrates” means a substance obtained by separating cannabinoids from marijuana by;
1. A mechanical extraction process;
 2. A chemical extraction process using a nonhydrocarbon-based or other solvent, such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol or ethanol;
 3. A chemical extraction process using the solvent carbon dioxide, provided that the process does not involve the use of high heat or pressure; or
 4. Any other process identified by the Oregon Liquor Control Commission or the Oregon Health Authority, by rule.
- C.** “Cannabinoid edibles” means food or potable liquids into which a cannabinoid concentrate, extract, or dried marijuana leaves or flowers have been incorporated.
- D.** “Cannabinoid extracts” means a substance obtained by separating cannabinoids from marijuana by;
1. A chemical extraction process using hydrocarbon-based solvent, such as butane, hexane, or propane;
 2. A chemical extraction process using the solvent carbon dioxide, if the process uses high heat or pressure, or;
 3. Any other process identified by the Oregon Liquor Control Commission or the Oregon Health Authority, by rule.
- E.** “Cannabinoid Product” means an edible and any other product intended for human consumption or use, including a product intended to be applied to the skin or hair, that contain cannabinoids or dried marijuana leaves or flowers. Cannabinoid product does not include;
1. Usable marijuana by itself;
 2. A concentrate by itself;
 3. A cannabinoid extract by itself;
 4. Industrial Hemp, as defined in ORS 571.300.
- F.** “Chief of Police” means the Chief of the Bureau of Police, or the Chief’s designee.

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- G.** “Consumer” means a person who purchases, acquires, owns, holds, or uses marijuana seeds, immature marijuana plants, marijuana or marijuana items other than for the purpose of resale.
- H.** "Director" means the Director of the Office of Community & Civic Life, or the Director's designee.
- I.** “Financial consideration” or “For consideration” means value that is given or received either directly or indirectly through sales, barter, trade, fees, charges, dues, contributions or donations.
- J.** “Licensee” means a person who holds a license issued under PCC Chapter 14B.130.
- K.** “Licensee representative” means an owner, director, officer, manager, employee, agent or other representative of a licensee, to the extent that the person acts in a representative capacity.
- L.** “Licensed premises” means all public and private enclosed areas at the location that are used for the business operated at the location, including offices, kitchens, rest rooms and storerooms; all areas outside a building that the City has specifically licensed for the production, processing, wholesale sale, retail sale or transfer of marijuana and marijuana items.
- M.** “Marijuana” means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae. “Marijuana” does not include industrial hemp, as defined in ORS 571.300.
- N.** “Marijuana Business” means any business located within the City that is licensed or has submitted or is required to submit an application to be licensed by the Oregon Liquor Control Commission as any of the following;
- 1.** “Marijuana micro-producer tier I” means a person who produces marijuana in the City with an indoor canopy size of up to 625 square feet in the City.
 - 2.** “Marijuana micro-producer tier II” means a person who produces marijuana in the City with an indoor canopy size 626 to 1250 square feet in the City.
 - 3.** “Marijuana micro-wholesaler” means a person that only purchases or receives seeds, immature plants or usable marijuana from a producer with a micro tier I or tier II canopy for resale to a person other than a consumer in the City.
 - 4.** “Marijuana processor” means a person who processes marijuana items in this City.

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- a. A marijuana processor may only process and sell cannabinoid products, concentrates, or extracts if the processor has received an endorsement from the Director for that type of processing activity. Endorsements types are:
 - (1) Cannabinoid edible processor;
 - (2) Cannabinoid topical processor;
 - (3) Cannabinoid concentrate processor;
 - (4) Cannabinoid extract processor; and
 - (5) Micro-tier processor.
 - b. An applicant must request an endorsement upon submission of an initial application but may also request an endorsement at any time after being licensed by the Director.
 - c. In order to apply for a processing endorsement an applicant or licensee must submit a form prescribed by the Director that includes a description of the type of products to be processed, a description of equipment to be used, and any solvents, gases, chemicals or other compounds proposed to be used to create extracts or concentrates.
5. “Marijuana producer” means a person who produces marijuana in the City.
6. “Marijuana retailer” means a person who sells or makes available for purchase marijuana or marijuana items in the City.
7. “Marijuana retail courier” means a marijuana retailer who sells or makes available for purchase marijuana or marijuana items only by delivery to residences located within the City.
8. “Marijuana wholesaler” means a person who purchases marijuana or marijuana items in this State for resale to a person other than a consumer.
- O. “Marijuana items” means marijuana, cannabinoid products, cannabinoid concentrates and cannabinoid extracts.
- P. “Marijuana Laboratory” means any person who is conducting tests of marijuana under Oregon law.
- Q. “Marijuana Regulatory License” means a license issued by the City to produce, process, sell or transfer marijuana and marijuana items.

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- R.** “Medical Dispensary” means a business located within the City that is registered with the Oregon Health Authority under ORS 475.314 and authorized to transfer usable marijuana, marijuana items and immature marijuana plants, or a site for which an applicant has submitted an application for registration under ORS 475.314.
- S.** “Micro-Tier Processor” means a Marijuana Micro-Producer Tier I or Marijuana Micro-Producer Tier II holding an active producer micro-tier processing endorsement issued by the Oregon Liquor Control Commission.
- T.** “Primary Contact” means the person designated in the application who has authority to conduct business with the City on behalf of the applicant or licensee.
- U.** “Processor” means the processing, compounding or conversion of marijuana into cannabinoid products, cannabinoid concentrates or cannabinoid extracts.
- V.** “Produces” means the planting, cultivation, or growing of marijuana.
- W.** “Research Certificate Holder” means any person authorized under Oregon law to receive marijuana items for the purpose of medical or public health and safety research.
- X.** “Sale” or “Sales” means any transfer, exchange or barter, in any manner or by any means, for consideration, and includes all sales made by any person including gifts for the purposes of advertising by marijuana businesses.
- Y.** “Social Equity Applicant” means a Marijuana Business that qualifies for Marijuana Regulatory License fee credit pursuant to this Chapter’s Social Equity Program.

14B.130.030 License Required.

(Amended by Ordinance No. 189078, effective July 18, 2018.)

- A.** No person shall establish, conduct, maintain or operate a medical dispensary or marijuana business in the City without a valid marijuana regulatory license issued by the Office of Community & Civic Life.
- B.** Any person that advertises or otherwise holds themselves to be producing, processing or offering marijuana or marijuana items for sale or financial consideration within the City will be presumed to be a medical dispensary or marijuana business subject to the terms of Chapter 14B.130.
- C.** No medical dispensary or marijuana business may lawfully exist in the City absent the issuance of a state license and full regulatory oversight of the marijuana establishment by the State as well as the City. Compliance with the requirements of this Chapter does not provide a defense to criminal prosecution under otherwise applicable law.

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14B.130.040 Minimum Standards.

(Amended by Ordinance Nos. 187391, 187557, 188178, 188602, 189078 and 189183, effective September 26, 2018.)

- A.** A marijuana regulatory license may only be issued for a specific, fixed location which shall be considered the licensed premises. The licensed premises must be within a building or structure subject to a building or zoning permit.
- B.** If the location is a medical dispensary, the location may be no closer than 1,000 feet of another medical dispensary. The distance between the dispensaries shall be computed by direct measurement of the nearest portion of the building in which one medical dispensary is located to the nearest portion of the building in which the other medical dispensary is located.
- C.** Except for marijuana retail couriers, if the location is a marijuana retailer, the location may be no closer than 1,000 feet of another marijuana retailer. The distance between the retailers shall be computed by direct measurement of the nearest portion of the building in which one marijuana retailer is located to the nearest portion of the building in which the other marijuana retailer is located.
- D.** Distance Restrictions for Dispensaries and Retailers.

 - 1.** Except for marijuana retail couriers, a marijuana regulatory license will not be granted for a medical dispensary or a marijuana retailer that is within 1,000 feet of another medical dispensary or another marijuana retailer. The distance between the dispensaries and retailers shall be computed by direct measurement of the nearest portion of the building in which one medical dispensary or marijuana retailer is located to the nearest portion of the building in which the other medical dispensary or marijuana retailer is located.
 - 2.** The distance requirement in Subsection 14B.130.040 D.1. shall not apply for applications for medical dispensary licenses received by the Director between November 1, 2015 and January 29, 2016, that meet the following criteria:

 - a.** The medical dispensary has been:

 - (1)** Registered, operating and in good standing with the Oregon Health Authority since on or before July 1, 2015 and had a valid City of Portland Business License on or before July 1, 2015.
 - (2)** Registered and in good standing with the Oregon Health Authority since on or before September 30, 2015, if the

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Director finds that the applicant demonstrates that they incurred significant financial obligations prior to that date, such as entering a lease, hiring employees, or obtaining fixtures and equipment, and had a valid City of Portland Business License on or before September 30, 2015.

- b. The medical dispensary has no outstanding compliance issues pending with the Oregon Health Authority.
 - c. The application for the medical dispensary has not submitted for or obtained a marijuana regulatory license for a marijuana retailer within 1,000 feet of the location to be licensed under this exception; and
 - d. The applicant meets all other requirements of this Chapter.
3. The requirements of Subsection D.1. shall not apply to current, valid renewal applications for medical dispensary licenses issued under Subsection D.2.
4. The distance requirement in Subsection 14B.130.040 D.1., shall not apply for applications for marijuana retail licenses received by the Director that meet the following criteria:
 - a. The application is from an existing medical dispensary licensee operating under a current, valid medical dispensary located within the City of Portland;
 - b. The marijuana retail license application is for the same address at which the medical dispensary is currently operating;
 - c. The medical dispensary has no outstanding compliance issues pending with the Oregon Health Authority;
 - d. Upon issuance of a marijuana retail license from the State an applicant, under conditional approval for a marijuana retailer license, may operate without a Marijuana Regulatory License for a period of no longer than 5 business days to allow for the transition from the medical market to the recreational market;
 - e. The applicant meets all other requirements of this Chapter.
- E. No medical dispensary, marijuana retailer or marijuana retail courier may locate its licensed premises for business operations within 1,000 feet of:

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1. Any public elementary or secondary school for which attendance is compulsory under ORS 339.020 (2013); or
 2. A private or parochial elementary or secondary school, teaching children as described in ORS 339.030 (1) (a) (2013).
 3. The distance from a school to a medical dispensary or a marijuana business retailer shall be computed by direct measurement from the nearest property line of the land used for the school to the nearest portion of the building in which the medical dispensary or marijuana retail business is located.
 4. If a school described in Subsection 14B.130.040 D. that has not previously been attended by children is established within 1,000 feet of a medical dispensary, marijuana retailer or marijuana retail courier for which a license has been issued under Chapter 14B.130, the medical dispensary, marijuana retailer or marijuana retail courier located at that premises may remain at that location unless:
 - a. The Office of Community & Civic Life revokes the license of the marijuana business under Section 14B.130.110; or
 - b. A new application is required.
- F. No medical dispensary, marijuana business, marijuana laboratory, or research certificate holder may be located in residential zones RF through RH or where otherwise not allowed per City Code.
- G. A marijuana retail courier may not operate their licensed premises as being generally open to the public for business. All sales must be conducted off-site by delivery to consumers in accordance with the standards established in OAR 845-025-2880, as in effect on December 1, 2016.
- H. A person or business operating a medical dispensary, marijuana business, marijuana laboratory, or research certificate holder must comply with all state and local regulations that apply.

14B.130.050 Application Procedure.

(Amended by Ordinance Nos. 188178, 188602, 189078 and 189183, effective September 26, 2018.)

- A. Applications for marijuana regulatory licenses will be processed in the order they are received by the Director. The application shall not be considered received until all the required information and documentation has been submitted and the application fee has been paid. An applicant for a marijuana regulatory license shall complete an application that includes the following information:

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1. All completed forms fully executed and signed, including:
 - a. Personal history forms, as developed by the Office of Community & Civic Life, for any person who will be directly involved in the management or operation of the proposed medical dispensary or marijuana business for review of the application under Subsection 14B.130.070 C.
 - b. An information form, as developed by the Office of Community & Civic Life that includes a description of the planned business operations and a security plan describing how the applicant intends to comply with the requirements of Section 14B.130.080.
 - c. If the application is for a medical dispensary or marijuana retailer, a Marijuana Control Plan to address security protocols, potential nuisance activities and other public safety concerns.
2. A Business License Certificate of Compliance as provided in Section 7.02.300, and;
3. Documentation of having an existing security system and proof of application submittal for an alarm permit from the Portland Police Bureau, and electrical permit from the Bureau of Development Services as needed for the premise.
4. Documentation of having an existing air filtration system or proof of application submittal for applicable permits to ensure odor impacts upon neighboring properties are minimized.
5. Proof of ownership or legal possession of the premises to be licensed for the term of the proposed license. If the licensed premises will be leased, the application shall include, a true and complete copy of the executed lease showing the property owner has authorized the use as a medical dispensary or marijuana business.
6. Marijuana producers and processors must provide documentation showing that an applicable commercial building permit has been issued or obtained. Marijuana processors of cannabinoid extracts must also provide documentation showing that the applicable commercial building permit, mechanical permit(s) for extraction equipment, and tank permit(s) from the City Fire Marshal's Office have been obtained and received final inspection approval. The documentation for a commercial building permit may include a temporary Certificate of Occupancy.

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7. A non-refundable application fee as stated in the fee schedule adopted by City Council. Fees will be updated annually or on an as needed basis and will be sufficient to cover the cost of administering this Chapter. The approved fee schedule will be available through the Office of Community & Civic Life.
 8. The Director may, at the Director's discretion, require additional documentation associated with the application as may be relevant to the requirements of this Chapter. To the extent any materials have been included with the applicant's state license application and forwarded to the City by the state licensing authority, the Director may rely upon the information forwarded from the state without requiring submittal of the same materials in conjunction with the marijuana regulatory license application.
 9. The licensee shall notify the Office of Community & Civic Life of any changes in the information required in Subsections 14B.130.050 A.1.a.-c. within 10 business days of the change. If ownership of the licensed entity changes by 51 percent or more, a new application is required.
- B.** Applications for renewal of marijuana regulatory licenses must demonstrate compliance with Subsections 14B.130.050 A.1.-9. on a form provided by the Office of Community & Civic Life and pay an annual fee as stated in the fee schedule adopted by City Council.

14B.130.055 Social Equity Program.

(Added by Ordinance No. 189183, effective September 26, 2018.)

- A.** Applicants may request participation in the Social Equity Program by demonstrating qualifications on a form provided by the Office of Community & Civic Life.
1. To qualify as a Social Equity Applicant, the applicant must demonstrate at least one of the following qualifying factors:
 - a. Applicant provides opportunities to individuals directly impacted by criminal prosecutions during cannabis prohibition as demonstrated by:
 - (1) 25 percent or greater of ownership is represented by individuals with a federal or state conviction for a criminal offense committed prior to July 1, 2015 in which possession, delivery or manufacture of marijuana or marijuana items is an element, whether misdemeanor or felony; or

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- (2) 20 percent or greater of staff hours are represented by individuals with a federal or state conviction for a criminal offense committed prior to July 1, 2015 in which possession, delivery or manufacture of marijuana or marijuana items is an element, whether misdemeanor or felony.
- b. Applicant is a small business as demonstrated by:
 - (1) The business entity seeking the license and all business entities, including any parent companies, associate companies, subsidiaries or affiliates, with an ownership interest of 10 percent or greater, have a combined annual total income less than \$750,000 in the preceding calendar year; and
 - (2) In total, no more than two other state recreational or medical cannabis licenses are pending for or have been obtained by the business entity seeking the license and all individuals and entities with 10 percent or greater ownership interest, including any parent companies, associate companies, subsidiaries or affiliates business entity owners.
- c. Applicant is a small business, as defined by Portland City Code Subsection 14B.130.055 A.1.b., and contracts with an ancillary industry vendor(s) certified by the State of Oregon as an emerging small business, pursuant to OAR 123-200-1700, and/or as socially and economically disadvantaged, pursuant to OAR 123-200-1210.
 - (1) If the application is for a new license, the entity seeking the license must have paid the vendor(s) a total of at least \$30,000 during the 24 months immediately preceding license issuance, for expenses directly related to the marijuana business seeking the license.
 - (2) If the application is for a renewal license, the entity seeking the license must have paid the vendor(s) a total of at least \$30,000 during the most recent licensing period, for expenses directly related to the marijuana business seeking the license.
 - (3) The marijuana business, or any owners, including any parent companies, associate companies, subsidiaries or affiliates, must not have any shared ownership with the ancillary industry vendor(s) or its parent companies, associate companies, subsidiaries or affiliates.

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2. A Social Equity Applicant that meets one of the qualifying factors shall receive Marijuana Regulatory License fee credits as follows:
 - a. 15 percent credit from the Marijuana Regulatory License fee; and
 - b. If the application is for a producer or processor marijuana regulatory license, the Social Equity Applicant will receive credit in the form of a license fee credit for documented payments to Bureau of Development Services for related Life Safety Preliminary Meetings and Early Assistance Meetings, or substantially similar assistance programs available at Bureau of Development Services. The license fee credit will be up to the lesser of \$750 or the total license fee.
 - c. Requests for credit should be directed to the Office of Community and Civic Life. All such credits will be deducted from the Marijuana Regulatory License fees.
3. A Social Equity Applicant that meets at least two of the qualifying factors shall receive Marijuana Regulatory License fee credit as follows:
 - a. 25 percent credit from the Marijuana Regulatory License fee; and
 - b. If the application is for a producer or processor marijuana regulatory license, the Social Equity Applicant will receive credit in the form of a license fee credit for documented payments to Bureau of Development Services for related Life Safety Preliminary Meetings and Early Assistance Meetings, or substantially similar assistance programs available at Bureau of Development Services. The license fee credit will be up to the lesser of \$1,500 or the total license fee.
 - c. Requests for credit should be directed to the Office of Community and Civic Life. All such credits will be deducted from the Marijuana Regulatory License fees.

14B.130.060 Notice.

- A. The Director shall provide notice of an application before a final decision is made to the Bureau of Police, Portland Fire & Rescue, Bureau of Revenue and Financial Services, and Bureau of Development Services.
- B. For medical dispensaries and marijuana business retailers, the Director shall provide notice of an application before a final decision is made to:
 1. Property owners and property occupants within 300 feet of the proposed licensed premises except for renewal applications and locations previously licensed for the proposed use with change in ownership;

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2. The District Coalition Office and Neighborhood Association in which the marijuana regulatory Licensee is located, or proposed to be located.
3. Area residents by posting a public notice where the marijuana regulatory licensee is located, or proposed to be located.

14B.130.070 Issuance and Renewal of the License.

(Amended by Ordinance Nos. 188178, 188329, 188602, 189078 and 189183, effective September 26, 2018.)

- A. Upon filing of an application and payment of the required application fee, the Director shall ensure that the location proposed to be licensed or registered meets the minimum standards as defined in Section 14B.130.040. If the proposed location meets the minimum standards the Director shall proceed with processing the application. If the location does not meet the minimum standards the Director shall deny the application.
- B. If the proposed location meets the minimum standards as defined in Section 14B.130.040, the Director in consultation with the Chief of Police, shall conduct an investigation of the application and all principals listed according to the requirements in Subsection 14B.130.050 A. If no cause exists for denial, the Director shall issue the license after the following has been received;
 1. Proof that a state license or registration has been issued.
 2. The license fee as stated in the fee schedule adopted by City Council. Fees, including late fees, will be updated annually or on an as needed basis and will be sufficient to cover the cost of administering this Chapter. The approved fee schedule will be available through the Office of Community & Civic Life.
 - a. Applicant may request a license fee deferred payment plan by submitting a form provided by the Office of Community & Civic Life to demonstrate financial need.
 - b. If the applicant's deferred payment plan request is approved by the Director, fees must be paid as follows:
 - (1) Any marijuana micro-producer tier I, marijuana micro-producer tier II, marijuana micro-wholesaler, or marijuana courier must make an initial payment of \$250 before the Director issues the license. The licensee must pay the remaining license fee of \$750 within 6 months of the license effective date.

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- (2) Applicants for all other license types must make an initial payment of \$500 before the Director issues the license. The licensee must pay the remaining license fee of \$3,000 within 6 months of the license effective date.
 - c. For any marijuana micro-producer tier I, marijuana micro-producer tier II, marijuana micro-wholesaler, or marijuana courier, payments made up to 30 days after the 6-month due date must include a late fee of \$100. Payments made after 30 days and up to 60 days after the 6-month due date must include a late fee of \$200.
 - d. For all other license types, payments made up to 30 days after the 6-month due date must include a late fee of \$250. Payments made after 30 days and up to 60 days after the 6-month due date must include a late fee of \$500.
 - e. Failure to pay the total licensing fee, including late fees, within 60 days after the 6-month due date constitutes a violation and the Director may impose civil penalties, license suspension, and/or license revocation.
- C. Except as provided for in Subsection 14B.130.070 D., the Director shall deny an initial or renewal application for a marijuana regulatory license if any of the following apply.
1. The applicant, or any person engaged in the direct management and operation of the medical dispensary or marijuana business, or anyone with 10 percent or more interest in the business has previously owned or operated a business regulated by Chapter 14B.130; and
 - a. The license has been revoked for cause that would be grounds for revocation pursuant to Chapter 14B.130.
 - b. The Director has determined that the business has contributed to crime or livability incidents in the area where the medical dispensary or marijuana business is located.
 2. Any statement in the application is false or any required information is withheld;
 3. If the application is for a medical dispensary, the location is not registered with the state under ORS 475.314;
 4. If the application is for a marijuana business, the location is not licensed with the Oregon Liquor Control Commission;

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5. The Director finds by preponderance of the evidence that the applicant or any person directly engaged in the management and operation of the medical dispensary or marijuana business has violated local or State law including a permitting or licensing requirement.
- D.** Notwithstanding Subsection 14B.130.070 B., the Director may grant a license after consulting with the Chief of Police despite the presence of one or more factors as outlined in Subsection 14B.130.070 C., if the applicant establishes to the Director's satisfaction that,
1. The behavior evidenced by such factor is not likely to reoccur;
 2. The behavior evidenced by such factor is remote in time; or
 3. The behavior evidenced by such factor occurred under circumstances that diminish the seriousness of the factor as it relates to this Chapter.
- E.** Marijuana regulatory licenses are valid for a term of 1 year and a renewal schedule will be established by rule. The license is non-transferable and valid only for a single fixed location.
1. When the business location is to be changed, the licensee shall provide the address of the new location in writing to the Director to review for compliance with the requirements of this Chapter at least 60 days prior to the change.
 2. A person with multiple dispensaries or business locations must apply for and obtain a license for each separate location.
- F.** Upon denial of an application for a marijuana regulatory license, the Director shall give the applicant written notice of the denial in accordance with the minimum requirements of Chapter 3.130 of Portland City Code.
1. Service of the notice shall be by mail to the address of the primary contact for the application on file with the Director. In addition, the Director may also send notices to other addresses known for the applicant or person including electronic delivery.
 2. Mailing of the notice will be prima facie evidence of receipt of the notice.
- G.** The denial will be effective the date the notice is sent.
- H.** Denial of a marijuana regulatory license may be appealed by filing written notice of an appeal within 10 business days of the date of denial in accordance with Section 14B.130.120.

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14B.130.080 Requirements.

(Amended by Ordinance Nos. 187391, 187611, 188178 and 189183, effective September 26, 2018.)

- A.** A marijuana regulatory licensee must comply with the following regulations:
- 1.** Licensee must display the marijuana regulatory license at the business location in a manner readily visible to patrons.
 - 2.** Licensee may not allow consumption of marijuana or marijuana items on the premises licensed under Chapter 14B.130, except as specifically authorized by Oregon law for employees of medical marijuana dispensaries who are valid, current registry identification cardholders.
 - 3.** Licensee must install and maintain in proper working order at the licensed premises a security system including alarms, safes, and surveillance cameras.
 - a.** Licensee must maintain camera surveillance data backup.
 - b.** Licensee must retain camera surveillance data for a minimum of 30 days.
 - 4.** Licensee must correct any violations and comply with any stop work orders issued by any City Bureau.
- B.** Any person with a marijuana regulatory license for a medical dispensary or marijuana retailer must comply with the following regulations:
- 1.** Licensee must designate personnel at the entrance intended for consumers to require all persons entering the premises to produce an approved form of identification according to ORS 614.24.1.a-e in order to ensure that no one under the age of 21 is allowed on the premises, except as provided for under ORS 475.314.
 - 2.** Licensee must maintain hours of operation no earlier than 7 a.m. and no later than 10 p.m.
 - 3.** Licensee must not make marijuana or marijuana items available for sale from a vendor cart, temporary structure, or satellite location, or through exterior openings of the licensed premises, such as drive-thru facilities or walk up windows.
- C.** Any person with a marijuana regulatory license for a marijuana retailer must comply with the following regulations:

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1. Licensee may provide delivery of marijuana and marijuana items to a residence in Portland in accordance with OAR 845-025-2880, as in effect on December 1, 2016 and subject to compliance with the requirements of this Chapter.
 2. Licensee may sell marijuana items for medical purposes in accordance with OAR 845-025-2900, effective December 1, 2016.
- D.** Any person with a processor marijuana regulatory license or micro-tier processor endorsement must comply with the following requirements:
1. Licensee must not allow the licensed location to be open to the general public.
 2. Licensee must adhere to applicable state and local regulations for food production, ensuring that marijuana items made for consumption by eating or drinking are processed in a licensed facility.
- E.** Any person with a marijuana micro-producer tier I, marijuana micro-producer tier II, producer, marijuana micro-wholesaler or marijuana wholesaler marijuana regulatory license must comply with the following requirements:
1. Licensee must not allow the licensed location to be open to the general public.

14B.130.090 Inspection of Property and Records.

(Amended by Ordinance Nos. 188178, 188602 and 189078, effective July 18, 2018.)

- A.** Upon presentation of proper credentials, an Applicant or Licensee shall allow any representative of the Bureau of Police or the Office of Community & Civic Life to enter the business location to ensure compliance with the provisions of Chapter 14B.130. The inspection will be for the limited purpose of inspecting the property and related records as provided in this Chapter and the administrative rules. Except by mutual agreement with the Applicant or Licensee or by court order, any inspection under this Section may occur only during the business' normal business hours.
1. The Director shall first present proper credentials and demand entry to the property. If entry is refused, the Director may attempt to secure entry by any legal means.
 2. If the Director has first obtained an inspection warrant to secure entry onto the property, no owner or occupant shall refuse, fail or neglect, after proper request, to promptly permit entry by the Director to the property.

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- B.** It shall be unlawful for any owner or occupant to refuse to permit entry by the Director to inspect the property under this Chapter after an inspection warrant has been obtained.
- C.** Grounds for Issuance of inspection warrants.

 - 1.** Affidavit. An inspection warrant shall be issued only upon cause, supported by affidavit, particularly describing the applicant's status in applying for the warrant, the statute, ordinance or regulation requiring or authorizing the inspection or investigation, the property to be inspected or investigated and the purpose for which the inspection or investigation is to be made including the basis upon which cause exists to inspect. In addition, the affidavit shall contain either a statement that entry has been sought and refused, or facts or circumstances reasonably showing that the purposes of the inspection or investigation might be frustrated if entry were sought without an inspection warrant.
 - 2.** Cause. Cause shall be deemed to exist if reasonable legislative or administrative standards for conducting a routine, periodic or area inspection are satisfied with respect to any building or upon any property, or there is probable cause to believe that a condition of nonconformity with this Chapter exists with respect to the designated property, or an investigation is reasonably believed to be necessary in order to discover or verify the condition of the property for conformity this Chapter.
- D.** Procedure for Issuance of inspection warrants.

 - 1.** Examination. Before issuing an inspection warrant, the judge may examine under oath the applicant and any other witness and shall be satisfied of the existence of grounds for granting such application.
 - 2.** Issuance. If the judge is satisfied that cause for the inspection or investigation exists and that the other requirements for granting the application are satisfied, the judge shall issue the warrant, particularly describing the person or persons authorized to execute the warrant, the property to be entered and the purpose of the inspection or investigation. The warrant shall contain a direction that it be executed on any day of the week between the hours of 8 a.m. and 6 p.m., or where the judge has specially determined upon a showing that it cannot be effectively executed between those hours, that it be executed at any additional or other time of the day or night.
 - 3.** Police Assistance. In issuing an inspection warrant on unoccupied property, including inspection warrants pursuant to Section 14B.130.090, the judge may authorize any peace officer, as defined in Oregon Revised Statutes, to

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enter the described property to ensure the safety of the Director or representative of the bureau in completing the inspection.

E. Execution of inspection warrants.

1. Occupied Property. Except as provided in Subsection 2. of this Section, in executing an inspection warrant, the person authorized to execute the warrant shall, before entry into the occupied premises, make a reasonable effort to present the person's credentials, authority and purpose to an occupant or person in possession of the property designated in the warrant and show the occupant or person in possession of the property the warrant or a copy thereof upon request.
2. Unoccupied Property. In executing an inspection warrant, the person authorized to execute the warrant need not inform anyone of the person's authority and purpose, as prescribed in Subsection 1. of this Section, but may promptly enter the property if it is at the time unoccupied or not in the possession of any person or at the time reasonably believed to be in such condition. In such case a copy of the warrant shall be conspicuously posted upon the property.
3. Return. An inspection warrant must be executed within 10 business days of its issue and returned to the judge by whom it was issued within 10 business days from its date of execution. After the expiration of the time prescribed by this Subsection, the warrant unless executed is void.

14B.130.100 Penalties.

(Amended by Ordinance Nos. 187557 and 188178, effective December 21, 2016.)

- A. The Director may assess civil penalties in an amount up to \$5,000 for any violation of this Chapter.
- B. Procedure.
 1. Having made a determination that a violation of this Chapter has occurred, the Director shall give written notice of a decision to assess civil penalties. The Director's written notice shall be in accordance with the minimum requirements of Chapter 3.130 of the Portland City Code.
 2. Service of the notice shall be by mail to the address of the primary contact for the Licensee on file with the Director. In the case of a person operating without a Marijuana Regulatory License, service of the notice shall be by mail to such address as the Director has on file for that person, or is otherwise available to the Director. In addition, the Director may also send

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notices to other addresses known for the person including electronic delivery.

3. Mailing of the notice will be prima facie evidence of receipt of the notice.
 4. The civil penalty will be due 10 business days from the date of the notice unless appealed in accordance with Section 14B.130.120.
- C. In determining the amount of the civil penalty to be imposed for violations of the provisions of this Chapter, the Director shall consider:
1. The extent and nature of the person's involvement in the violation;
 2. The economic or financial benefit accruing or likely to accrue as a result of the violations;
 3. Whether the violations were repeated or continuous, or isolated and temporary;
 4. The magnitude and seriousness of the violation;
 5. The City's costs of investigating the violations and correcting or attempting to correct the violation; and,
 6. Any other factors the Director may deem to be relevant.

14B.130.110 Revocation or Suspension of License.

(Amended by Ordinance Nos. 188178 and 189078, effective July 18, 2018.)

- A. The Director may, after consulting with the Chief of Police, revoke or suspend any license issued pursuant to this Chapter.
1. For any cause that would be grounds for denial of a license; or,
 2. Upon finding that any violation of the provisions of this Chapter, State, or local law has been committed and the citation is connected with the operation of the licensed business location so that the person in charge of the business location knew, or should reasonably have known, that violations or offenses were permitted to occur at the location.
 3. If payment of civil penalties has not been received within 10 business days by the Office of Community & Civic Life.
- B. The Director, upon revocation or suspension of any license issued pursuant to this Chapter, shall give the Licensee written notice of the revocation or suspension in

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accordance with the minimum requirements of Chapter 3.130 of Portland City Code.

1. Service of the notice shall be by mail to the address of the primary contact for the Licensee on file with the Director. In addition, the Director may also send notices to other addresses known for the applicant or person including electronic delivery.
 2. Mailing of the notice by regular mail will be prima facie evidence of receipt of the notice.
- C. Revocation will be effective and final 10 business days after the date of notice unless the revocation is appealed in accordance with Section 14B.130.120.
- D. Suspension will be effective immediately upon the date of the notice, for the period of time set in the notice not to exceed 30 days.

14B.130.120 Review by the Director and Appeals to the Code Hearings Officer.

(Amended by Ordinance No. 188178, effective December 21, 2016.)

- A. Any determination issued pursuant to Sections 14B.130.070, 14B.130.100 or 14B.130.110 believed to be made in error may be reviewed by the Director if requested by the recipient. The request must be submitted in writing within 10 business days of the determination, and must include all evidence that supports the request. Service of notice of the determination shall be by mail to the address for the primary contact for the application on file with the Director. The Director's determination shall be served by regular mail. Mailing of the notice of determination will be prima facie evidence of receipt of the notice. In addition, the Director may also send notice of the determination to other addresses known for the applicant or person including electronic delivery.
- B. The Director's determination may be appealed to the Code Hearings Officer, as provided for in Chapter 22.10 of Portland City Code.
- C. The filing of a notice of appeal of revocation or suspension of a license, or of a civil penalty imposed by the Director under this Chapter, will stay the effective date of the action until the Code Hearings Officer issues an opinion.

14B.130.130 Severability.

If any section, subsection, sentence, clause, or phrase of this Chapter is for any reason held to be invalid, void, illegal or unconstitutional, either on its face or as applied, such decision shall not affect the applicability, constitutionality, legality or validity of any remaining portions of this chapter. The Council hereby declares its intention to have adopted this chapter, and each section, subsection, sentence, clause, and phrase of this chapter, regardless of the fact that any one or more sections, subsections, sentences, clauses, or

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phrases may be declared invalid, void, illegal or unconstitutional, and that the same would have been adopted by the Council had such invalid, void, illegal or unconstitutional sections, subsections, sentences, clauses, or phrases, if any, not been included in this Chapter.

**CHAPTER 14C.10 - POLICE DUTIES TO
INVENTORY PROPERTY**

Sections:

- 14C.10.010 Purpose.
- 14C.10.020 Definitions.
- 14C.10.030 Inventories of Impounded Vehicles.
- 14C.10.040 Inventories of Persons in Police Custody.

14C.10.010 Purpose.

This Chapter is meant to apply exclusively to the process for conducting an inventory of the personal property in an impounded vehicle and the personal possessions of a person in police custody and shall not be interpreted to affect any other statutory or constitutional right(s) that police officers may employ to search persons or search or seize possessions for other purposes.

14C.10.020 Definitions.

For the purpose of this Chapter, the following definitions shall apply:

- A.** “Valuables” means:
 - 1.** Cash money of an aggregate amount of \$50 or more; or
 - 2.** Individual items of personal property with a value of \$500 or more.
- B.** “Open container” means a container which is unsecured or incompletely secured in such a fashion that the container’s contents are exposed to view.
- C.** “Closed container” means a container whose contents are not exposed to view.
- D.** “Police custody” means either:
 - 1.** The imposition of restraint as a result of an ‘arrest’ as that term is defined at ORS 133.005(1);
 - 2.** The imposition of actual or constructive restraint by a police officer pursuant to a court order;
 - 3.** The imposition of actual or constructive restraint by a police officer pursuant to ORS Chapter 430, or Chapter 419B; or
 - 4.** The imposition of actual or constructive restraint by a police officer for purposes of taking the restrained person to an approved facility for the involuntary confinement or detaining of persons pursuant to Oregon Revised Statute or this Code.

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- E.** “Police officer” means any police officer employed or acting at the direction of or in collaboration with the Portland Bureau of Police and any officer of the Port of Portland Police Department.

14C.10.030 Inventories of Impounded Vehicles.

- A.** The contents of all vehicles impounded by a police officer will be inventoried. The inventory shall be conducted before constructive custody of the vehicle is released to a third-party towing company except under the following circumstances:
 - 1.** If there is reasonable suspicion to believe that the safety of either the police officer(s) or any other person is at risk, a required inventory will be done as soon as safely practical; or
 - 2.** If the vehicle is being impounded for evidentiary purposes in connection with the investigation of a criminal offense, the inventory will be done after such investigation is completed.
- B.** The purpose for the inventory of an impounded vehicle will be to:
 - 1.** Promptly identify property to establish accountability and avoid spurious claims to property;
 - 2.** Assist in the prevention of theft of property;
 - 3.** Locate toxic, flammable or explosive substances; or
 - 4.** Reduce the danger to persons and property.
- C.** Inventories of impounded vehicles will be conducted according to the following procedure:
 - 1.** An inventory of personal property and the contents of open containers will be conducted throughout the passenger and engine compartments of the vehicle including, but not limited to, accessible areas under or within the dashboard area, in any pockets in the doors or in the back of the front seat, in any console between the seats, under any floor mats and under the seats;
 - 2.** In addition to the passenger and engine compartments as described above, an inventory of personal property and the contents of open containers will also be conducted in the following locations:
 - a.** Any other type of unlocked compartments that are a part of the vehicle including, but not limited to, unlocked vehicle trunks and unlocked car- top containers; and

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- b.** Any locked compartments including, but not limited to, locked vehicle trunks, locked hatchbacks and locked car-top containers, if either the keys are available to be released with the vehicle to the third-party towing company or an unlocking mechanism for such compartment is available within the vehicle.
- 3.** Unless otherwise provided in this Chapter, closed containers located either within the vehicle or any of the vehicle's compartments will not be opened for inventory purposes.
- 4.** Upon completion of the inventory, the police officer will complete a report as directed by the Chief of such officer's department.
- 5.** Any valuables located during the inventory process will be listed on a property receipt. A copy of the property receipt will either be left in the vehicle or tendered to the person in control of the vehicle if such person is present. The valuables will be dealt with in such manner as directed by the Chief of the police officer's department.

14C.10.040 Inventories of Persons In Police Custody.

- A.** A police officer will inventory the personal property in the possession of a person taken into police custody and such inventory will be conducted whenever:
 - 1.** Such person will be either placed in a secure police holding room or transported in the secure portion of a police vehicle; or
 - 2.** Custody of the person will be transferred to another law enforcement agency, correctional facility, or "treatment facility" as that phrase is used in ORS 426.460 or such other lawfully approved facility for the involuntary confinement of persons pursuant to Oregon Revised Statute.
- B.** The purpose of the inventory of a person in police custody will be to:
 - 1.** Promptly identify property to establish accountability and avoid spurious claims to property; or
 - 2.** Fulfill the requirements of ORS 133.455 to the extent that such statute may apply to certain property held by the police officer for safekeeping; or
 - 3.** Assist in the prevention of theft of property; or
 - 4.** Locate toxic, flammable or explosive substances; or
 - 5.** Locate weapons and instruments that may facilitate an escape from custody or endanger law enforcement personnel; or

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6. Reduce the danger to persons and property.
- C. Inventories of the personal property in the possession of such persons will be conducted according to the following procedures:
1. An inventory will occur prior to placing such person into a holding room or a police vehicle, whichever occurs first. However, if reasonable suspicion to believe that the safety of either the police officer(s) or the person in custody or both are at risk, an inventory will be done as soon as safely practical prior to the transfer of custody to another law enforcement agency or facility.
 2. To complete the inventory of the personal property in the possession of such person, the police officer will remove all items of personal property from the clothing worn by such person. In addition, the officer will also remove all items of personal property from all open containers in the possession of such person.
 3. A closed container in the possession of such person will have its contents inventoried only when:
 - a. The closed container is to be placed in the immediate possession of such person at the time that person is placed in the secure portion of a custodial facility, police vehicle or secure police holding room;
 - b. Such person requests that the closed container be with them in the secure portion of a police vehicle or a secure police holding room; or
 - c. The closed container is designed for carrying money and/or small valuables on or about the person including, but not limited to, closed purses, closed coin purses, closed wallets and closed fanny packs.
- D. Valuables found during the inventory process will be noted by the police officer in a report as directed by the Chief of such officer's department.
- E. All items of personal property neither left in the immediate possession of the person in custody nor left with the facility or agency accepting custody of the person, will be handled in the following manner:
1. A property receipt will be prepared listing the property to be retained in the possession of the respective police department and a copy of that receipt will be tendered to the person in custody when such person is released to the facility or agency accepting custody of such person;

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2. The property will be dealt with in such manner as directed by the Chief of such officer's department.
- F.** All items of personal property neither left in the immediate possession of the person in custody nor dealt with as provided in Subsection 14.10.040 E. above, will be released to the facility or agency accepting custody of the person so that they may:
1. Hold the property for safekeeping on behalf of the person in custody, and
 2. Prepare and deliver a receipt, as may be required by ORS 133.455, for any valuables held on behalf of the person in custody.

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CHAPTER 14C.20 - POLICE BUREAU
PROPERTY/EVIDENCE DIVISION DUTIES

Sections:

- 14C.20.010 Maintenance of Property/Evidence Division.
- 14C.20.020 Receipts for Property.
- 14C.20.030 Records.
- 14C.20.040 Evidence Property.
- 14C.20.050 Reserved.
- 14C.20.060 Found Property.

14C.20.010 Maintenance of Property/Evidence Division.

The Bureau of Police shall maintain a property/evidence division which shall keep the following:

- A. Property of all persons arrested by Portland Police and incarcerated in a Multnomah County Jail, except any personal items kept at the jailer's discretion for the prisoners;
- B. Evidence seized by officers or other persons in the process of making an arrest;
- C. Contraband, illegal items, or miscellaneous property which comes into possession of members of the Bureau of Police.

14C.20.020 Receipts for Property.

Officers and other authorized persons shall issue a receipt for all seized property, a duplicate copy of which shall be retained by the property/evidence division custodian. The receipt and any copy therefrom shall bear the signature of the person depositing the property and contain a description of the property.

14C.20.030 Records.

The property/evidence division custodian shall keep an accurate record of all property received by the property/evidence division and shall keep current records showing the disposition of all property.

14C.20.040 Evidence Property.

(Amended by Ordinance No. 186355, effective November 27, 2013.)

- A. All property received by the property/evidence division as evidence shall be held subject to use as evidence in the appropriate court(s). Currency received by the division may be held as cash or deposited into a trust fund. Upon final disposition of the case(s) for which such property was seized as evidence, the Bureau of Police shall make a reasonable attempt to return all lawful property still held by the property/evidence division to its legal owner or rightful possessor. The property/evidence division may return currency in the form of cash.

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- B.** The Bureau of Police shall make a reasonable attempt to give notice to the legal owner or rightful possessor that the property will be released to him or her. The notice shall state that the legal owner or rightful possessor has 60 days within which to claim the property at the Bureau of Police. All property received from the property/evidence division requires the signature of the legal owner or rightful possessor.
- C.** Upon attempted notice, if property is not claimed within 60 days, the property may be disposed of by the Bureau of Police in the manner provided by law. Payment on disputed claims shall be authorized either by an appropriate court order approved by the City Attorney or by ordinance.

14C.20.060 Found Property.

All found property in the custody of the Bureau of Police will be held, and a reasonable attempt will be made to return the property to the owner. If the owner of found property held by the Bureau of Police cannot be determined, or no owner comes forward to claim the property, the property may be disposed after 30 days from the date the property was taken into custody by the Bureau of Police in the manner provided by law.

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**CHAPTER 14C.30 - GENERAL
PROCEDURES AND AUTHORITY OF THE
BUREAU OF POLICE**

Sections:

- 14C.30.010 Authority to Restrict Access to Certain Areas.
- 14C.30.020 Other Police Officers Authorized to Arrest, Cite, or Take Other Enforcement Action for Violations of City Code Provisions.
- 14C.30.030 Authority to Direct Traffic on Public Rights of Way.
- 14C.30.040 Seizure and Disposition of Weapons.
- 14C.30.050 Seizure of Dangerous and Deadly Weapons for Safekeeping.
- 14C.30.060 Caretaking of Property.
- 14C.30.070 Authority of Tri-Met to Prohibit Misuse of Transit Shelters and Loading Platforms on City Property.
- 14C.30.080 Appeal of Designation as a Gang Affiliate.

14C.30.010 Authority to Restrict Access to Certain Areas.

- A.** Whenever a threat to the public health or safety is created by any emergency, a Portland police officer may restrict or deny access to any persons to the area where such threat exists, for the duration of such threat, when the officer reasonably believes the presence of such persons would constitute a danger to themselves or others or would substantially interfere with the performance of the police or other emergency services. For purposes of this Section, an emergency includes, but is not limited to an escaped prisoner, a natural disaster, a fire, an explosion, an accident, a riot, the presence of an armed person, a hostage incident or a bomb threat.
- B.** Whenever it appears to be reasonably necessary to investigate, or to preserve or collect evidence of criminal acts, a police officer may restrict or deny access to any area.
- C.** As used in this Section, "restrict or deny access" means that a police officer has the authority to regulate or prohibit the presence or movement of persons or vehicles to, from, and within any area, to evacuate persons and to move or remove any property therefrom, until the reason for such restriction or denial of access no longer exists.
- D.** It is unlawful for any person to enter or to refuse to leave any area closed or restricted in access pursuant to Subsections (A) or (B) above, unless such person has specific statutory authority, or the permission of the on-scene ranking police officer, to be within such area.
- E.** In accordance with the authority granted by this Section, and in consideration of the law enforcement and emergency services needs involved, provision shall be

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made for reasonable access to such areas by members of the media for the purpose of news gathering and reporting.

14C.30.020 Other Police Officers Authorized to Arrest, Cite, or Take Other Enforcement Action for Violations of City Code Provisions.

(Amended by Ordinance No. 184522, 185448 and 186053, effective January 1, 2015.)
Police officers, as defined in this Title, are authorized to arrest, issue a citation, or take other enforcement action for violations of the following City Code provisions:

- A. All provisions of Title 11, Tree Regulations;
- B. All provisions of Title 14, Public Order and Police;
- C. All provisions of Title 16, Vehicles and Traffic;
- D. All provisions of Title 18, Noise Control; and
- E. All provisions of Title 20, Parks and Recreation.

14C.30.030 Authority to Direct Traffic on Public Rights of Way.

Officers and reserve officers of the Portland Police Bureau are authorized to direct pedestrian and vehicular traffic on any public right of way.

14C.30.040 Seizure and Disposition of Weapons.

- A. The Bureau of Police may seize and take possession of any dangerous or deadly weapon that is possessed unlawfully, or used unlawfully, or used for an unlawful purpose. The weapon shall be held subject to disposal as provided in this Section.
- B. If it is determined that the weapon was not possessed, carried, or used unlawfully, the weapon shall be released to the lawful owner if he or she files a timely written claim with the Bureau.
 - 1. A claim is timely if it is filed:
 - a. Within 60 days after the weapon was seized, if it was not held for use as evidence, or
 - b. Within 60 days after it was released by directive of the Chief of Police or court order, if it was held for use as evidence.
 - 2. If there is a question as to ownership or right to possession, the weapon shall be released as ordered by the court.

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- C.** If the name and address of a person entitled to claim possession of a weapon under Subsection B. is known to the Bureau of Police, the Bureau shall give that person notice as provided in Portland City Code 14C.20.
- D.** If the weapon is not claimed under the provisions of Subsection B. or was possessed, carried or used unlawfully by the owner, it is a nuisance. Subject to a court order to the contrary, the weapon shall be disposed of as provided in Subsection E. to G.
- E.** Subject to approval of the, Property/Evidence Division, if the weapon is a firearm suitable for use by the Bureau of Police, it shall be added to the inventory of the Bureau.
- F.** Subject to Subsection C. if the weapon is a shotgun or rifle, it shall be delivered to the Property/Evidence Division, which shall dispose of it in the same manner as surplus property. However, disposal shall be only to persons who have prequalified with the Property/Evidence Division as being licensed to sell firearms at retail.
- G.** Any weapon described in Subsection D. that is not disposed of as ordered by the court, or as provided in Subsection E. or F., shall be destroyed by the Property/Evidence Division.

14C.30.050 Seizure of Dangerous and Deadly Weapons for Safekeeping.

If a police officer reasonably believes that a dangerous or deadly weapon may be used to cause serious harm to any person, the police officer may temporarily seize the weapon for safekeeping. If an officer seizes a weapon under this Section, he or she shall promptly turn the weapon into the Bureau of Police Property/Evidence Division.

14C.30.060 Caretaking of Property.

At the discretion of a police officer, property may be received for safekeeping or the prevention of crime.

14C.30.070 Authority of Tri-Met to Prohibit Misuse of Transit Shelters and Loading Platforms on City Property.

- A.** Tri-Met may make and enforce such ordinances and regulations as it deems necessary regarding misuse of transit shelters and transit loading platforms for the purpose of exclusion and criminal trespass.
- B.** For the purposes of this Section, the following definitions apply:
 - 1.** Transit Shelter: the area within the drip line of any transit shelter within the limits of the City of Portland, except the Pioneer Square North and South stations.

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2. Transit loading platform: the area that extends the entire length of the tactile bricks where Tri-Met operated trains and trolleys load and unload within the limits of the City of Portland. This area extends from the tracks to one foot past the rear of the Tri-Met ticket vending machines, or to the farthest drip line of the transit shelter, whichever is farthest from the tactile bricks.

14C.30.080 Appeal of Designation as a Gang Affiliate.

- A. Any person who is to be designated as a gang affiliate by the Police Bureau following the administrative hearing provided for in the Portland Police Bureau Manual of Policy and Procedure or who has unsuccessfully challenged a gang affiliate designation at such a hearing, has a right of appeal to the Code Hearings Officer.
- B. The appeal authorized by this Section shall be conducted in accordance with the procedures and under the conditions set forth in Chapter 22.10 of this Code.

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**CHAPTER 17.08 - LOCAL IMPROVEMENT
PROCEDURE**

(Chapter replaced by Ordinance No. 177124,
effective January 10, 2003.)

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17.08.010 Definitions and Scopes of Duties.

(Amended by Ordinance Nos. 182389, 184957 and 189413, effective March 6, 2019.)

A. The “Responsible Bureau” for a local improvement is as follows:

1. The Bureau of Transportation is the Responsible Bureau for street and other transportation improvements;
2. The Bureau of Environmental Services is the Responsible Bureau for sanitary sewer, stormwater management and other environmental improvements;
3. The Bureau of Water Works is the Responsible Bureau for water improvements; and
4. City Council shall designate the Responsible Bureau for a local improvement that is not addressed by this section.

B. “Local Improvement District Administrator” means the person designated by the Director of the Bureau of Transportation to administer the City’s local improvement district program.

C. The Responsible Engineer as identified in Section 17.04.037 is responsible for:

1. Preparing a preliminary engineer’s estimate;

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2. Preparing plans and specifications;
3. Entering into a contract for improvement construction and/or engineering;
4. Handling completion of construction and acceptance of work;
5. Preparing a final engineer's estimate; and
6. Any other work related to engineering or construction.

D. The Local Improvement District Administrator is responsible for:

1. Preparing a petition for a local improvement district and determining the validity of a petition for a local improvement district as appropriate;
2. Recommending an assessment methodology or assessment methodologies for a local improvement district to City Council;
3. Analyzing financial feasibility of a local improvement district prior to formation;
4. Preparing and filing a resolution of intent for formation of a local improvement district;
5. Publishing and posting notices for the formation hearing of a local improvement district;
6. Preparing and filing a formation ordinance for a local improvement district;
7. Responding to remonstrances against formation of a local improvement district;
8. Presenting significant changes to scope or cost of improvements to City Council after formation of a local improvement district;
9. Recommending abandonment of a local improvement district;
10. Determining the total cost of the local improvement;
11. Publishing and posting notice of final assessment for a local improvement district;
12. Preparing and filing the final assessment ordinance for a local improvement district;
13. Responding to objections against final assessment of a local improvement district; and

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14. Any other work related to processing or completing local improvement districts.

E. The Revenue Division shall be responsible for:

1. Mailing notices for the formation hearing of a local improvement district at the direction of the Local Improvement District Administrator;
2. Receiving written remonstrances against the formation of a local improvement district, and forwarding such remonstrances to the Local Improvement District Administrator for a response;
3. Maintaining records of preliminary estimates of assessments;
4. Mailing notices for the final assessment hearing for a local improvement district at the direction of the Local Improvement District Administrator;
5. Receiving written objections to the final assessment for a local improvement district, and forwarding such objections to the Local Improvement District Administrator for a response;
6. Entering final assessments for a local improvement district into the docket of City Liens upon passage of an assessment ordinance for a local improvement district;
7. Mailing of notices of final assessment to property owners after passage of the assessment ordinance and entry into the docket of City Liens;
8. Determining the individual financial capacities of property owners, and whether to offer bonding, if requested; and
9. Obtaining interim financing to pay for local improvement costs prior to bonding.

17.08.020 City Council Control.

Whenever the City Council deems it expedient, it may order an improvement; when the City Council determines that such improvement will afford a special benefit to property within a particular district, the City Council shall classify it as a local improvement, and provide for payment of all or a portion of the cost thereof by imposition and collection of local assessments on the property benefited.

17.08.030 Charter Provisions Applicable.

(Amended by Ordinance No. 184957, effective November 25, 2011.) Charter provisions applicable to local improvements shall be followed by the City except where Charter provisions are contrary to state statute or the Oregon Constitution. In case of such conflict, legally applicable City Code shall apply.

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17.08.040 Initiation of Local Improvement Proceedings.

- A.** City Council may, at its discretion, initiate a local improvement proceeding by adopting a resolution of intent to undertake a capital construction project, or part thereof, based on:

 - 1.** A valid petition of support per the criteria in Section 17.08.050, signed by property owners and filed with the Local Improvement District Administrator;
 - 2.** A recommendation from the Responsible Bureau; and/or
 - 3.** Its own initiative.
- B.** Where a sewer local improvement is ordered pursuant to an Environmental Quality Commission Order and a sewer plan has been developed and adopted by the City Council, preparation of the construction plans and specifications for that improvement may begin without action by the City Council.

17.08.050 Petition for a Local Improvement District .

- A.** A petition of support may be prepared by the Local Improvement District Administrator or by owners of property that may be specially benefited by the proposed improvement.
- B.** The petition shall include:

 - 1.** The name or designation of the improvement;
 - 2.** A map or clear description of the location of the improvement;
 - 3.** The general character and scope of the improvement; and
 - 4.** A proposed assessment methodology.
- C.** The Local Improvement District Administrator shall review a petition for the proposed local improvement district to determine if the petition is valid. A petition will be considered valid only when property owned by petition signers added to property covered by waivers of remonstrance and property owned by the City represents more than 50 percent of the property in the proposed district as measured by the proposed assessment methodology. Property owned by the City, including property owned through the Portland Development Commission, shall be counted in support of formation of a local improvement district.
- D.** The Local Improvement District Administrator will not consider a petition valid if a petition for a substantially similar local improvement district has been filed in the

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previous 6 months and City Council resolved not to proceed with the substantially similar district.

- E.** In reviewing the petition, the Local Improvement District Administrator shall also identify delinquencies in taxes or City liens in the proposed district and determine the bonding capacities of the properties within the proposed local improvement district. The Local Improvement District Administrator shall analyze project financial feasibility by determining whether the sums assessed together with all unpaid sums then outstanding as assessments against the properties would exceed one-half the real market valuation of the properties as shown on the latest county tax rolls.
- F.** A petition of support will not be disqualified as a result of a subsequent transfer in property ownership. However, the new property owner has a right to remonstrate against the proposed improvement as provided in Chapter 17.08.

17.08.060 Resolution of Intent.

- A.** The Local Improvement District Administrator shall prepare and file a resolution of intent for the City Council's consideration if after the review specified in Section 17.08.050 the Local Improvement District Administrator determines a petition is valid; if a Responsible Bureau recommends initiation of a local improvement district; and/or if a member of City Council requests initiation of a local improvement district.
- B.** The resolution of intent shall include the following: the name or designation of the improvement; the location of the improvement; a map or clear description of the district boundary; the general character and scope of the improvement; a preliminary estimate of the total cost of the local improvement; the proposed assessment methodology; the proportion of funding to be borne by property owners and other sources, if applicable; the designated Responsible Bureau if the project scope is not addressed by Section 17.08.010; a statement of whether the City Council intends to construct the improvement; and direction to the Local Improvement District Administrator to do one of the following:

 - 1.** Initiate formation proceedings on the proposed local improvement district; or
 - 2.** Suspend proceedings on the proposed local improvement district; or
 - 3.** Terminate the process for forming the proposed local improvement district.
- C.** If City Council passes a resolution of intent to construct the improvements, City Council shall direct the Local Improvement District Administrator to initiate local improvement district formation proceedings as set forth in Section 17.08.070.

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- D.** The City Council may direct that the engineering and construction work shall be done in whole or in part by the City, by a contract, by direct employment of labor, by another governmental agency, or by any combination thereof.
- E.** If a petition is not valid, but the City Council determines that an improvement should be constructed, it may initiate the proceedings by adopting a resolution of intent to construct the improvement.
- F.** If the City Council determines that some other construction, such as installation of water lines, sewer lines prior to a street improvement, installation of fire hydrants, utility lines or conduits, conduits for underground service for street lights, or any other underground construction should precede the particular proposed improvement, then the City Council may suspend the proceedings for the proposed improvement until such construction has been started or completed.
- G.** If the City Council passes a resolution to terminate the process for forming the local improvement district, no further action shall be taken by the Local Improvement District Administrator on the district for a period of 6 months, other than actions to close the project.

17.08.070 Local Improvement District Formation and Remonstrances.

(Amended by Ordinance No. 189413, effective March 6, 2019.)

- A.** Notice of Public Hearing
 - 1.** Publication Notice: Except as otherwise provided by Charter for changes to street grades, the Local Improvement District Administrator shall publish 2 notices of the City's intent to form a local improvement district by publication in a paper of general circulation in the City at least 14 calendar days before the formation hearing. The notices shall include the following information:
 - a.** The time, date and place of the formation hearing before City Council;
 - b.** The name of the proposed district;
 - c.** A description of the type and scope of improvements to be made;
 - d.** A map or description of the area proposed for inclusion in the district for which a legal description is not required;
 - e.** A preliminary estimate of the total cost of the local improvement based on the preliminary engineer's estimate;
 - f.** The methodology or methodologies by which properties will be assessed;

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- [illegible]

B. Remonstrances

1. If property owners choose to remonstrate against the proposed improvement such remonstrances must be received by the Revenue Division by 5:00 PM seven (7) calendar days prior to the local improvement district formation

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hearing. A remonstrance must be in writing and must be delivered in person or by first class U.S. mail to the Revenue Division. The Revenue Division is not responsible for remonstrances sent via facsimile or via e-mail. The remonstrance shall state the reasons for the objection. Any person acting as agent or Attorney with power to act in signing the remonstrance shall, in addition to describing the property affected, file with the remonstrance a copy in writing of the authority to represent the owner or owners of property. The Revenue Division will forward the remonstrance to the Local Improvement District Administrator for a response. A written remonstrance may be withdrawn at any time before the close of the City Council hearing on the formation of the District.

2. Owners of property covered by waivers of remonstrance may submit an objection; however such an objection shall not be considered for purposes of determining Council jurisdiction as provided by Chapter 9 of the City Charter for the particular type of improvement.
3. The number of remonstrances that will defeat formation of a proposed local improvement district shall be as provided by Chapter 9 of the City Charter for the particular type of improvement.

C. Formation Ordinance

1. The local improvement district formation ordinance shall contain at least the following findings:
 - a. Name of the proposed local improvement district;
 - b. A general description of the project scope as may also be shown on a typical section;
 - c. A description of the proposed local improvement district with a reference to specific district boundaries, or a map showing the area proposed for inclusion in the local improvement district;
 - d. A preliminary estimate of the total cost of the local improvement, including design, construction, engineering, project management and financing;
 - e. The assessment methodology or methodologies by which benefit within the local improvement district will be assigned;
 - f. A preliminary estimate of assessments for each property owner within the local improvement district based on the proposed assessment methodology or methodologies;

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- A statement as to the financial feasibility of the district, based on the preliminary estimate of assessments and outstanding past assessments and taxes; and
 - An exhibit containing findings addressing each remonstrance received, and number of remonstrances received.
- The local improvement district formation ordinance shall contain, at a minimum, directives that:
 - Create the district;
 - Include benefited properties in the district as shown on an attached exhibit;
 - State the property owners' share of the costs that the benefited properties will be assessed, and any other entities' shares, as applicable;
 - State the assessment formula or assessment formulas;
 - Direct the Responsible Engineer to arrange for the preparation of plans and specifications;
 - Direct the Responsible Engineer to arrange for construction of the improvement;
 - Direct the Revenue Division to obtain interim financing to pay for local improvement costs prior to bonding; and
 - Sustain or overrule any remonstrances received.

D. Local Improvement District Formation Hearing

1. The City Council shall hold a public hearing on the proposed improvement. As provided by Section 17.08.070 A.3., the hearing shall be held at least 21 calendar days after the date notice was deposited in the mail. The City Council may continue or discontinue the proceedings; may direct a modification of its resolution of intent; or may direct formation of the district and override any remonstrances, provided the City Council retains jurisdiction as provided by Chapter 9 of the City Charter for the particular type of improvement. The City Council may direct a modification to the location or scope of the improvement, and/or to the assessment district which it deems will be benefited by the improvement; or make such other modifications in the proceedings as it finds reasonable.

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2. Modification of Scope of Improvements: If the City Council significantly modifies the scope of the improvement within the adopted formation ordinance so that an assessment is likely to be significantly increased upon one or more properties, or if the City Council enlarges the assessment district within the adopted formation ordinance, then a new preliminary estimate of assessments will be made and new notices shall be sent to the property owners within the proposed district, and another hearing shall be held. The notice shall advise property owners who still wish to remonstrate that their remonstrance must be resubmitted. However, no new publication or posting shall be required. In the event of modification that meets the objection of any remonstrance, such remonstrance shall not be counted as such unless renewed following such modification.
3. Decision to Form District: Upon completion of the hearing process, the City Council may approve or decline formation of a district by ordinance. As provided in Section 17.08.070 C.1., a decision to approve formation of a district shall be supported by findings supporting a conclusion of special benefit and addressing the remonstrances, and shall direct the Local Improvement District Administrator to arrange for construction of the local improvement.
4. If the City Council approves formation of the local improvement district, the Responsible Engineer shall arrange for the preparation of plans and specifications. Upon completion, approved plans will be available for inspection at the Responsible Bureau for at least the minimum time period specified in its Records Retention and Disposition Schedule. The local improvement may be constructed and/or engineered in whole or in part by the City or by another government agency, or the City may seek bids for any portion of the local improvement.
5. The City Council shall have final determination of the kind and character of the local improvement, its location and extent, materials to be used, and all matters contained in the plans and specifications.
6. The City Council shall also have final determination of the assessment formula and boundaries of the district that is to be assessed for the costs of the improvement. The possibility or likelihood that some property contained in the property description of the proposed assessment district may not be benefited by the proposed improvement shall not invalidate the district description.
7. Upon City Council's passage of an ordinance forming a local improvement district, the assessment formula may not be changed notwithstanding concurrence among the property owner(s), nor can the assessment obligation be transferred to a property not included in the local improvement

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district. No release of obligation shall be made by the Revenue Division until after final assessment is made.

17.08.080 Changes to Scope or Cost of Improvements and Notice to Proceed.

(Amended by Ordinance No. 182760, effective June 5, 2009.)

- A. After formation of a local improvement district, City Council shall hold a public hearing to consider significant and material changes to the proposed scope or to the estimate of the total cost of the local improvement that may arise during the course of final engineering.
- B. For such a hearing, notice shall be in the manner provided by Section 17.08.070. In addition to meeting the provisions of Section 17.08.070, the notice shall also state the nature of the proposed modifications to the scope of improvements or to the preliminary estimate of the total cost of the local improvement previously approved at the Local Improvement District formation hearing. Property owners shall have the opportunity to remonstrate against the significant changes in the manner provided by Section 17.08.070. If the improvement district was initiated by petition, no new petition will be required.
- C. The Responsible Engineer may issue a Notice to Proceed to begin construction provided that:
 - 1. There are no significant changes to the scope of the local improvements; or
 - 2. There are no significant changes to the preliminary estimate of assessments for the benefiting properties in the local improvement district; or
 - 3. The City Council has approved significant changes to scope and/or cost of the improvements as provided in this section.

Construction of the local improvement shall be in substantial accordance with the plans and specifications adopted by the Responsible Engineer.

17.08.090 Abandonment of Local Improvement District.

The City Council shall have full power and authority to abandon and rescind proceedings for local improvements at any time prior to the final completion of the improvements.

17.08.100 Completion of Construction.

(Amended by Ordinance No. 182760, effective June 5, 2009.)

- A. After the work financed by the local improvement district has been completed satisfactorily, the Responsible Engineer shall prepare a certificate of completion. The Responsible Engineer shall also prepare a final engineer's estimate showing the costs of all engineering and construction work performed. The certificate of completion shall be deemed acceptance by the City of the local improvement work.

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- B.** Authorization for final payment will be made as provided by Chapter 5.33 of City Code.
- C.** The Local Improvement District Administrator will include the final engineer's estimate and a copy of the certificate of completion with the filing of the final assessment ordinance as set forth in Section 17.08.130.
- D.** Notice of completion of the work need not be provided except as may be required elsewhere in City Code.
- E.** If a local improvement is substantially complete except for contract closeout, or if a scope of improvement included in the construction contract but not included in the local improvement is incomplete, the Responsible Engineer at the discretion of the Responsible Bureau may file a written report attesting that the local improvements are complete in lieu of a certificate of completion. The provisions set forth in Section 17.08.100.A apply, except that the written report substitutes for the certificate of completion. Any further project or financing costs incurred subsequent to final assessment will be the responsibility of the Responsible Bureau, not of the property owners.

17.08.110 Total Cost of Local Improvement.

(Amended by Ordinance No. 189413, effective March 6, 2019.)

- A.** After the work financed by a local improvement district has been accepted as complete, the Local Improvement District Administrator shall determine the total cost of the local improvement, including costs identified in the final engineer's estimate and any pending costs.
- B.** The total cost of the local improvement that may be assessed against the properties specially benefited by the improvement shall include, but not be limited to the following:
 - 1.** Direct or indirect costs incurred in order to undertake the capital construction project such as the costs of labor, materials, supplies, equipment, permits, survey, engineering, administration, supervision, inspection, insurance, advertising and notification, administration, accounting, depreciation, amortization, operation, maintenance, repair, replacement, contracts, debt service and assessment;
 - 2.** Financing costs, including interest charges; the costs of any necessary property, right-of-way or easement acquisition and condemnation proceedings; and
 - 3.** Attorneys' fees and any other actual expense as allowed by state law.
- C.** Engineering and project management performed by the City in connection with local improvements shall be charged at the rate of 100 percent of the direct cost of

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services performed computed in accordance with the provisions of Section 5.48.030. The Responsible Engineer shall prepare a final engineer's estimate of the engineering and construction costs. A final estimate of the total project costs, including costs reflected in the final engineer's estimate, shall be prepared by the Local Improvement District Administrator.

- D.** The Revenue Division shall maintain a fee schedule that shall be used for determining the charge to be made for Revenue Division's administrative services and general City administrative services in connection with local improvements. These charges will include a Superintendency fee; a recording fee which shall be fixed regardless of the amount of the assessment; and a monthly billing fee if the property owner does not pay the full assessment at the time it is levied.

17.08.120 Alternative Financing Methods.

Nothing contained in this Chapter shall preclude the City Council from using any other available means of financing portions of local improvements, including but not limited to city funds, federal or state grants, user charges or fees, revenue bonds, general obligation bonds, or any other legal means of finance. In the event that such other means of financing improvements are used, the City Council may make assessments to pay any remaining part of the total costs of the local improvement.

17.08.130 Final Assessment and Objections.

(Amended by Ordinance Nos. 182760, 184957 and 189413, effective March 6, 2019.)

A. Apportionment of Proposed Final Assessments

- 1.** Whenever any local improvement, any part of the cost of which is to be assessed upon the property specially benefited thereby, is completed in whole, or in such part that the cost of the whole can be determined, the Local Improvement District Administrator shall file the final estimate of the total cost of the local improvement and prepare a proposed final assessment according to the assessment formula approved by City Council upon the properties in the district, including upon any land owned by the City.
- 2.** If the City Council has determined that a portion of the total cost of the local improvement is to be paid from public funds, other than the benefit assessment to be imposed upon land owned by the City and lying within the assessment district fixed by the City Council, the Local Improvement District Administrator shall deduct from the total cost of the local improvement such allocation of costs to public funds provided by the City Council and shall apportion the remainder of such total cost on the properties within the assessment district.
- 3.** When the Local Improvement District Administrator has calculated the assessment for each property, the Local Improvement District

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Administrator shall file the proposed final assessment roll with the City Council through the Commissioner-in-Charge of the Responsible Bureau.

B. Notice of Proposed Final Assessments

- 1.** At least 21 calendar days before the public hearing on the proposed final assessment, the Revenue Division at the direction of the Local Improvement District Administrator shall provide notice to the owner of each property or to the owner's agent as shown in the County tax record either by mail or by personal delivery. The notice shall state:
 - a.** The property description;
 - b.** The amount of the proposed final assessment against the property;
 - c.** A statement that this amount could be modified as a result of objections filed by other property owners in the district unless the cost to property owners is fixed;
 - d.** The date, time and place of the final assessment hearing;
 - e.** The deadline and manner for filing objections to the proposed final assessment; and
 - f.** Contact information for the Local Improvement District Administrator.
- 2.** The Local Improvement District Administrator shall publish 2 notices of the proposed final assessment in a newspaper of general circulation in the City at least 14 calendar days prior to the final assessment hearing.

C. Final Assessment Hearing and Objections

- 1.** Any owner of property proposed to be assessed a share of the cost of a local improvement may file an objection to the proposed final assessment in writing with the Revenue Division. The objection must be received by the Revenue Division no later than 5:00 PM seven (7) calendar days prior to the hearing by City Council on the proposed final assessment. The Revenue Division will forward the objection to the Local Improvement District Administrator for a response. The objection shall be filed in the same manner as set forth in Section 17.08.070.B and shall state the reasons for the objection. However, objections received to final assessment shall not affect Council jurisdiction over final assessment proceedings.
- 2.** The City Council shall hold a hearing on any objections on the date set forth in the notice, and at that time shall consider objections made by the owners

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of property at the hearing. The hearing may be continued as the City Council may find appropriate.

3. At the hearing, the City Council at its discretion shall determine and approve the amount to be assessed upon each property within the assessment district, which amount does not exceed the special benefits accruing to such property from the improvement and the sum of which amount and other amounts assessed against properties within the assessment district do not exceed the total cost of the local improvement. The amount of each assessment as determined by City Council shall be based on the City Council's finding of special benefit to the property.

D. Final Assessment Ordinance

1. The City Council shall pass an assessing ordinance that shall set forth the assessments against the respective properties within the assessment district.
2. The ordinance shall:
 - a. Include an exhibit containing findings addressing each objection received, and number of objections received
 - b. State the total cost and assessment formula used
 - c. Include a statement that each property is specifically benefited in the amount shown in the assessment roll;
 - d. Include a statement that the project has been constructed as provided in the adopted plans and specifications, and, if the provisions set forth in Subsection 17.08.100 E. have been invoked, a copy of the written report from the Responsible Engineer attesting that the local improvements are complete in-lieu of a certificate of completion; and
 - e. Contain a directive to sustain or overrule the objections.
3. Upon passage of the assessing ordinance, the Revenue Division shall enter the assessments in the docket of City liens and follow the assessment procedure set forth in Chapter 17.12. As provided by City Charter, the assessment ordinance shall take effect immediately upon passage or on any date fewer than 30 days after passage that is specified in the final assessment ordinance.
4. Claimed mistakes in the calculation of assessments shall be brought to the attention of the Local Improvement District Administrator, who shall determine whether there has been a mistake. If the Local Improvement District Administrator finds that there has been a mistake, the Local

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Improvement District Administrator shall recommend to the City Council an amendment to the assessment ordinance to correct the error. On enactment of an amendment, the Revenue Division shall cause the necessary correction to be made in the City lien docket. Such correction shall not change assessments against any other property within the district.

- E.** Formation of a new local improvement district: In the event a court of law holds that the formation of a local improvement district was invalid or improper procedures were used, property owners may be assessed after the new district is formed if the properties are again included.

CHAPTER 17.12 - ASSESSMENTS

(Chapter amended by Ordinance No. 163420,
effective September 29, 1990.)

Sections:

- 17.12.010 Lien Docket and General Assessment Procedure.
- 17.12.060 Assessing Ordinance.
- 17.12.070 Notice of Assessment.
- 17.12.080 Payment of City's Share.
- 17.12.100 Surplus.
- 17.12.120 Correction of Mistake in Assessment Refund or Overpayment.
- 17.12.130 Segregation of Assessments
- 17.12.140 Bonding.
- 17.12.150 Rebonding.
- 17.12.170 Collection.

17.12.010 Lien Docket and General Assessment Procedure.

(Replaced by Ordinance No. 177124, effective January 10, 2003.)

- A.** The City will maintain a lien docket and general assessment procedure as set forth in the Chapter for the assessment of:
 - 1. Local improvement district assessments.
 - 2. System development charge assessments.
 - 3. Sidewalk maintenance and repair assessments.
 - 4. Enforcement of City Code; and
 - 5. Other assessments prescribed by City Code.
- B.** In addition to the general assessment procedure set forth in this Chapter, specific assessment procedures are set forth as follows:
 - 1. Local improvement district assessment procedures as set forth in Chapter 17.08;
 - 2. System development charge assessment procedures are set forth in Chapters 17.13, 17.14 and 17.15; and
 - 3. Sidewalk maintenance and repair assessment procedures are set forth in Chapter 17.28.

17.12.020 Allowance for Engineering and Administration.

(Repealed by Ordinance No. 177124, effective January 10, 2003.)

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17.12.030 Estimate of Cost - Apportionment of Assessments.

(Repealed by Ordinance No. 177124, effective January 10, 2003.)

17.12.040 Notices of Proposed Assessments.

(Repealed by Ordinance No. 177124, effective January 10, 2003.)

17.12.050 Remonstrances and Hearings.

(Repealed by Ordinance No. 177124, effective January 10, 2003.)

17.12.060 Assessing Ordinance.

(Amended by Ordinance No. 189413, effective March 6, 2019.) The City Council may pass an assessing ordinance, effective immediately upon passage as prescribed in the City Charter, which shall set forth the assessments against the respective properties within the assessment district. Upon such passage the Revenue Division shall enter the assessments in the docket of City liens.

17.12.070 Notice of Assessment.

(Amended by Ordinance No. 189413, effective March 6, 2019.) After an assessment has been entered in the lien docket, the Revenue Division shall send a bill for the assessment by mail to each person whose property is assessed or to the owner's agent as shown in the County tax record.

17.12.080 Payment of City's Share.

The City Council may provide for the payment into the particular local improvement assessment fund of any share allocated by the Council to be paid from public funds, and also any assessments imposed by it against City owned property.

17.12.090 Deficit Assessment.

(Repealed by Ordinance No. 177124, effective January 10, 2003.)

17.12.100 Surplus.

If the total cost of an improvement is found to be less than the total sum previously assessed therefor, the surplus shall be apportioned and paid in accordance with Charter provisions.

17.12.110 Reassessment.

(Repealed by Ordinance No. 177124, effective January 10, 2003.)

17.12.120 Correction of Mistake in Assessment Refund or Overpayment.

(Amended by Ordinance No. 173369, effective May 12, 1999.) A mistake in assessment or entry thereof in the lien docket may be corrected as prescribed by the Charter. In case of overpayment because of such mistake or otherwise, the person who paid such excess or his or her legal representative, heirs or assigns, is entitled to repayment of the same by check drawn upon the fund receiving such overpayment.

17.12.125 Mid-County Sewer Financial Assistance Program.

(Repealed by Ordinance No. 182760, effective June 5, 2009.)

17.12.130 Segregation of Assessments.

(Amended by Ordinance Nos. 177124, 182760 and 189413, effective March 6, 2019.)

- A.** A lien against the real property in favor of the City may be segregated on the application of the owner(s), subject to the provisions of this section and any rules adopted by the Revenue Division.
- B.** Applications shall be made to the Revenue Division and shall include:

 - 1.** A legal description of each tract to be segregated;
 - 2.** Documentation demonstrating that each tract to be segregated is a lot or parcel created by a subdivision, partition or other division of the original tract of land in accordance with ORS 92.010 to 92.190, and is consistent with all applicable comprehensive plans;
 - 3.** The names of the owners of each tract, and the name of each person who will own each parcel should the segregation be approved; and
 - 4.** A full legal description that will be assigned by the County Assessor for each lot or parcel that is created as a result of the segregation.
- C.** No segregation shall be made unless each part of the original tract of land after the segregation has a true cash value, as determined from the certificate of the county assessor, of 200% or more of the amount of the lien as to each segregated tract concerned.
- D.** The Revenue Division shall compute a segregation of the lien against the real property on the same basis as it was originally computed and apportioned and shall record the segregation in the lien docket. If the original tract has been divided by filing of a condominium plat, the applicant for segregation may propose an alternative, equitable basis for computing segregation of the lien. The alternative proposed segregation shall be subject to the Council's approval by ordinance.
- E.** No assessment shall be segregated until all outstanding delinquent City liens on the property are brought current.
- F.** The Revenue Division shall charge a fee for the segregation of assessments. The fee will be based in part on the number of lots or parcels that result from the segregation. The segregation fee may be amended from time to time and shall be stated in the Fees & Charges schedule maintained in the Revenue Division.

17.12.140 Bonding.

(Amended by Ordinance Nos. 173369, 177124 and 189413, effective March 8, 2019.)

- A.** Within 30 days of the entry in the lien docket a property owner may apply to pay the assessment, deficit assessment or re assessment or the amount remaining unpaid

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by installments as stated in the signed installment payment contract. The contract shall be in accordance with the terms and provisions of ORS 223.215. The contract shall be received by the Revenue Division subject to the limitations prescribed in this Section. The City may accept contracts after the 30-day period stated in this Section under procedures established by the Revenue Division.

- B.** If the sum assessed together with all unpaid sums then outstanding as assessments against the property exceeds one-half the real market valuation of the property as shown on the latest county tax rolls, then the Revenue Division shall reject the application unless the excess is paid in cash with the application and the application is made for the remainder only.
- C.** If the installment payment contract has been received and is in force, the City Treasurer may accept prepayments of any installments without penalty for the prepayment. Whenever an installment is paid, accrued interest to the due date of the installment on the unpaid assessment balance, plus interest on the past due installment if any, shall be paid with the installment.
- D.** In addition to the procedures provided for in Subsections A. through C above, the procedures for bonding improvement assessments authorized by the Bancroft Bonding Act (ORS 223.205, 223.930) may be followed for improvement assessments when the Council so directs in the ordinance making the assessment.
- E.** For purposes of this Section the term “property owner” means the owner of the Title to real property or the contract purchaser of real property, of record as shown on the last available complete assessment roll in the Office of the County Assessor.
- F.** Interest rates for bonded assessments shall be set using an adjusted rate mechanism. The City Council shall set an interim rate by ordinance, which shall be applied to the unpaid balance until improvement bonds are sold to finance the bonded assessments. Upon sale of bonds, the Revenue Division shall adjust the interest rate to the rate received by the City on the bond issue (expressed as true interest cost) plus a fee to cover insurance and discount on the bonds. All subsequent payments will be made at the new adjusted rate. Property owners who sign an installment contract for systems development charges shall receive the adjusted rate.
- G.** Bond financing fees shall be charged to each installment contract to defray the costs of financing per a fee schedule on file with the Revenue Division. The fee schedule will include a loan creation fee as well as a bond financing fee. Bond financing fees are in addition to costs set forth in Chapter 17.08.
- H.** The City may charge a bond reserve fee on each installment payment contract to facilitate the sale of the improvement bonds. Proceeds from the bond reserve fee shall be dedicated to a reserve account and used as security for the improvement bonds that the City sells to finance the installment payment contract. A separate

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bond reserve account shall be created for each bond sale as required by the terms of the sale. This fee shall be in addition to the fees set forth in Chapter 17.08 and in Section 17.12.140 G.

- I.** The Revenue Division shall charge a billing and service charge which shall be added to each statement and shall be in addition to principal, interest, penalties, costs and other fees. This fee shall be per a schedule on file with the Revenue Division. This fee shall be in addition to the fees set forth in this Chapter 17.08, Section 17.12.140 G. and Section 17.12.140 H.

17.12.150 Rebonding.

- A.** If the Council specifically approves the same, a property owner who has bonded an assessment a portion of which remains unpaid, or a property owner whose assessment on such property has been subdivided as provided in the Charter, may apply for a rebonding if all taxes then due have been paid upon the property, no outstanding liens have been filed against the property, and if all the conditions applicable to initial bonding are met at the time of rebonding application. The rebonding application may include all unpaid assessment amounts remaining due and unpaid. All provisions relating to rebonding contained in the statutes of the State shall be applicable.
- B.** As used in this Section the term “property owner” shall mean the owner of the Title to real property or the contract purchaser of real property, of record as shown on the last available complete assessment roll in the Office of the County Assessor.

17.12.160 Monthly Payments on Assessments.

(Repealed by Ordinance No. 161797, effective May 12, 1989.)

17.12.170 Collection.

After 30 days from the date of entry in the lien docket of a sum assessed, whether by initial assessment, deficit assessment or reassessment, the amount of the delinquency together with interest and any costs may be collected as provided in the City Charter.

17.12.180 Redemption.

(Repealed by Ordinance No. 161797, effective May 12, 1989.)

17.12.190 Applicability of Charter Provisions.

(Repealed by Ordinance No. 161797, effective May 12, 1989.)

17.12.200 Alternate Procedures.

(Repealed by Ordinance No. 161797, effective May 12, 1989.)

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- E.** **“Building Official”** means that person, or other designated authority charged with the administration and enforcement of the state building codes for the City, or a duly authorized representative.
- F.** **“Building Permit”** means a permit issued by the City Building Official pursuant to the state building codes.
- G.** **“Campus Housing”** means dormitories and other buildings arranged and designed as living quarters on a college or university campus for students enrolled at that college or university. College or university campus is any property owned or controlled by the college or university within a Conditional Use Master Plan, Impact Mitigation Plan or other campus zone boundary.
- H.** **“Central City”** means the area identified in the SDC Methodology Report as the Central City Service Area, and whose boundaries are included on the map in the SDC Methodology Report. This area is also referred to as the Central City Sub-Area.
- I.** **“City”** means the City of Portland, Oregon.
- J.** **“Condition of Development Approval”** is any requirement imposed on an Applicant by a City land use or limited land use decision, site plan approval or Building Permit either by operation of law, including but not limited to the City Code or Rule or regulation adopted thereunder, or a condition of approval.
- K.** **“Cost Index,”** as related to construction costs, means the Seattle Area Engineering News Record (ENR) Construction Cost Index and, as related to land acquisition costs, means the change in the sum of the Central City and Non-Central City (the Sub-Areas) ratios of unimproved land values to the number of accounts, according to the records of the Multnomah County Tax Assessor.
- L.** **“Credit”** means the amount by which an Applicant may be able to reduce the SDC fee as provided in this Chapter.
- M.** **“Development Agreement”** means a written agreement approved by the Director that is:

 - 1. An agreement between the City and another entity that includes as an element the conveyance to the City of capacity-increasing Real Property Interests or capacity-increasing capital improvements, for parks and recreation use, in connection with the undertaking of a New Development that is subject to the SDC imposed by this Chapter; or
 - 2. An agreement between agencies of the City that includes as an element the acquisition of capacity-increasing Real Property Interests or construction of capacity-increasing capital improvements, for parks and recreation use, in

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connection with a New Development that is subject to the SDC imposed by this Chapter; or

3. An agreement for the donation of capacity-increasing Real Property Interests or capital improvements, for parks and recreation use, that provides for the consideration of the donation as a Qualified Public Improvement in a subsequent New Development subject to the SDC imposed by this Chapter; or
4. An agreement under Subsections 1.-3. of this Section that, instead of or in addition to the conveyance of Real Property Interests or capital improvements, provides for donation to the City of money to be used for the acquisition of capacity-increasing Real Property Interests or the development of capacity-increasing capital improvements, for parks and recreation use.

- N. **“Director”** means the Director of Portland Parks & Recreation for the City of Portland.
- O. **“Dwelling Unit”** means one or more habitable rooms, as defined in City Code Section 24.15.075.
- P. **“Non-Central City”** means all portions of the City outside the Central City Service Area.
- Q. **“Non-Residential Development”** means development which does not include Dwelling Units. When a Development contains both Dwelling Units and other uses, that portion of the Development containing Dwelling Units shall be considered “Residential Development,” and that portion devoted to other uses shall be considered “Non-Residential Development.”
- R. **“New Development”** means development for which a Building Permit is required, including existing development for which a required Building Permit was not obtained.
- S. **“Occupancy Group Codes”** means the use codes (A-1, B, H, e.g.) in the Oregon Structural Specialty Code, “Use and Occupancy Classification.”
- T. **“Occupancy Use Types”** means the occupancy classifications in the Oregon Structural Specialty Code, “Use and Occupancy Classification.”
- U. **“Parks and Recreation SDC Capital Improvement Plan,”** also called the Parks and Recreation SDC-CIP, means the City program set forth in the “SDC Methodology Report,” as amended in accordance with this Chapter, of projects to be funded with Parks and Recreation SDC revenues.
- V. **“Permit”** means a Building Permit.

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- W. “Previous Use”** means the most intensive permitted use conducted at a particular property within 36 months before the date of completed Application. Where the property was used simultaneously for several different uses (mixed use), for the purposes of this Chapter all of the specific use categories shall be considered.
- X. “Proposed Use”** means the use proposed by the Applicant for the New Development.
- Y. “Qualified Public Improvement”** means any parks and recreation system capital facility or conveyance of a Real Property Interest that increases the capacity of the City’s Parks and Recreation System, is approved by the Commissioner-in-Charge or designee, and meets the definition and requirements of qualified public improvements under ORS 223.304(4) and 223.304(5). Additionally, unless there is a conflict with ORS 223.304(4) or 223.304(5), the following will be considered qualified public improvements:
1. A conveyance of Real Property Interests or capital improvements for public recreational use specified in a Development Agreement between the City and a developer entered into before the effective date of this Ordinance. Conveyances of Real Property Interests or capital improvements for public recreational use specified in a Development Agreement between the City and a developer entered into after the effective date of this Ordinance are excluded from the definition of “qualified public improvement” unless the Development Agreement specifically provides otherwise. If the Development Agreement does include conveyances of Real Property Interests that are intended to be eligible for Parks SDC Credits, the value of the Real Property Interests must be established at the time the Development Agreement is finalized by the appraisal methods described in Section 17.13.070. The date of valuation is the date of the final Development Agreement. If there are subsequent amendments to the Development Agreement, the date of valuation will be the date of the original Development Agreement unless otherwise specified in future amendments.
 2. A donation of money to the City to be used for acquisition of Real Property Interests or capital improvements for parks and recreational use, if memorialized in a Development Agreement.
 3. A donation of a habitat or trail. If the donation is a habitat, it must be adjacent to a Portland Parks property, or it must be a minimum of 3 contiguous acres with at least 66 percent of its area covered by the City’s environmental overlay zone. If the donation is a trail, it must be a major public trail designated on the City’s Official Zoning Maps.
 4. An improvement or conveyance of Real Property Interests for parks and recreational use that does not otherwise qualify as a Qualified Public Improvement; is not separately eligible for a credit, bonus, or other

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compensation; and, in the opinion of the Director in their reasonable discretion, serves the City's public parks and recreation needs.

- Z.** **“Rate Group”** means one of four rates or groups of rates, each of which has its own percentage split between land costs and development costs as follows:

Central City	Non-Central City
71% Land Portion	49% Land Portion
29% Improvement Portion	51% Improvement Portion

- AA.** **“Real Property Interests”** means fee title, easement, or other permanent interests in real property as documented in a written conveyance.
- BB.** **“Remodel”** or **“remodeling”** means to alter, expand or replace an existing structure.
- CC.** **“Resident Equivalent”** means a measure of the impact on parks and recreation facility needs created by Non-Residential Development, as compared to the impact of a resident.
- DD.** **“SDC Methodology Report”** means the methodology report entitled Parks System Development Charge Methodology Update Report, dated April 15, 2015 and adopted as Exhibit A to Ordinance 187150, as may be modified.
- EE.** **“Temporary use”** means a construction trailer or other non-permanent structure.

17.13.030 Rules of Construction.

(Amended by Ordinance No 189244, effective November 7, 2018.) For the purposes of administration and enforcement of this Chapter, unless otherwise stated in this Chapter, the following rules of construction shall apply:

- A.** In case of any difference of meaning or implication between the text of this Chapter and any caption, illustration, summary table, or illustrative table, the text shall control.
- B.** The word “shall” is always mandatory and not discretionary: the word “may” is permissive.
- C.** Words used in the present tense shall include the future; words used in the singular number shall include the plural and the plural the singular, unless the context clearly indicates the contrary.
- D.** The phrase “used for” includes “arranged for,” “designed for,” “maintained for,” and “occupied for.”

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- E.** Where a regulation involves two or more connected items, conditions, provisions, or events:
- 1.** “And” indicates that all the connected terms, conditions, provisions or events shall apply;
 - 2.** “Or” indicates that the connected items, conditions, or provisions or events may apply singly or in any combination.
- F.** The word “includes” shall not limit a term to the specific example, but is intended to extend its meaning to all other instances or circumstances of like kind or character.

17.13.040 Application.

(Amended by Ordinance Nos. 181669, 187150 and 189244, effective November 7, 2018.)
This Chapter applies to all New Development throughout the City of Portland. The amount of the Parks and Recreation SDC shall be calculated according to this section, using the rates set forth in the SDC Methodology Report.

- A.** Except as otherwise provided in this Chapter, a Parks and Recreation SDC shall be imposed upon all New Development for which an Application is filed on or after the effective date of this ordinance.
- B.** The Applicant shall at the time of Application provide the Administrator with the information requested on an SDC application form regarding the Previous Use and Proposed Use(s) of the property, including the following:
- 1.** A description of each of the Previous Uses and Proposed Uses for the property for which the Permit is being sought, including the number of Dwelling Units and square footage for the entire property under the Previous Use and for the Proposed Use(s) of the New Development.
 - 2.** For residential uses, the number of residential dwellings and the square footage of each Dwelling Unit.
 - 3.** For non-residential uses, the square footage for each occupancy use type (i.e., office, retail, etc.).
- C.** Except as otherwise provided in this Chapter, the amount of the SDC due shall be calculated as follows:
- 1.** Calculating the fee for the Proposed Uses (“the Proposed Use Fee”);
 - a.** Multiplying the number of Dwelling Units by their appropriate per-unit fee, based on square footage of each individual dwelling unit;
 - b.** Multiplying the square footage of each non-Dwelling Unit

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Proposed Use by the appropriate per-square-foot occupancy fee; and

- c. Adding the fees for the proposed Dwelling Unit and non-Dwelling Unit uses.
 2. Calculating the credit for the Previous Uses (“the Previous Use Credit”); and
 - a. Multiplying the number of Dwelling Units by their appropriate per-unit fee, based on square footage of each individual Dwelling Unit;
 - b. Multiplying the square footage of each non-Dwelling Unit Proposed Use by the appropriate per-square-foot occupancy fee; and
 - c. Adding the credits for the previous Dwelling Unit and non-Dwelling Unit uses.
 3. Subtracting the Previous Use Credit from the Proposed Use Fee to arrive at the net Park SDC due. If the Previous Use(s) were vacant for more than 36 months prior to the date of the application, the SDC due shall be the full amount of the SDC for the Proposed Use(s) and no credit shall be provided for Previous Use(s).
- D. The dollar amounts of the SDC set forth in the SDC Methodology Report are based on 2013 values and shall be adjusted on July 1, 2017 and thereafter annually on July 1st to account for changes in the costs of acquiring and constructing parks facilities. The adjustment factor shall be based on:
1. The percent change in the Cost Index for land acquisition per Subsection 17.13.020 K., by SDC Sub-Area, measured from annually, to the most recent annual tax year report;
 2. The portion of Rate Group growth costs for land identified in Subsection 17.13.020 Z.;
 3. The percent change in the Cost Index for construction costs per Subsection 17.13.020 K., measured annually, and
 4. The portion of Rate Group growth costs for improvement identified in Subsection 17.13.020 Z.

The adjustment factor for each Rate Group shall be determined as follows:

Percent change in Land Cost Index multiplied by the Rate Group's Land Portion (percent)

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- + Percent change in Construction Cost Index multiplied by the Rate Group's Development Portion (percent)
- = Park SDC Rate Group Adjustment Factor

The resulting Adjustment Factor will be multiplied by the adopted SDC rates by Rate Group and added to the base charges.

- E. Notwithstanding any other provision, the adjustment shall not exceed a total of 12 percent in any consecutive 2 year period. This is calculated by dividing the proposed new rate by the rate of 2 years prior, or, if a new rate structure was adopted less than 2 years prior, by the variance from the rate most recently adopted. If the resulting change is greater than 12 percent, the rate will be set at 12 percent variance from the rate of 2 years prior, or, if a new rate structure was adopted less than 2 years prior, by the variance from the rate most recently adopted.

17.13.050 Application Requirements.

(Amended by Ordinance Nos. 176955, 181669, 187150 and 189244, effective November 7, 2018.) All Applications must meet the application completeness requirements of the Planning Bureau and Bureau of Development Services. This Ordinance applies to all Applications for Building Permits for New Development, which Applications are not yet complete as of the effective date, and to those which are subsequently submitted or made complete. Fees are assessed based on the rate schedule in use on the date that the permit Application is made complete. For purposes of this Section, a complete Application must meet all the requirements of the Bureau of Development Services.

17.13.060 Partial and Full Exemptions.

(Amended by Ordinance Nos. 176511, 179008, 181669, 183448, 187150, 189050, 189244 and 189323, effective December 19, 2018.) The uses listed and described in this Section will be exempt, either partially or fully, from payment of the Parks and Recreation SDC. Any Applicant seeking an exemption under this Section must specifically request that exemption no later than the time of the City's completion of the final inspection. Where New Development consists of only part of one or more of the uses described in this section, only that/those portion(s) of the development which qualify under this section are eligible for an exemption. The balance of the New Development which does not qualify for any exemption under this section will be subject to the full SDC. Should the Applicant dispute any decision by the City regarding an exemption request, the Applicant must appeal as provided by Section 17.13.120. The Applicant has the burden of proving entitlement to any exemption so requested.

- A. Temporary uses are fully exempt so long as the use or structure proposed in the New Development will be used for not more than 180 days in a single calendar year.
- B. Affordable housing is exempt pursuant to Section 30.01.095.

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- C.** Alteration permits for commercial interior alteration work are fully exempt, including commercial alterations that change occupancy. This exemption does not apply to alterations that create additional Dwelling Units, nor does it apply to the particular development on a property that previously benefitted from an exemption for mass shelters or short-term housing under Subsection 17.13.060 I.
- D.** New construction or remodeling of Dwelling Units where no additional Dwelling Unit(s) are created and the square footage of each remodeled Dwelling Unit does not change the range of square footage in the SDC Methodology Report is fully exempt.
- E.** New construction or remodeling of Non-Residential Development where no additional square footage or change of use is created is fully exempt.
- F.** Campus Housing is fully exempt.
- G.** For New Development which includes a mix of exempt and non-exempt forms of development, the applicable exemption(s) apply only to that portion of the New Development to which the exemption applies.
- H.** Certain accessory Dwelling Units are exempt pursuant to Section 17.14.070.
- I.** Mass shelters and short-term housing as provided by Section 30.01.096 of this Code.

17.13.070 SDC Credits.

(Amended by Ordinance Nos. 172732, 172758, 173386, 174617, 181669, 187150 and 189244, effective November 7, 2018.) SDC Credits:

- A.** The City may grant a Credit against the Parks SDC, which is otherwise assessed for New Development, for any Qualified Public Improvements constructed by or conveyed by the Applicant as part of that New Development. At the time the application for a credit is made, the New Development must be identified by a Building Permit Number. Credit will not be allowed for a Qualified Public Improvement that was conveyed more than 36 months prior to the date of the request for the Credit, unless a Development Agreement provides otherwise. The Applicant bears the burden of evidence and persuasion in establishing entitlement to an SDC Credit and to a particular value of SDC Credit.
- B.** To obtain an SDC Credit, the Applicant must specifically request a Credit prior to the City's completion of the final inspection for the New Development. In the request, the Applicant must identify the improvements for which Credit is sought and explain how the improvements meet the requirements for a Qualified Public Improvement. The Applicant must also document, with credible evidence, the value of the improvements for which Credit is sought. If, in the Administrator's opinion, the improvements are Qualified Public Improvement, and the Administrator concurs with the proposed value of the improvements, an SDC

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Credit can be granted, if approved as outlined below. The value of the SDC Credits under this section shall be determined by the Administrator based on the cost of the Qualified Public Improvement, or the value of Real Property Interests, as follows:

1. For Real Property Interests, the value shall be based upon a written appraisal of fair market value by a qualified, professional appraiser based upon comparable sales of similar property between unrelated parties in an arms-length transaction.
 2. For improvements yet to be constructed, value will be based upon the anticipated cost of construction. Any such cost estimates must be certified by a professional architect or engineer or based on a fixed price bid from a contractor ready and able to construct the improvement(s) for which SDC Credit is sought. The City will give immediate credits based on estimates, but it will provide for a subsequent adjustment based on actual costs: a refund to the Applicant if actual costs are higher than estimated, and an additional SDC to be paid by the Applicant if actual costs are lower than estimated. The City will inspect all completed Qualified Public Improvement projects before agreeing to honor any credits previously negotiated. The City will limit credits to reasonable costs. Credits will be awarded only in conjunction with an application for development.
 3. For improvements already constructed, value will be based on the actual cost of construction as verified by receipts submitted by the Applicant.
- C. The Administrator will acknowledge receipt of the Applicant's request in writing within 21 days of when the request is submitted. The Administrator will confirm whether the application is complete or indicate additional information needed. The Administrator will provide a written explanation of the process for making the decision on the SDC Credit request.
1. The "Request for Parks SDC Credit for Qualified Public Improvement" (Form PSDC-7) and accompanying information will be sent to the Parks SDC Administration Section, who will prepare a staff report and convene the SDC Credit Review Committee. If Requests are received, the Committee will be convened quarterly. Applications not deemed complete 1 month prior to a committee meeting may not be heard until the following quarterly meeting. The Committee will be appointed by the Commissioner-in-Charge, after consultation with the Director, and include, but not be limited to, representatives of the following interests:
 - a. Development Community (e.g., Metropolitan Home Builders Association). Up to two representatives.
 - b. Environmental (e.g., Portland Audubon Society)

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- c. Public Interest (e.g., League of Women Voters, Urban League). Up to two representatives.
 - d. Neighborhood (one for each SDC Sub-Area)
 - e. Park Advocate (Portland Parks Board Member)
 - f. Business Community (e.g., Portland Business Alliance)
 - 2. A representative of the Commissioner-in-Charge may attend and participate in the discussion but may not vote.
 - 3. The Applicant may attend the Committee meeting to respond to questions and provide relevant testimony but may not be present during the Committee's deliberation and vote. The Administrator will present the public interest to the committee, including staff findings regarding the application. City Attorney staff may be present to respond to any legal questions. The Committee will review each proposal and the Administrator will provide a record of the Committee members present, the recommendation, along with any minority viewpoints, and minutes of the Committee's discussion, including a summary of factors considered to the Director and Commissioner-in-Charge. If a member of the Committee has a conflict of interest related to a specific application, the member must withdraw from the deliberations and recommendations. Each neighborhood interest representative may only participate in discussions of and recommendations for applications that pertain to the SDC Sub-Area that the member does not represent.
 - 4. The Director (for SDC credits under \$250,000) or Commissioner-in-Charge (for SDC credits of \$250,000 and over) will make a decision within 30 days of the SDC Credit Review Committee meeting date. If a minority viewpoint is presented along with a majority recommendation, the Commissioner and Director will meet to review jointly before issuing a decision.
 - 5. Copies of the decision and the Committee recommendations will be shared with the applicant and members of the SDC Credit Review Committee digitally, or as a hard copy if requested. Copies of the decision and Committee recommendations will also be available in the digital City Archives, with a link on the Parks SDC Webpage.
- D.** If the Applicant disputes the decision to grant or deny an SDC Credit, including the amount of the Credit, the Applicant may appeal as provided in Section 17.13.120.
- E.** When the construction or donation of a qualified public improvement gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project receiving development approval, the excess credit may be applied against improvement fees that accrue in subsequent phases of the original

development project. For purposes of this paragraph, “subsequent phases of the original development project” means additional New Development that is approved as part of the same regulatory development approval (such as elements approved as part of the same conditional use master plan or planned unit development) or other portions of the same “site” (as defined by PCC 33.901.030) that are explicitly defined in the application for SDC credits as subsequent phases of the original development project. For multi-phased developments, the applicant must describe all subsequent phases at the time application is made for SDC credits and must document to the satisfaction of the SDC Administrator that the subsequent phases are integrally connected with the original development rather than independent projects.

- F.** Parks and Recreation SDC Credits are void and of no value if not redeemed with the City for payment of a Parks and Recreation SDC within 5 years of the date of issuance.
- G.** Notwithstanding any other provisions of this section, with respect to conveyances of Real Property Interests specified in Development Agreements adopted before June 21, 2000, the value of the credit will be 25 percent of the appraised value of the Real Property Interest.

17.13.080 Alternative Calculation for SDC Rate.

(Amended by Ordinance Nos. 181669 and 189244, effective November 7, 2018.)

- A.** Pursuant to this section, an Applicant may request an alternative Parks and Recreation SDC rate calculation if the Applicant believes that the Applicant’s SDC should be lower than that calculated by the City.
- B.** Alternative SDC Rate Request
 - 1.** The Applicant’s alternative SDC rate calculation request must provide the Applicant’s reasons that the City’s occupancy assumptions for the class of structures that includes the New Development are inaccurate because:
 - a.** For residential development, the number of persons per Dwelling Unit is or will be fewer than the number of persons per Dwelling Unit established in the SDC Methodology Report; or
 - b.** For non-residential development, the number of resident equivalents per 1,000 square feet is or will be fewer than the number of resident equivalents per 1,000 square feet established in the SDC Methodology Report.
 - 2.** Alternative SDC rate calculations must be based on analysis of occupancy of classes of structures, not on the intended occupancy of a particular New Development.

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3. The City will not entertain an alternative SDC rate calculation request filed after the City has completed the final inspection for the New Development. Upon the timely request for an alternative SDC rate calculation, the Administrator will review the Applicant's calculations and supporting evidence and make a determination within 21 days of submittal.
4. The Applicant must provide complete and detailed documentation, including verifiable dwelling occupancy data, analyzed and certified by a suitable and competent professional. The Applicant's supporting documentation must rely upon generally accepted sampling methods, sources of information, cost analysis, demographics, growth projections, and techniques of analysis. The request must demonstrate that the rate established in the SDC Methodology Report does not accurately reflect the New Development's impact on the City's capital improvements.
5. The Administrator shall apply the Applicant's alternative SDC rate calculation if, in the Administrator's opinion:
 - a. The evidence and assumptions underlying the alternative SDC rate calculation are reasonable, correct and credible and were gathered and analyzed in compliance with generally accepted principles and methodologies consistent with this Section;
 - b. The proposed alternative SDC rate better or more realistically reflects the actual impact of the New Development than the rate set forth in the SDC Methodology Report.
6. The Administrator will respond with a written decision to the Applicant within 21 days of receipt of the Alternative SDC rate calculation request by email or certified mail and either approve or deny the request.

17.13.090 Payment.

(Amended by Ordinance Nos. 173565, 181669, 183447, 189244 and 189413, effective March 6, 2019.)

- A. The Parks and Recreation SDC required by this Chapter to be paid is due upon issuance of the Building Permit. However, in lieu of payment of the full Parks and Recreation SDC, the Applicant may elect to pay the SDC in installments as is authorized by ORS 223.208 and Chapter 17.14 of this Code. If the Applicant elects to pay the SDC in installments, a lien will be placed against the property that is subject to the SDC Deferral or Installment Agreement entered into by the Applicant and the City on a form provided by the City, and which may provide for the deferral of payments as set forth in Chapter 17.14 of this Code. In any event, the Applicant shall either pay the SDC in full or enter into an SDC Deferral or Installment Agreement as provided in this Code, before the City will issue any Building Permits.

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- B.** Upon written request of Portland Parks & Recreation, the Revenue Division is authorized to cancel assessments of SDCs, without further Council action, where the New Development approved by the Building Permit is not constructed and the Building Permit is cancelled.
- C.** For property that has been subject to a cancellation of assessment of SDCs, a new installment payment contract shall be subject to the code provisions applicable to SDCs and installment payment contracts on file on the date the new contract is received by the City.

17.13.100 Refunds.

(Amended by Ordinance Nos. 181669 and 189244, effective November 7, 2018.) Refunds may be given by the Administrator in the following instances:

- A.** If the Administrator determines that there was a clerical error in the calculation of the SDC.
- B.** If the City has not expended SDC revenues within 10 years of receipt.
- C.** Upon request by the Applicant, when a building permit application is cancelled.

17.13.110 Dedicated Account and Appropriate Use of Account.

(Amended by Ordinance Nos. 181669 and 189244, effective November 7, 2018.)

- A.** There is created a dedicated account entitled the “Parks and Recreation SDC Account.” All monies derived from the Parks and Recreation SDC shall be placed in the Parks and Recreation SDC Account. Funds in the Parks and Recreation SDC Account shall be used solely for the purpose of providing capacity-increasing capital improvements as identified in the adopted Parks and Recreation SDC-CIP as it currently exists or as is hereinafter amended, and eligible administrative costs. In this regard, SDC revenues may be used for purposes which include, but are not limited to:
 - 1.** design and construction plan preparation;
 - 2.** permitting;
 - 3.** land and materials acquisition, including any costs of acquisition, stabilization, or condemnation;
 - 4.** construction of parks and recreation capital improvements;
 - 5.** design and construction of new drainage facilities or streets required by the construction of parks and recreation capital improvements and structures;
 - 6.** relocating utilities required by the construction of improvements;

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7. landscaping;
8. construction management and inspection;
9. surveying, soils and material testing;
10. acquisition of capital equipment that is an intrinsic part of a facility;
11. demolition that is part of the construction of any of the improvements on this list;
12. payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the City to provide money to construct or acquire parks and recreation facilities; and
13. direct costs of complying with the provisions of ORS 223.297 to 223.314, including the consulting, legal, and administrative costs required for developing and updating the system development charges methodologies and capital improvement plan; and the costs of collecting and accounting for system development charges expenditures.

- B.** Money on deposit in the Parks and Recreation SDC Account shall not be used for:
1. any expenditure that would be classified as a maintenance or repair expense; or
 2. costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements; or
 3. costs associated with acquisition or maintenance of rolling stock
- C.** The City may prioritize SDC-funded projects and may spend SDC revenues for growth-related projects anywhere in the City. However, the City may not spend, or allocate as a placeholder in the Parks and Recreation SDC Account for future spending, less SDC revenues for local-access parks within any SDC service Sub-Area than the total amount of SDC revenues collected for local-access parks within that Sub-Area.
- D.** The proportional breakdown of the Local Access portion to the Non-Local Access portion of the SDC fee is 43 percent to 57 percent.

17.13.120 Challenges and Appeals.

(Amended by Ordinance Nos. 174617 and 189244, effective November 7, 2018.)

- A.** Any person may challenge the expenditure of SDC revenues by filing a challenge to the expenditure with the Administrator within two years after the date of the disputed SDC revenue expenditure.

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17.14.050 Assessment.

(Amended by Ordinance No. 189413, effective March 6, 2019.) The Revenue Division shall report to the Council from time to time the contracts to pay system development charges pursuant to this Chapter. If the Council finds that the contracts are in order and that subject property has been permitted to connect to City facilities and has thereby benefited, it shall approve the contracts by ordinance direct the billing for the charges upon the land benefited plus a financing fee. The financing fee shall be calculated as set forth in PCC 17.12 Assessments. All such assessments may be combined in one assessment roll and shall be entered upon the Docket of City Liens and collected in the same manner as other local improvement assessments.

17.14.060 Cancellation.

(Amended by Ordinance Nos. 183447 and 189413, effective March 6, 2019.)

- A.** Upon written request of the responsible City bureau, the Revenue Division is authorized to cancel assessments of system development charges, without further Council action, where the property is not physically connected to the public improvement of where the new development approved by the building permit is not constructed and the building permit is cancelled. The Revenue Division shall establish administrative guidelines and fees or charges relating to the cancellation of assessments. The Revenue Division shall maintain on file for public inspection a current copy administrative guidelines and fees or charges.
- B.** For property which has been subject to a cancellation of assessment of system development charges, a new installment payment contract shall be subject to the code provisions applicable to system development charges and installment payment contracts on file on the date the new contract is received by the City.

17.14.070 System Development Charge Exemptions.

(Added by Ordinance No. 189050; amended by Ordinance No. 189323, effective December 19, 2018.)

- A.** Affordable housing developments are exempt from all system development charges as provided by Section 30.01.095 of this Code.
- B.** Certain developments and uses are exempt from parks and recreation system development charges as provided by Section 17.13.060 of this Code.
- C.** Certain developments and uses are exempt from transportation system development charges as provided by Section 17.15.050 of this Code.
- D.** Temporary uses are exempt from sanitary sewer system development charges as provided by Section 17.36.040 of this Code.
- E.** Certain developments and uses are exempt from water service system development charges as provided by Section 21.16.170 of this Code.

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- F.** An accessory dwelling unit, as that term is defined in Chapter 33.910 of this Code, is exempt from all system development charges under the following conditions:
- 1.** The building permit application for the accessory dwelling unit must have an intake date of August 1, 2018 or later.
 - 2.** Prior to issuance of a building permit for the accessory dwelling unit, the applicant must submit a recorded covenant on a form provided by the Revenue Division of the Bureau of Revenue and Financial Services. The covenant will prohibit the use of the accessory dwelling unit or any other structure on the property as an accessory short-term rental, as that term is defined in Chapter 33.207 of this Code, for a period of 10 years from the date of permit final inspection. The covenant must be recorded in the deed records for the property before the City will issue the building permit.
 - 3.** The Revenue Division will enforce the requirements of this Section and may:
 - a.** Adopt, amend, and repeal administrative rules, establish procedures, and prepare forms for the implementation, administration, and enforcement thereof;
 - b.** In the event of a violation, use any reasonable means to collect debt, including but not limited to private collection agencies, liens, or lawsuits;
 - c.** Delegate functions under this Section as deemed appropriate by the Revenue Division;
 - d.** Impose a civil penalty of up to \$500 for failure to pay an application fee within 60 days of the approval of an SDC fee waiver;
 - e.** Impose a civil penalty of up to \$500 per violation for failure to provide requested information to the Division; and
 - f.** Waive or reduce for good cause any civil penalty assessed under this Section.
 - 4.** If an applicant for an exemption under this section or a successor-in-interest thereof violates the covenant for an accessory dwelling unit or any requirement of this section, or if the covenant is terminated according to its terms:
 - a.** The exemption will be terminated and all previously exempt portions of system development charges will become immediately due and payable by the then-owner of the property. The amount owing will be 150 percent of the rates in effect at the time the

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Credit calculation must be filed with the Administrator in writing within 10 calendar days of the written decision on the initial credit request.

Upon the timely request for an Alternative SDC Credit calculation, the Administrator shall review the Applicant's calculations and supporting evidence and make a determination within 21 calendar days of submittal as to whether the Applicant's request satisfies the requirements of this Section.

2. In support of the Alternative SDC credit request, the Applicant must provide complete and detailed documentation, including appraisals, cost analysis or other estimates of value, analyzed and certified by an appropriate professional, for the improvements for which the Applicant is seeking credit. The Applicant's supporting documentation must rely upon generally accepted sources of information, cost analysis and techniques of analysis as a means of supporting the proposed Alternative SDC credit.
3. The Administrator shall grant the Alternative SDC Credit if, in the Administrator's opinion, all of the following are true:
 - a. The improvement(s) for which the SDC Credit is sought are Qualified Public Improvement(s); and
 - b. The evidence and assumptions underlying the Applicant's Alternative SDC Credit request are reasonable, correct and credible and were gathered and analyzed by an appropriate, competent professional in compliance with generally accepted principles and methodologies; and
 - c. The proposed alternative SDC Credit is based on a realistic, credible valuation or benefit analysis.
4. If, in the Administrator's opinion, not all of the above criteria are met, the Administrator shall deny the request and provide to the Applicant by certified mail, return receipt requested, a written decision explaining the basis for rejecting the Alternative SDC Credit proposal.

D. Alternative SDC Exemption or Discount Request:

1. If an Applicant has requested an exemption or discount under Section 17.15.050 and that request has been denied, the Applicant may request an Alternative SDC exemption or discount under this section. Any request for an Alternative SDC exemption or discount calculation must be filed with the Administrator in writing within 10 calendar days of the written decision on the initial credit request. Upon the timely request for an Alternative SDC exemption or discount, the Administrator shall review the Applicant's request and supporting evidence and make a determination within 21

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calendar days of submittal as to whether the Applicant's request satisfies the requirements of Section 17.15.050 for exemptions and discounts.

2. In support of the Alternative SDC exemption or discount request, the Applicant must provide complete and detailed documentation demonstrating that the Applicant is entitled to one of the exemptions or discounts described in Section 17.15.050.
3. The Administrator shall grant the exemption or discount if, in the Administrator's opinion, the Applicant has demonstrated with credible, relevant evidence that it meets the pertinent criteria in Section 17.15.050.
4. Within 21 calendar days of the Applicant's submission of the request, the Administrator shall provide a written decision explaining the basis for rejecting or accepting the request.

17.15.080 Payment.

(Amended by Ordinance Nos. 173437, 181322, 182389, 183447, 188619 and 189413, effective March 6, 2019.)

- A. The Transportation SDC required by this Chapter to be paid is due upon issuance of the Building Permit. However, in lieu of payment of the full SDC, the applicant may elect to pay the SDC in installments as provided in ORS chapter 223 and Chapter 17.14 of this Code. If the Applicant elects to pay the SDC in installments, a lien will be placed against the property that is subject to the SDC, and that lien will be given first priority as provided by statute. The Applicant's election to pay the SDC by installments shall be memorialized in an SDC Deferral or Installment Agreement entered into by the Applicant and the City on a form provided by the City, and which may provide for the deferral of payments as set forth in Chapter 17.14 of this Code. In any event, the Applicant shall either pay the SDC in full or enter into an SDC Deferral or Installment Agreement as provided in this section, before the City will issue any building permits.
- B. Upon written request of the Bureau of Transportation, the Revenue Division is authorized to cancel assessments of SDCs without further Council action, where the New Development approved by the Building Permit is not constructed and the Building Permit is cancelled.
- C. For property that has been subject to a cancellation of assessment of SDCs, a new installment payment contract shall be subject to the Code provisions applicable to SDCs and installment payment contracts on file on the date the new contract is received by the City.
- D. The City of Portland shall not be responsible for, nor have any responsibility to honor or enforce agreements made by private parties regarding the payment or collection of SDC assessments.

CHAPTER 17.16 - GENERAL PROVISIONS

Sections:

- 17.16.010 Specifications and Authority to Revise.
- 17.16.020 Interpretation of Specifications.
- 17.16.030 Progress Payments.
- 17.16.040 Interest on Progress Payment and Final Warrants.
- 17.16.050 Progress Payment not Deemed Final Acceptance.
- 17.16.060 Division of Warrants.
- 17.16.065 Purchase of Warrants by the City.
- 17.16.070 Claims against Contractors.
- 17.16.080 Statutory Provisions Relating to Labor and Wages.
- 17.16.090 Bonding City Property.
- 17.16.100 Facilities in Street Area Affected by Improvement.
- 17.16.110 Facilities in Street Area Damaged by Contractor.
- 17.16.120 Engineer's Standards.
- 17.16.130 Approvals by City Attorney.
- 17.16.140 Acceptance and Release of Property Interests.

17.16.010 Specifications and Authority to Revise.

(Amended by Ordinance Nos. 149769, 173295 and 184957, effective November 25, 2011.)

- A.** All work done and materials used for either a local or public improvement whether it be as a district or by permit shall conform to the provisions of this Title and to the current version of the standard construction specifications.
- B.** Revisions. The City Engineer, in consultation with the Chief Engineers of the Bureau of Environmental Services and the Portland Water Bureau, is authorized to revise the standard construction specifications of the City of Portland as needed, excluding Part 01100 Water Supply Systems contained therein, which shall be revised by the Chief Engineer of the Portland Water Bureau.

17.16.020 Interpretation of Specifications.

(Amended by Ordinance Nos. 149769, 173295 and 184957, effective November 25, 2011.)

The decision of the City Engineer as to all performances, materials and technical requirements of standard specifications and plans for a local improvement or public improvement shall be final and conclusive excepting work performed in accordance with Part 01100 of the standard construction specifications for which the Chief Engineer, Portland Water Bureau shall have final and conclusive decision. The interpretation of all other provisions of standard construction specifications shall be determined by the City Attorney.

17.16.030 Progress Payments.

(Amended by Ordinance Nos. 138075, 140744, 173295 and 189413, effective March 6, 2019.)

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- A. Subject to applicable provisions of the City Charter and in accordance with the specifications adopted for particular work by the Council, progress payments may be made by the City periodically as required by the contract for the improvement work, on the basis of a certificate concerning the same, filed with the Revenue Division by the Responsible Engineer.
- B. The progress payment certificate shall show the amount of work and material applied to the local improvement or public improvement and not included in any prior certificate, the reasonable value of the work and material, the contract price thereof, the amount to be retained pursuant to the contract, and the amount to be paid as a progress payment. Contract provision for the progress payments shall be deemed sufficient without further approval by the Council, except that if the contractor is found to be delinquent, if the payment is the last payment to be made before payment of retainage pursuant to the contract, or if any progress payment covers work which is in addition to or an extra over the basic contract, then a progress payment shall not be made pursuant to the Responsible Engineer's certificate until such certificate has been presented to the Council and approved by the Council, or the Council has separately authorized the extra work.
- C. On any contract for a local improvement which does not contain a specific provision for progress payments, a single progress payment shall be made at the time the final estimate of the Responsible Engineer is filed with the Revenue Division if such payment is requested by the contractor. The progress payment shall not exceed 95 percent of Council authorized contract costs included in the final estimate. This paragraph shall be applicable to contracts which are completed after the passage of this Ordinance.

17.16.040 Interest on Progress Payment and Final Warrants.

Payment for work done as a local improvement shall be made by warrant drawn on the Local Improvement Assessment Fund for the particular improvement created or to be created when assessments therefor are paid. Any warrant for a progress payment or final warrant drawn against a Local Improvement Assessment Fund, either to be created or already in existence, shall bear interest at the rate of 6 percent per year beginning on the 10th day after the date of the warrant. Total interest on such warrants shall not exceed the total amounts collected as interest from the properties assessed. When sufficient money is collected and is in the Local Improvement Assessment Fund to pay accrued interest on the oldest outstanding warrant and some portion or all of the principal on such warrant, the interest on the warrant shall cease as of the day when the principal amount or portion thereof is collected, to the extent of the amount collected.

17.16.050 Progress Payment Not Deemed Final Acceptance.

(Amended by Ordinance No. 173295, effective April 28, 1999.) No progress payment shall be deemed a final acceptance or any acceptance of the work or material represented by such progress payment, nor shall the progress payment affect the liability of the contractor or the contractor's surety relating to the public work or local improvement.

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17.16.060 Division of Warrants.

When money has been collected and is in a Local Improvement Assessment Fund sufficient to pay all or a portion of the principal as well as the accrued interest on the oldest outstanding warrant, upon presentation of the warrant the Treasurer shall pay the accrued interest and principal amount collected upon the outstanding warrant and issue a new warrant for the unpaid principal balance. The new warrant shall bear interest from the 10th day after the date of the original warrant.

17.16.065 Purchase of Warrants by the City.

(Added by Ordinance No. 138072, amended by Ordinance No. 173295, effective April 28, 1999.) The City of Portland shall purchase local improvement warrants issued for progress payments and final payment to a contractor on a local improvement project under the conditions listed below upon written request from the contractor to the City Finance Officer:

- A. Either the official estimate of the Responsible Engineer or the bid of the contractor is less than \$50,000,
- B. Before the plans and specifications for the project were issued it has been determined by the Finance Officer that funds would be available in the Assessment Collection Fund for this purpose,
- C. The plans and specifications for the project will include a provision that such warrants will be purchased by the City from the contractor at the contractor's request,
- D. The purchase will be made by the City no earlier than 10 days and no later than 30 days after the issue date,
- E. The purchase of final warrants will be at face value without accrued interest. The purchase of progress payment warrants will be at face value discounted by an amount equal to 10 days of interest and without accrued interest.

17.16.070 Claims Against Contractors.

(Amended by Ordinance Nos. 173295 and 189413, effective March 6, 2019.) Notwithstanding contractual provisions for payment of progress payment warrants, final payment warrants or payment of retainage, any person given a right by statute to institute an action on the contractor's bond may file a claim with the Revenue Division for the labor, material, or payment to State funds for which the contractor is liable in connection with the performance of the contract. In the event such claim is filed and the contractor has money due and owing from the City, the money due and owing shall not be paid to the contractor until 20 days after the filing of the claim. If, prior to the expiration of such 20 day period, the money due and owing to the contractor has been ordered withheld or paid into court by a court of competent jurisdiction, if the claimant withdraws the claim, or if the contractor orders all or a portion of the amount due and owing to be paid to the claimant, then the Revenue Division shall divide the payment or treat the same as required by such order or

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withdrawal. However, if the only money due and owing to the contractor is the final retainage, then the City shall have first call upon the retained amount for correction of defects in the contract.

17.16.080 Statutory Provisions Relating to Labor and Wages.

All contractors employed by the City shall comply with all statutory requirements concerning hours of labor and prevailing wage rates. All certifications required by statute to be filed with the City shall be so filed.

17.16.090 Bonding City Property.

The Mayor or a Commissioner to whom particular City property has been assigned, which property is assessed for a local improvement, shall have authority to make application for bonding and to sign the application. For such application said Mayor or Commissioner shall be deemed the owner on behalf of the City.

17.16.100 Facilities in Street Area Affected by Improvement.

(Amended by Ordinance No. 173295, effective April 28, 1999.)

- A.** If a fire hydrant has been installed at established street grade and in a location approved by the City Engineer, and a local improvement or public improvement requires moving such hydrant, the Bureau of Water Works shall upon request of the City Engineer make the necessary change. The cost thereof shall be included in the cost of the improvement unless the Council directs payment from public funds.
- B.** In all other cases, any facility over, upon or under the street area, required to be moved either for construction or as the result of a local or public improvement shall be changed, moved, removed or relocated, as the City Engineer may direct, at the expense of the owner of the facility. The change includes any trenches and filling thereof or other work necessary for the change. However, this does not relieve the contractor from liability or responsibility under contract specifications. Liability of the owner of the facility for such change shall be conditioned upon notice in writing given by the contractor at least 10 days preceding the improvement work in the area. In case any such owner fails or refuses to make the change or relocation, then upon direction by the City Engineer the contractor on the improvement may perform such change or relocation, and upon approval of the contractor's bill therefor by the City Engineer, if the owner of the facility is the owner of land to be assessed for the local improvement, then the City shall add the amount of the bill for the work to the local improvement assessment to be assessed upon the property. If the contractor has performed such work of change or relocation of facility, and the owner thereof is not chargeable by assessment of benefit from the improvement, then the contractor shall look solely to the owner of such facility for reimbursement of the cost of change or relocation. In case of a public improvement constructed at the expense of City funds, City funds shall be chargeable for the cost of moving any City owned facilities.

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- B.** Property owner(s) and/or occupant(s) shall be liable for any and all damages to any person who is injured or otherwise suffers damage resulting from failure to remove snow and/or ice accumulations.
- C.** Property owner(s) and/or occupant(s) shall be liable to the City of Portland for any amounts paid or incurred consequent from claims, judgment or settlement, and for all reasonable investigation costs and attorney fees, resulting from the responsible property owner's or occupant's failure to remove snow and ice accumulations from such sidewalks as imposed by this Code.

17.28.030 Notice for Construction of Sidewalks and Curbs.

(Amended by Ordinance Nos. 182760, 184957 and 189413, effective March 6, 2019.)
Where the sidewalk or curb in front of any lot, part thereof, or parcel of land is or becomes so worn or deteriorated as, in the opinion of the City Engineer, to require a new sidewalk or curb to be constructed, or where no sidewalk or curb exists and, in the opinion of the Director of the Bureau of Transportation, a sidewalk or curb or both are needed, it shall be the duty of the City Engineer to post a notice on the adjacent property headed "Notice to Construct Sidewalk" (or curb, or both). The notice shall in legible characters direct the owner, agent, or occupant of the property immediately to construct a sidewalk or curb or both in a good and substantial manner and in accordance with the City ordinances, regulations and plans therefore which will be furnished by the City Engineer upon application. The City Engineer shall file with the Revenue Division an affidavit of the posting of the notice, stating when and where the same was posted, and shall furnish upon request proper specifications, standards and information for the construction thereof. The City Engineer shall send by mail a notice to construct the sidewalk or curb, or both, to the owner of the property, if known, or to the agent of the owner, if known, directed to the post office address of the owner or agent, when the post office address is known to the City Engineer. If the post office address is unknown to the City Engineer, the notice shall be directed to the owner or agent at the address where the notice was posted. A mistake in the name of the owner or agent, or a name other than that of the owner or agent of such property, or any mistake in the address, shall not render void the notice, but in such case the posted notice shall be sufficient.

17.28.035 Curb and Intersection Corner Ramps.

(Amended by Ordinance No. 184957, effective November 25, 2011.)

- A.** All newly constructed or reconstructed sidewalk intersection corners shall have included, either within the corner or within the curb area immediately adjacent thereto, ramps allowing access to the sidewalk and street by persons with disabilities as mandated by the Americans with Disabilities Act.
- B.** The ramps referred to in Subsection (a) shall be constructed in a good and substantial manner and in accordance with the plans and specifications established by the City Engineer. The particular plan to be used at a given intersection corner shall be appropriate to the location as determined by the City Engineer.

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17.28.040 Construction Alternatives.

(Amended by Ordinance Nos. 182760, 184957 and 189413, effective March 6, 2019.) In case three or more adjacent properties are posted with notice to construct sidewalk or curb, or both, as set forth in Section 17.28.030, they may petition for such construction as a local improvement. Otherwise it shall be the duty of the owners of properties posted with such notice to construct the same. Before constructing the sidewalk or curb, or both, the owner, designated agent or the occupant of the property intending to construct the same, shall obtain from the Director of the Bureau of Transportation a permit therefore, which permit shall prescribe the kind of sidewalk or curb, or both, to be constructed, the material to be used and the width thereof. After notice to construct sidewalk or curb, or both, has been posted, the owner, agent or occupant shall construct the same within 30 days from the date of posting, or within said time shall show cause, if any there be, by a written remonstrance addressed to the City Council stating why the same should not be constructed. The Council will grant a hearing to the remonstrator at a regular meeting as soon thereafter as the same can be filed on regular Council Calendar. The Council will thereupon determine whether or not such sidewalk or curb, or both, shall be constructed. If the remonstrator is not present at the time of such determination by the Council, the Revenue Division shall forthwith notify such person of such determination of the Council by mail sent to the address given upon the written remonstrance. Failure of the Revenue Division to send the notice, or failure of the remonstrator to receive the same, or any other mistake therein, shall not render void or ineffective the lien to be imposed upon the property in the event of City construction. In the event that the Council determines that the sidewalk or curb, or both, shall be constructed, the owner or designated agent or the occupant shall within 10 days thereafter begin the construction thereof and diligently prosecute the same to final completion.

17.28.050 City Construction if Owner Fails to Construct.

(Amended by Ordinance No. 182760, effective June 5, 2009.) If no petition for local improvement is filed, and if the owner, agent or occupant of property posted with notice construct sidewalk or curb, or both, shall fail, neglect or refuse to begin the construction of the sidewalk or curb within 30 days after posting of notice, or within 10 days after order by the Council in the event of a remonstrance, the City shall construct the same as soon thereafter as such work can be conveniently scheduled. The cost for the City to have the repairs made shall be assessed upon the property.

17.28.060 Location, Size and Materials of Sidewalks and Curbs.

(Amended by Ordinance Nos. 182760 and 184957, effective November 25, 2011.) The Director of the Bureau of Transportation shall determine the distance between the improved sidewalk and the property line, which, in residential areas shall generally be 2 feet unless a different distance is specified. The width of the improved sidewalks, the grade thereof, materials for construction or reconstruction, and the location and size of curbs, shall be designated by the City Engineer. The class and kind of any fill materials and requirement thereof shall be designated by the City Engineer. Based on a finding of necessity, the Director of the Bureau of Transportation may permit installation of a temporary sidewalk for a specified period, and the City Engineer shall designate specifications for the temporary improvement.

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- E.** The Director of the Bureau of Transportation may require any applicant for a driveway permit to provide evidence that the proposed driveway will access legal parking and maneuvering space on property as set forth in Title 33, Planning and Zoning regulations. The Director of the Bureau of Transportation may refuse to issue a permit if the applicant cannot show evidence that on property parking and maneuvering space is in compliance with Title 33, Planning and Zoning regulations.
- 1.** If the Director of the Bureau of Transportation finds that a property owner is permitting access where a properly constructed driveway does not exist, the Director of the Bureau of Transportation may post notice and require termination of access or construction of a driveway in accordance with the requirements of this Chapter.
- F.** Revocability of driveway permits.
- 1.** The Director of the Bureau of Transportation may revoke any driveway permit or require the modification of any driveway if:
- a.** The area occupied by the driveway is needed for the public convenience;
- b.** Continued operation of the driveway interferes with the safe and orderly flow of pedestrians, bicycles or vehicular traffic; or
- c.** The abutting owner has failed to comply with all specifications and conditions of the permit; or
- d.** The driveway does not access legal parking and maneuvering space on abutting property.
- 2.** The Council may revoke any driveway permit if they deem such action will be in the public interest.
- G.** Enforcement powers. Within 60 calendar days of written notice from the Director of the Bureau of Transportation to close or modify a driveway, the abutting property owner shall obtain any required permits and make the required corrections. If the abutting owner fails to make the required corrections within 60 calendar days, the City may perform the required work at the expense of the abutting property owner and the cost shall be determined and assessment made as provided in this Chapter.

17.28.120 After Construction Driveways Deemed Part of Sidewalk.

After a driveway has been constructed, it shall be deemed a part of the sidewalk whether or not there is a sidewalk improvement extending along the balance of the frontage property, for all purposes of repair or reconstruction. Requirements relating to construction or reconstruction of a sidewalk as provided in this Chapter, shall be applicable to

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reconstruction of a driveway, except that the property owner shall have no option to petition for a local improvement solely for such purpose.

17.28.130 Reconstruction of Existing Driveways.

(Amended by Ordinance No. 186716, effective August 15, 2014.) If the City Engineer finds that any driveway does not conform to the requirements of this Chapter and should be reconstructed for the protection or convenience of pedestrians or vehicles using the street area, the City Engineer may post notice and require the reconstruction or removal of the driveway. If the abutting property owner fails to make the required corrections within 60 days the City may perform the required work at the expense of the abutting property owner, and the cost shall be determined and assessment made as provided in this Chapter.

17.28.140 City Charges for Construction or Repair of Sidewalks, Curbs and Driveways.

(Amended by Ordinance No. 182760, effective June 5, 2009.) The property owner shall be charged for the construction, reconstruction or repair of sidewalks, curbs and driveways. The cost for the City to have repairs made will be assessed upon the property.

- A.** Special structural, excavation and fill jobs and jobs in areas of traffic and pedestrian congestion shall be charged at the discretion of the City Engineer. Determination of whether a job is of special type shall be made by the City Engineer.
- B.** Cost basis charges for work may be made at the discretion of the City Engineer if the actual cost can be conveniently and accurately determined.

17.28.150 Billing for Charges.

(Amended by Ordinance Nos. 183348 and 189413, effective March 6, 2019.)

- A.** When work is completed by the City on any construction, reconstruction or repair of a sidewalk, curb or driveway, the amount of the charge shall be determined by the City Engineer or responsible bureau and reported to the Revenue Division. The Revenue Division shall calculate a proposed assessment that includes the amount of the improvement charge plus 10% of the charge to defray the administrative costs of notice, assessment and recording.
- B.** The Revenue Division shall prepare a proposed assessment notice for the owner of each property or the owner's agent as shown in the County tax records. The notice shall be mailed at least 21 calendar days before the public hearing on the proposed assessment, and the notice shall consist of the following information:
 - 1.** The legal description and site address of the property;
 - 2.** The amount of the proposed assessment against the property;
 - 3.** The manner and deadline for filing a written remonstrance to the proposed assessment amount;

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4. The date, time and location of the public hearing for Council consideration of the proposed assessment; and
 5. Contact information for sidewalk repair.
- C. Any owner of property proposed to be assessed for sidewalk repair may file a remonstrance to the proposed assessment with the Revenue Division. The remonstrance must be in writing and received by the Revenue Division via US mail or hand delivered no later than 5:00 PM eight (8) calendar days prior to the hearing by the City Council on the proposed final assessment. Upon receipt of a timely filed remonstrance the Revenue Division shall remove the property from the filing of the proposed assessment before the council hearing date, and shall refer the remonstrance to the responsible bureau for follow-up and response.
- D. The Revenue Division shall mail the proposed assessment notice by first class mail to the owners of the affected property. The notice shall be deemed given upon deposit in the U.S. mail.

17.28.160 Assessment of Charges.

(Amended by Ordinance Nos. 182760, 183348 and 189413, effective March 6, 2019.)

- A. The Revenue Division shall refer to the City Engineer or responsible bureau all remonstrances and remove from further assessment action the proposed assessments which are associated with the remonstrances. The City Engineer or responsible bureau shall review each remonstrance by taking the following actions:
1. Determine whether the improvement work was required by Code and whether the conditions required the improvements, whether the required improvements are consistent with Code and City specifications, and whether the improvement charges are calculated as provided by Code; and
 2. Determine the extent of actions or adjustments which are necessary to bring the proposed assessment into compliance with Code and program standards; and
 3. Mail a statement of findings to the remonstrating property owner, and file a copy with the Revenue Division. The findings shall include a statement that the property owner may appeal the determination to the Council.
- B. The Council shall conduct a public hearing on the proposed assessments, however is should be held no sooner than 20 days following the date of the proposed assessment notice as provided in this Chapter. The Council shall consider and make its determinations based on the requirements of this Code and the City specifications maintained by the City Engineer. The Council shall affirm or modify the proposed assessments based on its findings. The Council's decisions shall be

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implemented by ordinance which sets forth its findings and decision. The decision of the Council may be appealed to the court by writ of review.

- C.** Following adoption of the assessing ordinance, the Revenue Division shall mail a final assessment notice to the owners of the affected property as shown on the last available assessment roll in the office of the county assessor. The notice shall be deemed given upon deposit in the U.S. mail. The notice shall contain the following information:
- 1.** The legal description and site address of the property;
 - 2.** The final assessment amount;
 - 3.** A statement that the final assessment is recorded in the Docket of City Liens, and is a lien which has first priority against the property as provided by state statute;
 - 4.** The manner and deadline for paying the final assessment in full or requesting to pay the final assessment in installments if authorized by Code;
 - 5.** The interest, penalties and collections costs which shall be charged if the final assessment is not paid or an installment payment contract is not filed before the deadline contained in the notice; and
 - 6.** A statement that delinquent final assessments may be collected by foreclosure and property sale.
- D.** The Revenue Division shall maintain a Docket of City Liens containing final assessments on property. Any unpaid final assessment shall be recorded in the City lien docket, and it shall be binding upon the property owner and all subsequent property owners of the property or any segregated part of it. The docket shall stand thereafter as a lien docket the same as ad valorem property taxes assessed in favor of the City against each lot or parcel of land until paid, for the following:
- 1.** The amount of the unpaid final assessments docketed, with accrued interest at the rate determined by the City Council, or in the case of an installment contract, at the rate set forth in the contract; and
 - 2.** Any additional interest, penalties, or billing charges imposed by the City with respect to any installments of final assessments which are not paid when due.
- E.** All unpaid final assessments together with accrued and unpaid interest and penalties and billing charges are a lien on each lot or parcel of land respectively, in favor of the City and the lien shall have first priority over all other liens and encumbrances whatsoever.

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- F.** The City shall enforce assessment liens and installment payment contracts under this Chapter in the same manner as other City assessments as set forth in Title 5.

CHAPTER 17.41 - LANDSLIDE ABATEMENT

(Chapter added by Ordinance No. 165864, effective
September 30, 1992.)

Sections:

- 17.41.010 Purpose.
- 17.41.020 Definitions.
- 17.41.030 Applicability.
- 17.41.040 Landslide As a Nuisance; Costs.
- 17.41.050 Abatement.
- 17.41.060 Administrative Review.

17.41.010 Purpose.

(Amended by Ordinance No. 173369, effective May 12, 1999.) The purpose of this Section is to protect the public from hazards created by landslides that deposit material on the public right-of-way, remove material from the public right-of-way or threaten the stability of the right-of-way. The intent of this Section is to provide for the immediate abatement of a landslide by the responsible property owner or, if necessary, by the City.

17.41.020 Definitions.

(Amended by Ordinance Nos. 173369, 182760 and 189413, effective March 6, 2019.) For purposes of this Chapter 17.41:

- A. **“Costs”** means any costs, direct or indirect, incurred by the City in the abatement of a landslide. Costs may include, but are not limited to, those associated with the removal of debris, traffic control and barricading, engineering, construction, erosion control, reforestation, restoration and repair of existing public facilities, City overhead as provided in 5.48.030, and Revenue Division’s charges established in 17.12.020 B.
- B. **“Landslide”** means any detached mass of soil, rock, or debris that is of sufficient size to cause damage and moves down a slope or stream channel.
- C. **“Owner”** means the person or persons shown on the most recent property tax records.
- D. **“Responsible property”** means the property or properties abutting that portion of the public right-of-way on which materials have been deposited by a landslide, or property or properties which has caused the instability of the public right-of-way.

17.41.030 Applicability.

(Amended by Ordinance Nos. 173369 and 182760, effective June 5, 2009.) This Chapter applies to:

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- A.** Landslides that originate on private property and deposit material on the public right-of-way; and
- B.** Landslides in unimproved public right-of-way as defined by Chapter 17.42 of this code.
- C.** Landslides in public right-of-way caused by actions on property abutting such public right-of-way.
- D.** Landslides that threaten the stability of the public right-of-way.

17.41.040 Landslide As a Nuisance; Costs.

(Amended by Ordinance No. 173369, effective May 12, 1999.)

- A.** A landslide is a public nuisance. The nuisance is subject to abatement as provided by Title 29, except as provided in this Chapter. Abatement by the City shall be conducted at the direction of the City Engineer. The City Engineer may direct summary abatement where there is an immediate threat to the public safety.
- B.** Recovery of costs incurred by the City in the abatement of a landslide shall be as provided in Title 29, and such costs shall be assessed to the responsible property.

17.41.050 Abatement.

(Amended by Ordinance No. 176955, effective October 9, 2002.)

- A.** The owner of the responsible property is required to abate the landslide.
- B.** Abatement of a landslide includes:
 - 1.** Immediate work necessary to remove the debris from any areas where it would constitute or create a hazard to the public and to temporarily stabilize the slope; and
 - 2.** Permanent stabilization of the slope, as necessary, through engineered solutions such as retaining walls or riprap. Plans and specifications for permanent stabilization shall be prepared by a professional engineer registered in the State of Oregon and shall be approved by the City Engineer.
- C.** If summary abatement is not directed, the City Engineer may post notice on the responsible property of the requirement for immediate abatement, including dates by which the abatement must be commenced and completed. Such notice shall also be mailed to the owner and/or occupant of the responsible property. If the abatement is not commenced or completed within the time provided in the notice, the City Engineer may cause the landslide to be abated and the costs assessed against the responsible property.

**CHAPTER 17.102 - SOLID WASTE &
RECYCLING COLLECTION**

(Chapter replaced by Ordinance. No. 182190,
effective October 10, 2008.)

Sections:

- 17.102.010 Declaration of Policy.
- 17.102.020 Definitions.
- 17.102.030 Authority of Director to Adopt Rules.
- 17.102.040 General Requirements for Franchisees and Permittees.
- 17.102.050 Clean and Efficient Fleet Practices for Franchisees and Permittees.
- 17.102.060 Fees Credited to Solid Waste Management Fund.
- 17.102.070 Fees As a Debt, Enforcement and Collection.
- 17.102.080 Daytime Prohibition of Downtown Garbage Collection.
- 17.102.090 Assessments for Infractions.
- 17.102.100 Right of Appeal and Payment of Assessments.
- 17.102.110 Divulging Particulars of Reports Prohibited.
- 17.102.120 Franchise Administration.
- 17.102.130 Franchise Size Limitation.
- 17.102.140 Residential Collection Franchise Required.
- 17.102.150 Exceptions to Residential Franchise Requirement.
- 17.102.160 Forfeiture and Replacement.
- 17.102.170 Residential Recycling Services.
- 17.102.180 Franchise System Evaluation.
- 17.102.190 Residential Solid Waste and Recycling Rates and Charges.
- 17.102.200 Large Size Container Service to Residential Customers.
- 17.102.210 Commercial Collection Permit Required.
- 17.102.220 Exceptions to Commercial Collection Permit Requirement.
- 17.102.230 Applications for Commercial Collection Permits, Issuance, Denial.
- 17.102.240 Revocation or Suspension of Commercial Collection Permits.
- 17.102.250 Commercial Tonnage Fee.
- 17.102.260 Registration Required for Independent Commercial Recyclers.
- 17.102.270 Businesses and Multifamily Complexes Required to Recycle.
- 17.102.280 Inspections to Determine Compliance with Business Recycling Requirements.
- 17.102.290 Storing solid waste, recycling or compostable containers on the right of way prohibited.
- 17.102.295 Separation of Recyclables, Compost and Solid Waste.

17.102.010 Declaration of Policy.

(Amended by Ordinance No. 189293, effective January 11, 2019.) It is the policy of the City of Portland to reduce the amount of solid waste, both generated and disposed of, by promoting aggressive waste prevention and recycling activities. The City shall promote the development of environmentally and economically sound practices regarding the collection, processing and end use of solid waste, recyclable material and compostable material. In order to attain these goals and protect public health and the environment, the

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City shall regulate collection of solid waste, recyclable and compostable materials within the City. In carrying out this policy, the goals of this Chapter are:

- A.** To promote sustainability of the system of solid waste and recycling collection, by seeking to maximize efficiency, equity and economic vitality, improve worker safety and reduce environmental and human health impacts over the entire life cycle of the materials.
- B.** To set and achieve recycling goals for Portland that are among the highest in the nation.
- C.** To target reductions in toxic waste, to minimize its harmful effects and to reduce greenhouse gas emissions.
- D.** To ensure the safe and sanitary collection, transportation and recovery of solid waste, recyclable and compostable materials.
- E.** To provide Portland residents and businesses the opportunity to recycle more materials through convenient on-site, curbside and depot collection programs and through the addition of recyclable materials to the curbside collection program as appropriate.
- F.** To establish and enforce solid waste, recyclable and compostable material collection standards to ensure uniform, cost effective and high-quality service delivery to all residential customers.
- G.** To establish rates for residential waste collection which are fair to the public, encourage waste reduction, and promote safe, efficient collection.
- H.** To establish and enforce solid waste, recyclable and compostable material collection standards, cost effective and high-quality service delivery and inform collection service options for all commercial customers.
- I.** To promote community awareness in order to achieve the highest participation possible in the solid waste and recycling collection system.
- J.** To enhance solid waste reduction and recycling in the multifamily, commercial, institutional and industrial sectors by ensuring that comprehensive recycling systems are provided at every establishment not covered by the residential franchise, and that owners of the establishments encourage extensive use of those systems by all employees.
- K.** To undertake research, studies and demonstration projects on developing more efficient, economical and effective methods of solid waste reduction, recycling and collection.

17.102.020 Definitions.

(Amended by Ordinance Nos. 182671, 186877 and 189293, effective January 11, 2019.)
For purposes of Chapter 17.102, and rules adopted thereunder, the following terms shall be understood to have the meanings specified in this Section. Terms, words, phrases, and their derivatives used but not specifically defined in this Chapter shall have meanings commonly accepted in the community.

- A. “Administrative Rule”** means all rules promulgated under Section 17.102.030 of this Chapter.
- B. “Approved Residential Recycler”** means a person that has been granted approved residential recycler status by the Director. Approved residential recycler includes any employees or other persons authorized to act on behalf of the approved residential recycler.
- C. “Assessment”** means a civil penalty assessed for an infraction as provided in Chapter 17.102 or the franchise.
- D. “Assigned Territory”** means an area within the City in which only a franchisee designated by the City may collect solid waste and recyclable material from residential customers.
- E. “Biodiesel”** is a domestic, renewable fuel for diesel engines derived from vegetable oils, or animal fats, designated B100, and which meets the specifications of ASTM #D6751-03a “Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels” or revised ASTM specifications.
- F. “Biodiesel Blend”** is a blend of biodiesel fuel meeting the ASTM #D6751-03a or revised ASTM specifications and ASTM #D5453 “Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence”, or revised ASTM specifications, comprised of biodiesel and ultra-low sulfur diesel fuels blended by a percentage of each individual component. Biodiesel Blend also includes renewable diesel blends, derived from vegetable oils or animal fats through fractional distillation, if the fuel meets a maximum carbon intensity of 56 gCO₂e/MJ as provided by the Oregon Department of Environmental Quality Clean Fuels Program.
- G. “Business”** means any commercial entity, including industrial and institutional, but not including multifamily complexes or commercial entities that occupy 50 percent or less of the floor area of a residence.
- H. “City”** means the City of Portland, Oregon, and such territory outside of this City over which the City has jurisdiction or control by virtue of any Intergovernmental Agreement or law.

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- I. **“Collect” or “Collection”** means to accept, accumulate, store, process, transport, market or dispose of.
- J. **“Collection Vehicle”** means any vehicle used for the collection of solid waste, recycling, or compostables in Portland.
- K. **“Commercial”** means relating to an entity that is non-residential in nature or, if residential, consists of five or more dwelling units on a single tax lot.
- L. **“Commercial Collection”** means the collection of solid waste, recyclable and compostable materials in exchange for compensation from:
 - 1. A non-residential source; or
 - 2. A multifamily residence of five or more dwelling units located on a single tax lot.;
- M. **“Compensation”** means:
 - 1. Any type of consideration paid for collection service, including, without limitation, rent or lease payments and any other direct or indirect provision of payment of money, goods, services or benefits by owners, tenants, lessees, occupants or similar persons;
 - 2. The exchange of services between persons; and
 - 3. The flow of consideration from the person owning or possessing the solid waste recyclable or compostable material to the person providing collection service or from the person providing collection service to the person owning or possessing the solid waste recyclable or compostable material.
- N. **"Compostable Material" and “Compostable”** means yard debris, food scraps and food soiled paper when source separated for controlled biological decomposition. Compostable material shall not include food soiled paper containing plastic or other materials that inhibit controlled biological decomposition.
- O. **"Composting"** means the series of activities, including collection, separation, and processing, by which compostable materials are recovered from or otherwise diverted from the solid waste stream for controlled biological decomposition. Composting includes composting of source separated organics but not composting of mixed waste.
- P. **"Covered Food Scraps Generating Business”** means organizations that cook, assemble, process, serve, or sell food or do so as service providers for other enterprises.

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- Q.** **“Customer”** when used to refer to commercial collection service, means a person that has arranged for the collection of solid waste, recyclable or compostable materials, excluding residential collection service covered by a franchise. Where several businesses share containers and service, customer refers only to the person that arranges for the service.
- R.** **“Customer”** when used to refer to residential collection service means any person who receives solid waste, recycling or compostables collection service at a residence (four-plex or smaller) in a franchise territory. The customer need not be the person billed for such service. For rental properties where the owner of the property is required to subscribe for service, the owner shall be considered the customer.
- S.** **“Director”** means the Director of the City’s Bureau of Planning and Sustainability or their authorized representative, designee or agent.
- T.** **"Food Soiled Paper"** means paper products that cannot be recycled into paper products and have been in contact with organic materials to the degree that they would not be able to be recycled into paper products. Food soiled paper includes, but is not limited to, used napkins and paper towels.
- U.** **"Food Scraps"** means waste from fruits, vegetables, meats, dairy products, fish, shellfish, nuts, seeds, grains, coffee grounds, and other food that results from the distribution, storage, preparation, cooking, handling, selling or serving of food for human consumption. Food waste includes but is not limited to excess, spoiled or unusable food and includes inedible parts commonly associated with food preparation such as pits, shells, bones, and peels. Food waste does not include liquids or large amounts of oils and meats which are collected for rendering, fuel production or other non-disposal applications, or any food fit for human consumption that has been set aside, stored properly and is accepted for donation by a charitable organization and any food collected to feed animals in compliance with applicable regulations.
- V.** **“Franchise”** means a franchise for the collection of residential solid waste, recyclable materials and compostables, granted by Ordinance No. 181666, and as amended by subsequent ordinances.
- W.** **“Franchisee”** means a business that has been granted a franchise by Ordinance No. 181666 and subsequent amending ordinances. Franchisee includes any employees or other persons authorized to act on behalf of the franchisee. Franchisee has a meaning identical to that of “grantee” as used in the franchise. A franchisee holds a single franchise for collection service in any and all of its franchise territories, including any territories transferred from other franchisees as approved by the Portland City Council, subsequent to Ordinance No. 181666, and as amended by subsequent ordinances.

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- X. “Franchise Territory”** means an area within the City in which only a person granted a franchise by the City may collect residential solid waste, recyclable materials or compostables, from residential customers. A single franchisee may serve more than one franchise territory.
- Y. “Independent Commercial Recycler”** means a person who collects only recyclable and/or compostable materials from non-residential sources for the sole purpose of recycling or composting, and who does not collect solid waste.
- Z. “Infraction”** means a failure to comply with Portland City Code Chapter 17.102, the franchise, or the administrative rules promulgated thereunder, as applicable.
- AA. “Metro”** means the metropolitan service district responsible for regional solid waste management and planning within Clackamas, Multnomah and Washington Counties.
- BB. “Multifamily Complex” or “Multifamily”** means any multidwelling building or group of buildings that contain(s) five dwelling units or more on a single tax lot, such as apartments, condominiums, mobile home parks, or houseboat moorages. Multifamily also includes certified or licensed residential care housing, such as adult foster care homes.
- CC. “BPS”** means the City’s Bureau of Planning and Sustainability.
- DD. “Permittee”** means any person granted a commercial collection permit under Section 17.102.210 of this Chapter.
- EE. “Person”** means any individual, partnership, association, firm, trust, estate, a public or private corporation, a local government unit, a public agency, the state or any other legal entity.
- FF. “Recyclable Material” and “Recyclable”** includes, but is not limited to, newspaper, scrap paper, ferrous scrap metal, non-ferrous scrap metal, used motor oil, corrugated cardboard and kraft paper, container glass, aluminum, tin cans, magazines, aseptic packaging, coated paper milk cartons, steel aerosol cans, plastic bottles, office paper, cooking grease, wood, rubble and other materials as may be designated by the City.
- GG. “Recycling”** means the series of activities including collection, separation, and processing, by which products or other materials are recovered from or otherwise diverted from the solid waste stream for use in the following:
1. In the form of raw materials in the manufacture of new products other than fuel.
 2. As fuel in the case of source separated wood waste which has no other material use.

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- HH. “Residence”** means any dwelling unit that is a four-plex or smaller, regardless of whether it has subscribed for waste collection, or has waste collection, in individual cans, carts or containers. Residence includes multifamily dwellings such as apartment complexes, condominiums, mobile home parks, or houseboat moorages with four units or fewer on a single tax lot. Residence also includes dwelling units used by fraternities or sororities. Residence does not include any multifamily complex as defined in this Section, multi-dwelling building or group of buildings that contain(s) five dwelling units or more on a single tax lot, such as condominiums, mobile home parks, or houseboat moorages, nor does residence include certified or licensed residential adult foster care homes. Residence does not include any dwelling where over 50 percent of the entire building is being used for business purposes. Agreements between owners of residences purporting to provide for the collection of solid waste and recyclable on a combined basis shall not alter the status of each dwelling unit as a residence.
- II. “Resident”** means any person living in a residence.
- JJ. “Residential”** means of or pertaining to a residence.
- KK. “Self-haul, Commercial”** when used in reference to solid waste, recyclables or compostables generated by a commercial entity, means the collection and transportation of material from a commercial entity where an owner or employee of the entity hauls the material rather than hiring a permittee or independent commercial recycler to perform this function.
- LL. “Solid Waste”** has the meaning given in ORS 459.005(24) (2013), but does not include the following materials:
1. Sewage sludge, septic tank and cesspool pumpings or other sludge, and grit, screenings and other residues delivered by sewer systems to municipal treatment plants.
 2. Discarded or abandoned vehicles;
- MM. “Source Separate”** means that the person who last used recyclable or compostable material separates the material from solid waste and keeps the recyclable or compostable material separate from solid waste.
- NN. “Yard Debris”** means leaves, grass clippings, sod, weeds, vines, vegetative material from the yard, pumpkins, and prunings of no greater than four inches in diameter or 36 inches in length. Large branches (greater than four inches in diameter or more than 36 inches in length), dirt, stumps, metal, rocks, ashes, animal waste, food and household solid waste are not considered yard debris.

17.102.030 Authority of Director to Adopt Rules.

(Amended by Ordinance Nos. 182671 and 189078, effective July 18, 2018.)

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- A.** The Director is hereby authorized to administer and enforce the provisions of this Chapter.
- B.** The Director is authorized to adopt rules, procedures, and forms to implement the provisions of this Chapter.
 - 1.** Any rule adopted pursuant to this section shall require a public review process. Not less than ten nor more than thirty days before such public review process, notice shall be given by publication in a newspaper of general circulation. Such notice shall include the place, time, and purpose of the public review process and the location at which copies of the full set of the proposed rules may be obtained.
 - 2.** During the public review, the Director shall hear testimony or receive written comment concerning the proposed rules. The Director shall review the recommendations; taking into consideration the comments received during the public review process, and shall either adopt the proposed rules, modify or reject them. If a substantial modification is made, additional public review shall be conducted, but no additional notice shall be required if such additional review is announced at the meeting at which the modification is made. Unless otherwise stated, all rules shall be effective upon adoption by the Director and shall be filed in the Office of the Director.
 - 3.** Notwithstanding paragraphs 2 and 3 of this Section, an interim rule may be adopted by the Director without prior notice upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties, including the specific reasons for such prejudice. Any rule adopted pursuant to this paragraph shall be effective for a period of not longer than one year (365 days). Within five business days of the adoption of an interim rule, the Director shall send notice of the rule to all the following, giving the language of the rule change, describing the purpose of the rule, and inviting the submission of comments.
 - a.** Neighborhood associations recognized by the City Office of Community & Civic Life,
 - b.** District Coalitions recognized by the City Office of Community & Civic Life,
 - c.** Business District Associations identified by the City Office of Community & Civic Life,
 - d.** Persons on the BPS list of parties interested in administrative rules, and
 - e.** Franchisees and permittees,

17.102.040 General Requirements for Franchisees and Permittees.

All franchisees and permittees must comply with applicable federal law, statutes of the State of Oregon, ordinances of Metro or the City and rules and regulations promulgated thereunder.

17.102.050 Clean and Efficient Fleet Practices.

(Replaced by the Ordinance No. 185449; amended by Ordinance No. 189293, effective January 11, 2019.) The Director is authorized to draft regulations to protect the public health and the environment. This can include requiring the use of a blend of biodiesel fuel in any collection vehicle with a diesel engine and requiring regular replacement of all collection vehicles used by franchisees or permittees within the City.

- A.** All collection vehicles with a diesel engine shall use a blend of biodiesel fuel as specified by the Director, consistent with the requirements set forth in Chapter 16.60.
- B.** Fleet Replacement. The intention of the clean and efficient fleet practices is to phase out vehicle emissions that contribute to unhealthy air for Portland residents and to reduce climate change impacts according to the Climate Action Plan.
 - 1.** All residential vehicles shall have engines that are 12 years old or newer. "Collection vehicles" that are intended as back-up collection vehicles and older than 12 years are allowed to be used less than 20 percent of a full-time vehicle's hours or miles.
 - 2.** Federal Emissions Improvement Adjustments. Due to emissions standard improvements to collection vehicles manufactured in 2010 or newer, collection vehicle restrictions will be adjusted accordingly:
 - a.** As of January 1, 2023, all collection vehicles using diesel fuel shall have engines 13 years old or newer.
 - b.** As of January 1, 2024, all collection vehicles using diesel fuel shall have engines 14 years old or newer.
 - c.** As of January 1, 2025, all collection vehicles using diesel fuel shall have engines 15 years old or newer and older back up vehicles will no longer be acceptable and subject to infraction. Starting January 1, 2026 collection vehicle age restrictions will continue with a rolling 15-year timeframe for compliance.
 - d.** As of January 1, 2025, all collection vehicles providing service to any Portland residential or commercial customer will adhere to the Clean and Efficient Fleet Practices. At this time, exemptions to collection vehicles serving less than 50 percent of Portland customers will be lifted.

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3. Diesel Particulate Filter (DPF) Retrofits. Collection vehicles that have been retrofitted with a functioning DPF will not be required to be replaced until January 1, 2025. Diesel Oxidation Catalyst (DOC) retrofits on collection vehicles will not be required to be replaced until January 1, 2020.

17.102.060 Fees Credited to Solid Waste Management Fund.

(Amended by Ordinance No. 182671, effective May 15, 2009.)

- A. All fees, assessments and interest received by the Bureau of Planning and Sustainability with respect to solid waste collection or disposal shall be deposited with the City Treasurer and credited to the Solid Waste Management Fund.
- B. Monies deposited into the Solid Waste Management Fund shall be used for administration, implementation and operation of solid waste, recycling, composting and sustainable development programs, consistent with all applicable constraints on use of funds. BPS may spend or apply such fees and charges to implement and administer solid waste, recycling, composting and sustainable development policies approved by the Council.
- C. The proceeds from the City's sale of a forfeited franchise shall be deposited with the City Treasurer and credited to the Solid Waste Management Fund. Such proceeds shall be used to offset the City's costs of the process of replacing a franchisee, including its costs for providing any necessary temporary collection services, and to offset program costs to the public.

17.102.070 Fees As a Debt, Enforcement and Collection.

- A. All fees, assessments and interest imposed by this Chapter shall be a debt due and owing to the City of Portland and may be collected by civil action in the name of the City of Portland. Any fees and assessments remaining unpaid after the due date shall accrue interest at 1 percent per month, compounded daily from the due date. In addition, the Director may revoke, suspend or deny issuance of any commercial collection permit to permittees who have not paid commercial permit or tonnage fees or infraction assessments by the deadlines provided in this Chapter or in administrative rules adopted pursuant to this Chapter.
- B. Fees, assessments and interest shall be enforced and collected by the Director. The Director may waive or reduce any assessments for good cause, according to and consistent with written policies. The Director may refer collection and enforcement to another agency of the City.

17.102.080 Daytime Prohibition of Downtown Garbage Collection.

(Amended by Ordinance No. 189293, effective January 11, 2019.) No person, whether acting as private citizen, principal, employee, agent, franchisee or permittee shall transport any refuse through streets in the district bounded by SW Oak Street, SW First Avenue, SW

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Yamhill Street and SW Tenth Avenue, except between the hours of 10 p.m. and 10 a.m. or when otherwise authorized by the City Engineer, a city police officer, or the Director.

17.102.090 Assessments for Infractions.

- A.** The Director may impose assessments as follows:
- 1.** A first violation of this Chapter may be subject to an assessment of up to \$500.
 - 2.** A second violation of this Chapter by the same person may be subject to an assessment of up to \$1,000.
 - 3.** Third and subsequent violations of this Chapter by the same person may be subject to an assessment of up to \$1,500.
 - 4.** Assessments may be imposed on a per month, per day, per incident, per class or such other basis as the Director may determine as appropriate based upon the nature of the infraction.
- B.** The Director shall consider the following criteria in determining the amount of assessments to be imposed under this Section:
- 1.** The nature and extent of the person's involvement in the violation;
 - 2.** Whether the person was seeking any benefits, economic or otherwise, through the violation;
 - 3.** Whether the violation was isolated and temporary, or repeated and continuous;
 - 4.** The length of time from any prior violations;
 - 5.** The magnitude and seriousness of the violation;
 - 6.** The costs of investigation and remedying the violation;
 - 7.** Whether any criminal prosecutions have occurred in regard to the violations; and
 - 8.** Other relevant, applicable evidence bearing on the nature and seriousness of the violation.

17.102.100 Right of Appeal and Payment of Assessments.

(Amended by Ordinance Nos. 184288 and 189293, effective January 11, 2019.)

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- A.** Any person receiving a Notice of Assessment shall, within ten days of issuance of the notice either pay to the City the stated amount of the assessment or request an appeal hearing by the Code Hearings Officer in accordance with procedures set forth in Chapter 22.10 of the City Code. The filing of an appeal request shall stay the effective date of the assessment until the appeal is determined by the Code Hearings Officer. If, pursuant to said appeal hearing, payment of the assessment is ordered, such payment must be received by the Director or postmarked within 15 calendar days after the order becomes final.
- B.** A person may appeal to the Code Hearings Office in accordance with Title 22 of the City Code if the person receives:

 - 1.** A written denial of an application for a commercial collection permit;
 - 2.** Any written suspension or revocation of a commercial collection permit.
- C.** A business or property owner may appeal to the Code Hearings Office in accordance with Title 22 of the City Code if they receive a written denial of an application for a limited term extreme economic hardship exemption from the Containers in the Right of Way rules.

17.102.110 Divulging Particulars of Report Forms Prohibited.

(Amended by Ordinance No. 182671, effective May 15, 2009.)

- A.** Except as otherwise required by law, it shall be unlawful for the Bureau of Planning and Sustainability or any officer, employee, or agent of the City, to divulge, release or make known in any manner:

 - 1.** Any information submitted or disclosed to the City under Section 17.102.250; or,
 - 2.** Any information submitted or disclosed to the City by solid waste collectors regarding past hazardous waste remedial action surcharges.
- B.** Nothing in this Section shall be construed to prohibit:

 - 1.** The disclosure of the names and addresses of any persons to whom permits have been issued; or
 - 2.** The disclosure of general statistics in a form which would prevent the identification of financial information regarding any individual permittee.

17.102.120 Franchise Administration.

(Amended by Ordinance No. 182671, effective May 15, 2009.) Notwithstanding Section 3.114.020, the Bureau of Planning and Sustainability shall be responsible for administration of residential collection franchises.

17.102.130 Franchise Size Limit.

(Amended by Ordinance No. 184224, effective December 10, 2010.)

- A. No franchisee shall serve residential customers greater than 40 percent of the residential customer base, as determined on a quarterly basis. For purposes of this Section, the Bureau of Planning and Sustainability will calculate the residential customer base and the residential customer cap using the most recent Quarterly Residential Customer Count Report, and shall keep this calculation on file for public reference.
- B. No franchisee shall be a subsidiary corporation of another franchisee.

17.102.140 Residential Collection Franchise Required.

(Amended by Ordinance No. 189293, effective January 11, 2019.)

- A. No person may collect residential solid waste, recyclable or compostable materials, within the City without having obtained a franchise from the City, except as provided in 17.102.150 or 17.102.170 of this Chapter.
- B. Having obtained a franchise for residential solid waste, recyclable material and compostables collection from the City, no person shall provide or offer to provide such collection in an area within the City other than the assigned territory for which the franchise was issued.
- C. No person shall accumulate, store collect, transport, dispose of or resource recover solid waste, recyclable materials or compostables, except in compliance with this Chapter, other city ordinances and regulations, and state laws dealing with solid waste management.
- D. Nothing in this section shall prohibit the City from withdrawing certain solid waste, recyclable materials or compostables collection services by amendment of this Chapter on the basis of finding that such change is appropriate.
- E. No person other than an approved residential recycler may remove recyclable materials or compostables that are in or next to a residential recycling or compostables container set out at a residence.
- F. As provided in Section 29.30.140, owners of rental housing shall not collect solid waste generated by their tenants. Owners of rental residences must arrange for collection by a franchisee.

17.102.150 Exceptions to Residential Franchise Requirement.

(Amended by Ordinance No. 189293, effective January 11, 2019.)

- A. A franchise is not required for the collection or transportation of residential solid waste, recyclable materials or yard debris by the following persons:

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1. Persons transporting solid waste, recyclable materials, or compostables, collected outside the City;
 2. Organizations which have been granted non-profit tax status by the federal government or who are organized as non-profit corporations in accordance with ORS Chapter 61 (2007) and who collect residential recyclable materials or compostables without charge to the person who generates those recyclable materials or compostables;
 3. A contractor employed to demolish, construct or remodel a building or structure, including, but not limited to, land clearing operations and construction wastes, when collecting or transporting wastes created in connection with such employment;
 4. Landscapers, gardeners, tree service contractors, janitors or renderers when collecting or transporting wastes created in connection with such employment;
 5. Persons collecting and transporting waste produced by that person, except for waste produced by a tenant at a rental dwelling. For purposes of this Subsection, solid waste produced by a tenant, licensee, occupant or similar person is produced by that person and not by the landlord;
 6. Persons collecting or transporting only waste tires under a valid waste tire storage or carrier permit pursuant to OAR Chapter 340;
 7. Persons transporting only reusable beverage containers as defined in ORS 459A.725 (2007);
 8. Federal or state agencies that collect, store, transport and dispose of solid waste or those who contract with such agencies to perform the service, but only insofar as the service is performed by or for such agencies; and,
 9. Persons exclusively collecting recyclable materials or compostables, from non-residential sources.
- B.** An organization is not required to have a franchise for the acceptance, storage or transportation of recyclable materials or compostables if those materials are accepted and stored at a depot or depots which accept recyclable material or compostables without a charge to the generator of that recyclable material or compostables.

17.102.160 Forfeiture and Replacement.

(Amended by Ordinance No. 182671, effective May 15, 2009.)

- A.** In the event that the Director finds grounds for declaring a forfeiture, according to the terms of the franchise awarded by Ordinance No. 181666 and as amended by

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subsequent ordinances, the Director shall make a recommendation for Council action on the matter, following procedures specified in the BPS's adopted rules.

- B.** In preparing for the transfer of a forfeited franchise to another party, the Director shall solicit applications from current franchisees and from other parties who have given a written notice of their interest following a public notification. The Director shall determine the applicants' qualifications to assume the franchise responsibilities. The Director is authorized to then use a lottery in selecting among qualified applicants. In addition, the Director may conduct an appraisal of the value of the forfeited franchise. The lottery winner(s) shall then be offered the opportunity to purchase the franchise from the City within a specified time period at the appraised value.
- C.** In cases where a franchisee abruptly ceases to provide collection service, and there is insufficient time to conduct an appraisal and permanently transfer a franchise, the Director may recommend that the Council appoint a temporary service provider. If the Council makes such an appointment, it may also guarantee a minimum level of revenue to that company, in order to encourage companies who would not otherwise be willing to assume this responsibility on a short-term basis. Such minimum level of revenue would be achieved by the City's supplementing revenues received by the temporary service provider from its temporary customers.

17.102.170 Residential Recycling Services.

(Amended by Ordinance No. 189293, effective January 11, 2019.)

- A.** No person shall provide residential recycling collection without first applying for and receiving approval as an approved residential recycler.
- B.** To have status as an approved residential recycler an applicant must receive the City's approval of recycling collection and processing plans prior to initiation of collection service, and at subsequent times as provided in the administrative rules.
- C.** To receive approval as an approved residential recycler, an applicant shall submit a recycling collection and processing plans on forms provided by the Director and shall include, at a minimum, the following information:

 - 1.** Number of residential households to be served;
 - 2.** Description of recycling collection equipment;
 - 3.** Address and City zoning classification of all processing/storage sites that relate to collection services provided in the City;
 - 4.** Description of all processing and storage activities that relate to collection services provided in the City;
 - 5.** List of markets where each recyclable material will be sold;

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6. List of the number of staff, their positions and full-time equivalent (FTE) for each;
 7. Address and phone number of office;
 8. Cost of recycling collection and processing equipment, the financial institution used and type of financing obtained; and
 9. Any subcontracted collection services, including the names of the providers, description of the services provided and the number of customers served.
 10. Written consent of the franchisee in whose territory the applicant seeks to provide collection service.
 11. Other information as deemed relevant and necessary by the Director.
- D.** The Director shall review the recycling collection and processing plans submitted by an applicant to determine if the plan sets out reasonable means and methods to deliver high quality recycling to City residents, and which are capable of meeting administrative rule standards for residential recycling service delivery. The Director shall notify the applicant of the decision on their status as an approved residential and any recommended modifications if approval is not given. Approved residential recyclers shall use recycling containers that meet the Director's specifications.
- E.** An applicant's failure to receive the Director's approval of a plan shall result in denial of the City's permission for that applicant to provide recycling collection service and the appointment of another approved residential recycler by the Director to provide recycling collection service to those residential customers.

17.102.180 Franchise System Evaluation.

(Amended by Ordinance No. 182671, effective May 15, 2009.)

- A.** Periodically the Director shall prepare and submit a report to the City Council on the status and performance of the franchise collection system. The report shall comment on progress toward achievement of the relevant goals identified in Section 17.102.010 and as otherwise described in BPS's budget documents.
- B.** Commencing at least five years prior to the expiration of the franchise term, the City Council shall evaluate the franchise system to determine if the system is achieving waste reduction, increased recycling, and cost-effective collection service. Such evaluation shall include an opportunity for public discussion and comment.

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17.102.190 Residential Solid Waste and Recycling Rates and Charges.

For all service levels of franchised residential collection, rates and charges shall be as set forth in Figures 6 and 6-1 published at the end of Title 17.

17.102.200 Large Size Container Service to Residential Customers.

- A. Any residential putrescible waste collected in containers exceeding two yards capacity shall be emptied within seven days of the empty container being placed at the residence.
- B. Commercial permittees are prohibited from providing collection of any putrescible waste more than four times in a 365-day period to residential customers without the express written permission of the franchisee in whose territory the collection would be occurring.
- C. Within the City, franchisees are prohibited from providing containers larger than two cubic yards which are emptied more than four times in a 365-day period to residential customers outside their franchise territory.

17.102.210 Commercial Collection Permit Required.

(Amended by Ordinance Nos. 182671 and 189293, effective January 11, 2019.)

- A. No person shall provide commercial collection of solid waste, compostables and recyclable material within the City without having a currently valid commercial collection permit from the Bureau of Planning and Sustainability, except as provided in Section 17.102.220. Permits shall be issued annually, with the permit being valid for the period beginning July 1 and ending June 30. No expenditure of money, lapse of time or other act or thing, shall give the permittee any vested rights or other property rights.
- B. The Director may impose conditions upon the issuance of a permit which are necessary to implement the provisions of this Chapter or administrative rules promulgated under Section 17.102.030. Conditions shall include but not be limited to:
 - 1. Permittees must comply with the provisions of this Chapter and administrative rules promulgated under Section 17.102.030.
 - 2. If a permittee provides solid waste collection services to a customer, the permittee must offer recycling collection services to the customer. The permittee shall also offer compostable material collection services to a customer that is a food scrap generating business subject to the requirements of Subsection 17.102.270 A.1.c.
 - a. Permittees may provide recycling and compostable material collection services either directly or through third-party providers.

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Where a permittee provides such services through a third party provider, the permittee shall be responsible for reporting to the City the quantities of all materials collected by that provider on its behalf within the City.

- b.** In providing recycling and compostable material collection services, permittees shall use containers that comply with the City's administrative rules.
- 3.** If the Director determines that a permittee is delivering as waste, loads containing significant amounts of recyclable materials to a transfer station, reload, or landfill, the Director shall work with the permittee to identify customers on the routes serviced in those loads for the purpose of providing customer outreach, assistance and education.
- 4.** Permittees may charge a person who source separates recyclable material - and makes it available for reuse or recycling - less, but not more, for collection and disposal of solid waste and collection of recyclable material than the collection service charges a person who does not source separate recyclable material. This subsection does not affect charges for the collection of food scraps.
- C.** Any person who provides commercial collection of solid waste within the City without a current commercial collection permit from the City shall be subject to an assessment as provided by Section 17.102.090.
- D.** No person who is not authorized by the customer may remove recyclable material that is set out by the customer for recycling.
- E.** As provided in Section 29.30.140, owners of rental housing shall not collect solid waste generated by their tenants. Owners of multifamily complexes must arrange for collection by a permittee.

17.102.220 Exceptions to Commercial Collection Permit Requirement.

A commercial collection permit is not required for the collection or transportation of commercial solid waste by any of the following:

- A.** Persons transporting solid waste collected outside the City;
- B.** A contractor employed to demolish, construct or remodel a building or structure, including, but not limited to, land clearing operations and construction wastes, when collecting or transporting wastes created in connection with such employment;
- C.** Landscapers, gardeners, farmers, tree service contractors, janitors or renderers when collecting or transporting wastes created in connection with such employment;

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- D.** Persons collecting or transporting only waste tires under a valid waste tire storage or carrier permit pursuant to OAR Chapter 340;
- E.** Persons transporting only reusable beverage containers as defined in ORS 459A.725 (2007);
- F.** Federal or state agencies that collect, store, transport and dispose of solid waste or those who contract with such agencies to perform the service, but only insofar as the service is performed by or for such agencies; and
- G.** Persons exclusively collecting recyclable or compostable materials from anyone other than residential customers.

17.102.230 Applications for Commercial Collection Permits, Issuance, Denial.

(Amended by Ordinance Nos. 184288 and 189293, effective January 11, 2019.)

- A.** Applications for commercial collection permits required by Chapter 17.102 shall be submitted to the Director. The Director shall prepare application forms and make them available upon request.
- B.** Each application for a commercial collection permit shall be accompanied by a nonrefundable fee of \$350.
- C.** An applicant for a commercial collection permit shall submit an application that sets forth the following information:
 - 1.** The name, address and telephone number of the business or proposed business;
 - 2.** Whether the applicant is organized as a sole proprietorship, partnership, limited partnership, family limited partnership, joint venture, association, cooperative, trust, estate, corporation, personal holding company, limited liability company, limited liability partnership or any other form of organization for doing business;
 - a.** If a partnership, the application must set forth the names, addresses and telephone numbers of each general or managing partner.
 - b.** If a corporation, or limited liability company, the application must set forth the corporate or company name and the names, addresses and telephone numbers of every person owning more than twenty percent of the business;
 - c.** If the business is organized in some other form, the application must set forth the name, address and telephone number of the designated contact person for the business.

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3. A City of Portland business license number.
 4. A signed statement that the permittee shall hold harmless the City of Portland, its officers and employees and shall indemnify the City of Portland, its officers and employees for any claims for damage to property or injury to persons which may be occasioned by any activity carried on under the terms of the commercial collection permit. Permittee shall furnish and maintain such public liability, food products liability, and property damage insurance as will protect permittee, property owners, and City from all claims for damage to property or bodily injury, including death, which may arise from operations under the permit or in connection therewith. Such insurance shall provide General Liability coverage insurance with a combined single limit of not less than \$1,000,000 per occurrence for bodily injury and property damage. Such insurance shall be without prejudice to coverage otherwise existing therein, and shall name as additional insureds the City of Portland, their officers and employees with respect to the permittee's activities carried on under the terms of the commercial collection permit, and shall further provide that the policy shall not terminate or be canceled prior to the completion of the contract without 30 days written notice to the Auditor.
 5. Any other information that the Director may reasonably feel is necessary to accomplish the goals of this Chapter.
- D.** Applications shall contain a written declaration, verified by the applicant, to the effect that the statements made therein are true.
- E.** Applications shall contain written demonstration of adequate staff, equipment and collection vehicles necessary to provide services as required under Subsection 17.102.210 B.2.
- F.** The Director may investigate and verify data reported in the permit application.
- G.** The permittee shall provide written notice to the Director within 10 days of any changes in the information provided in the application that occurs after the application is submitted.
- H.** The Director shall approve issuance of a commercial collection permit to the applicant after payment of the required fee, completion of the application form and following an evaluation of the information provided with the application. The Director may deny the issuance of a commercial collection permit to an applicant under the following conditions:
1. The permit application contains falsehoods or facts that cannot be verified;
 2. The applicant has failed to pay fees, assessments and interest as provided in Chapter 17.102;

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3. The applicant has been found by a court of competent jurisdiction to have practiced fraud or deceit upon the City; or,
 4. The applicant has had their permit revoked during the two years prior to the application. For purposes of this section, "applicant" includes any individual who was a managing partner, or who owned or controlled more than 20 percent of the voting interests in the permittee whose permit was revoked.
- I.** There shall be no right to renewal of a commercial collection permit; each application shall be considered as it would be for a new permit notwithstanding that the applicant has previously been issued a permit.
- J.** Denial of an application may be appealed to the Code Hearings Officer as provided in accordance with procedures set forth in Chapter 22.10 of the City Code.

17.102.240 Revocation or Suspension of Commercial Collection Permits.

(Amended by Ordinance Nos. 184288 and 189293, effective January 11, 2019.)

- A.** The Director may suspend or revoke a commercial collection permit under the following conditions:
1. One or more of the permit conditions is being violated;
 2. The permittee is in violation of any of the provisions of this Chapter or the commercial administrative rules for solid waste and recycling.
 3. The permittee has failed to pay fees and assessments as provided in Chapter 17.102.
 4. The permittee has been found by a court of competent jurisdiction to have practiced fraud or deceit upon the City.
- B.** The Director shall consider the following criteria in determining whether to revoke or suspend the commercial collection permit due to violations of the provisions of this Chapter or the commercial administrative rules for solid waste and recycling:
1. The nature and extent of the permittee's involvement in the violation;
 2. Whether the permittee was seeking any benefits, economic or otherwise, through the violation;
 3. Whether the violation was isolated and temporary, or repeated and continuous;
 4. The magnitude and seriousness of the violation;

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5. The relative harms of continued collection service from the permittee and the potential for service disruption;
 6. Whether any criminal prosecutions have occurred in regard to the violations; and
 7. Other relevant, applicable evidence bearing on the nature and seriousness of the violation.
- C. Revocation or suspension of a permit may be appealed to the Code Hearings Officer as provided in accordance with procedures set forth in Chapter 22.10 of the City Code.

17.102.250 Commercial Tonnage Fee.

(Amended by Ordinance Nos. 183828, 185349, 187771 and 189037, effective July 1, 2018.) Commercial permittees shall, when invoiced quarterly by the Director, pay a tonnage fee to the City. Fees shall be assessed up to \$12.60 per ton of commercial solid waste collected within the City and deposited in disposal facilities authorized by Metro. Payments shall be made within 30 days of the date of the invoice. Interest shall accrue at 1 percent per month on balances which remain unpaid as of 30 days after the date of invoice, compounded daily from the due date.

17.102.260 Registration Required for Independent Commercial Recyclers.

(Amended by Ordinance No. 182671, effective May 15, 2009.)

- A. No person shall provide collection service as an independent commercial recycler within the City without having registered with the Bureau of Planning and Sustainability, by providing BPS with a copy of their City of Portland Business License, with their Business License number, or with a copy of their current annual Business License exemption application or request submitted to the City's Revenue Bureau.
- B. All independent commercial recyclers which collect in the City at least 25 tons of recyclables and/or compostables per year shall report quarterly to BPS on the amounts of recyclables collected in the City, on forms provided by BPS.

17.102.270 Businesses and Multifamily Complexes Required to Recycle.

(Amended by Ordinance No. 189293, effective January 11, 2019.)

- A. Waste Prevention and Recycling Requirements.
 1. To achieve the City's waste prevention and recycling goals as set forth in Section 17.102.010, all businesses within the City shall comply with waste prevention, recycling and composting requirements as set forth in the administrative rules established by the Director. The following recycling requirements shall be in effect:

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- a. All businesses and multifamily complexes shall recycle 75 percent of the solid waste they produce;
 - b. All businesses shall recycle all of their paper and containers. For the purposes of this Section, containers means all recyclable metal, plastic and glass containers;
 - c. Covered food scraps generating businesses shall separate their food scraps for collection.
 - d. For all building projects within the City where the total job cost (including both demolition and construction phases) exceeds \$50,000, the general contractor shall ensure that 75 percent of the solid waste produced on the job site is recycled. In addition, certain materials generated on the job site shall be recycled in compliance with administrative rules established by the Director. For an affected building project where there is no general contractor, this requirement applies to the property owner is the person responsible for ensuring compliance with the recycling requirements.
 - 2. Commercial customers that provide garbage collection service to business tenants as part of their rental/lease, shall provide recycling and, where appropriate, compostable collection systems that will enable the business tenants to recycle in compliance with administrative rules established by the Director.
 - 3. All multifamily complexes within the City shall establish recycling systems for their tenants' use, in compliance with administrative rules established by the Director.
 - B. The Director may monitor compliance with the requirements of Subsection A by reviewing available information including, but not limited to, information reported by the customers on their recycling activities, as well as onsite inspections.
 - C. Any business or any other person may sell or exchange at fair market value its own recyclable materials which are source separated for reuse or recycling. This Chapter and any administrative rules promulgated hereunder are not intended to limit the ability of any person to compete openly to provide recycling collection service to businesses within the City of Portland.
- 17.102.280 Inspections to Determine Compliance with Business Recycling Requirements.**
- A. The Director shall be responsible for the administration and enforcement of Section 17.102.270 relating to recycling goals for businesses and multifamily complexes. In furtherance of these responsibilities, the Director shall have the authority to inspect sites, buildings and other structures and equipment for compliance with

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Section 17.102.270. The Director shall establish a program for the periodic inspection of businesses and multifamily complexes for compliance with these requirements. The program shall identify the frequency, priority and types of inspections, subject to the availability of staff and budgeted funds.

- B.** Right of Entry. The Director may enter the premises of any business or multifamily complex, except private residences, between the hours of 9:00 am and 5:00 pm on any business day to conduct inspections for the purpose of determining compliance with recycling requirements established pursuant to Section 17.102.270. The Director shall first present proper credentials and request entry. If entry is refused, the Director may attempt to gain entry by obtaining an inspection warrant. Failure to respond to repeated requests may constitute refusal for entry. For the purposes of Section 17.102.280, the premises shall include the common areas of the business or multifamily complex used to store solid waste, recycling or compostable materials.
- C.** Warrants. Whenever an inspection is necessary to determine compliance with Section 17.102.270 and the Director has been refused entry, the Director may apply to any Circuit Court judge to obtain an inspection warrant for the inspection of the premises of a business or multifamily complex. The inspection warrant is a court order authorizing entry onto the premises of a business or multifamily complex for the purposes of conducting an inspection to determine compliance with the requirements of Section 17.102.270.
- D.** Grounds for Issuance of Inspection Warrants; Affidavit.
 - 1.** Affidavit. An inspection warrant shall be issued only upon cause, supported by affidavit, particularly describing the applicant's status in applying for the inspection warrant, the applicable code sections or regulation requiring or authorizing the inspection, the property to be inspected and the purpose for which the inspection is to be made including the basis upon which cause exists to inspect. In addition, the affidavit shall contain either a statement that entry has been sought and refused.
 - 2.** Cause. Cause shall be deemed to exist if the affidavit demonstrates that:
 - a.** The inspection is authorized pursuant to reasonable legislative or administrative standards for conducting a routine, periodic or area inspection are satisfied with respect to the premises of a business or multifamily complex;
 - b.** There is a reasonable basis for believing that a condition of nonconformity with Section 17.102.270 exists with respect to the designated property; or,

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- c.** An inspection is reasonably believed to be necessary in order to discover or verify the condition of the property for conformity with any of the requirements of Section 17.102.270 or any regulations promulgated pursuant thereto.

E. Procedure for Issuance of Inspection Warrant.

- 1.** Examination. Before issuing an inspection warrant, the judge may examine under oath the applicant and any other witness and shall be satisfied of the existence of grounds for granting such application.
- 2.** Issuance. If the judge is satisfied that cause for the inspection exists and that the other requirements for granting the application are satisfied, the judge shall issue an inspection warrant, particularly describing the person or persons authorized to execute the inspection warrant, the property to be entered and the purpose of the inspection. The inspection warrant shall contain a direction that it be executed on any business day between the hours of 9:00 a.m. and 5:00 p.m., or where the judge has specially determined upon a showing that it cannot be effectively executed between those hours, that it be executed at any additional or other time of the day or night.
- 3.** Police Assistance. In issuing an inspection warrant, the judge may authorize any peace officer, as defined in Oregon Revised Statutes, to enter the described property to assist the person authorized to execute the inspection warrant in any way necessary to complete the inspection.

F. Execution of Inspection Warrants

- 1.** In executing an inspection warrant, the person authorized to execute the warrant shall, before entry into any occupied premises of a business or multifamily complex, make a reasonable effort to present the person's credentials, authority and purpose to an occupant or person in possession of the premises of the business or the multifamily complex designated in the inspection warrant and show the occupant or person in possession of the property the warrant or a copy thereof upon request. The person authorized to execute the warrant shall leave a copy of the inspection warrant at the premises.
- 2.** Return. The inspection warrant must be executed within 10 working days of its issue. The return of warrant must be submitted to the judge by whom it was issued within 10 working days from its date of execution. After the expiration of the time prescribed by this subsection, the inspection warrant shall be void unless it has been timely executed.

17.102.290 Storing Solid Waste, Recycling or Compostable Containers in the Right of Way Prohibited.

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(Amended by Ordinance Nos. 182671, 184288 and 189293, effective January 11, 2019.)

- A.** No person may store, or cause to be stored, containers of solid waste, recycling or compostables in public right-of-way without a permit from the City Engineer, the City Traffic Engineer, or the Bureau of Planning and Sustainability. For the purposes of this Section, storage means leaving containers in the right of way for more than 2 hours either before or after collection during normal business hours. If collection occurs after normal business hours, containers may be placed in the right of way at the close of business but must be removed from the right of way by the start of the following business day or within 24 hours of set out, whichever occurs first.
- B.** The Director may provide exemptions from Subsection A. for extreme economic hardship. Criteria for eligibility shall be based upon such factors as financial hardship for the property or business owner, conditions related to the property and resources necessary to provide adequate on-site, interior storage space for garbage and recycling containers. Exempted property shall be subject to the requirements of this Section following the termination of the hardship exemption. Exemptions shall be for no more than two years. Exemptions may be renewed upon reapplication by the property owner or business owner, after a re-evaluation of eligibility by the Director. Exemptions shall be personal to the property or business owner, and shall not be assignable, transferable or otherwise be conveyable. Exempted property shall be subject to the requirements of Subsection A. following expiration of any hardship exemption granted by the Director.
- C.** The Director shall develop administrative rules and procedures for determining extreme economic hardships under Subsection B., using the process under Section 17.102.030. The Director shall also adopt standards for space requirements for storage of containers of solid waste, recycling or compostables in new construction and when major alterations are made to existing buildings.
- D.** The Bureau of Planning and Sustainability may charge fees to business and property owners who apply for an extreme economic hardship exemption to recover costs of administering the exemption program. All fees are stated in the Fee Schedule adopted by City Council. Fees will be updated on an as needed basis. The approved Fee Schedule is available through the Bureau of Planning and Sustainability.
- E.** Denial of a request for exemption for extreme economic hardship may be appealed to the Code Hearings Officer in accordance with procedures set for in Chapter 22.10.

17.102.295 Separation of Recyclables, Compost and Solid Waste.

(Added by Ordinance No. 185452, effective July 21, 2012.) It shall be a violation of Chapter 17.102 for any customer to:

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- A. Place in a recycling cart, recycling container or recycling bin any plastic bag, diapers, pet waste, Styrofoam, wood, food, yard debris, or any Solid Waste; or,
- B. Place in a compost cart or compost container any plastic bag, diapers, pet waste, Styrofoam, or any Solid Waste.

17.102.300 Definitions for Ban of Polystyrene Foam Food Containers (PSF).

(Repealed by Ordinance No. 189271, effective January 4, 2019.)

17.102.310 Prohibition on Certain PSF Uses.

(Repealed by Ordinance No. 189271, effective January 4, 2019.)

17.102.320 Exemptions for PSF Use.

(Repealed by Ordinance No. 189271, effective January 4, 2019.)

17.102.330 Enforcement and Notice of Violations for PSF Ban.

(Repealed by Ordinance No. 189271, effective January 4, 2019.)

17.102.340 Fines for PSF Ban.

(Repealed by Ordinance No. 189271, effective January 4, 2019.)

**CHAPTER 17.103 – PROHIBITION AND
RESTRICTIONS ON SINGLE-USE PLASTIC**

(Chapter replaced by Ordinance No. 189271,
effective January 4, 2019.)

Sections:

- 17.103.100 Definitions for Prohibition on Polystyrene Foam Food Containers (PSF).
- 17.103.110 Prohibition on Certain PSF Uses.
- 17.103.120 Exemptions for PSF Use.
- 17.103.200 Purpose for Prohibition on Single-Use Plastic Checkout Bags.
- 17.103.210 Definitions for Prohibition on Single-Use Plastic Checkout Bags.
- 17.103.220 Checkout Bag Regulation.
- 17.103.300 Definitions for Restrictions on Single-Use Plastic Serviceware.
- 17.103.310 Restrictions on Single-Use Plastic Serviceware.
- 17.103.400 Authority of Director to Adopt Rules.
- 17.103.410 Enforcement and Penalties.
- 17.103.420 Severability.

17.103.100 Definitions for Prohibition on Polystyrene Foam Food Containers (PSF).

As used in Sections 17.103.100 through 17.103.120, the following terms have the following meanings:

- A.** “Food vendor” means any restaurant or retail food vendor.
- B.** “Food packager” means any person, located within the City of Portland, who places meat, eggs, bakery products, or other food in packaging materials for the purpose of retail sale of those products.
- C.** “Nonprofit food provider” means a recognized tax-exempt organization which provides food as a part of its services.
- D.** “Prepared food” means food or beverages which are served on the vendor's premises without preparation, or are prepared on the vendor's premises by cooking, chopping, slicing, mixing, brewing, freezing or squeezing. Prepared food does not include any raw uncooked meat or eggs. Prepared food may be eaten either on or off the premises.
- E.** “Person” means any natural person, firm, corporation, partnership, or other organization or group however organized.
- F.** “PSF” means any material composed of polystyrene and having a closed cell air capacity of 25 percent or greater, or a density of less than 0.787 grams per cubic centimeter based on an average polystyrene density of 1.05 grams per cubic centimeter, as determined by an analytical testing laboratory.

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- G.** “Restaurant” means any establishment, located within the City of Portland, selling prepared food to be eaten by customers. Restaurant includes a sidewalk food vendor.
- H.** “Retail Food Vendor” or “Vendor” means any store, shop, sales outlet or other establishment, including a grocery store or a delicatessen, located within the City of Portland, which provides prepared food.

17.103.110 Prohibition on Certain PSF Uses.

On and after January 1990, no restaurant or retail food vendor shall serve prepared food in any PSF products.

17.103.120 Exemptions for PSF Use.

The City Council, or its appointee, may exempt a food vendor, food packager or nonprofit food provider from the requirements of this Code for a one-year period, upon showing by the applicant that the conditions of this Code would cause undue hardship. The phrase undue hardship, shall be construed to include, but not be limited to:

- A.** Situations where there are no acceptable alternatives to PSF packaging for reasons which are unique to the vendor or provider;
- B.** Situations where compliance with the requirements of this Code would deprive a person of a legally protected right. If a request for exemption is based upon a claim that a legally protected right would be denied if compliance were required and such request for exemption is denied, review of the denial shall only be by writ of review as provided for in ORS 34.010 to 34.102 and not otherwise.

17.103.200 Purpose for Prohibition on Single-Use Plastic Checkout Bags.

The purpose for the prohibition on single-use plastic checkout bags 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.

17.103.210 Definitions for Prohibition on Single-Use Plastic Checkout Bags.

As used in Sections 17.103.200 through 17.103.220, the following terms have the following meanings:

- A.** “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.

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- B.** “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.
- C.** “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.
- D.** “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.
- E.** “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.
- F.** “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 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.

17.103.220 Checkout Bag Regulation.

- A.** As of March 1, 2013, the following shall provide only recycled paper bags or reusable bags as checkout bags to customers:
- 1.** Grocery stores; or
 - 2.** Retail establishments or food providers with greater than 10,000 square feet in specific store size.

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- 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.

17.103.300 Definitions for Restrictions on Single-Use Plastic Serviceware.

As used in Sections 17.103.300 through 17.103.320, the following terms have the following meanings:

- A.** “Condiment packaging” means plastic packaging used to deliver single-serving condiments to customers. This includes but is not limited to single-serving plastic packaging for ketchup, mustard, relish, mayonnaise, hot sauce, coffee creamer, salad dressing, jelly and jam and soy sauce.
- B.** “Customer” means every person who purchases food or beverage that is intended to be consumed using single-use plastics.
- C.** “Dine-in” means food and beverage that are intended to be consumed inside the place of business where the food and beverage were purchased, including without limitation cafeterias and food halls.
- D.** “Electronic orders” are food purchases conducted by smart phone, email or the website of a retail food and beverage establishment.
- E.** “Fast food” is food that can be prepared quickly and easily and is sold in retail food and beverage establishments as a quick meal or to be taken out of the retail food and beverage establishment for consumption. Fast food includes take-out and delivery orders and applies to orders transacted in person, by phone or electronically.
- F.** “Institutional cafeterias” are dine-in areas within government, education and medical institutions. Institutional cafeterias include ones managed by the institution or contracted food services.
- G.** “Plastic serviceware” means single-use plastic straws, stirrers, utensils and condiment packaging.
- H.** “Retail food and beverage establishments” means any retail business that provides single-use plastic serviceware as a component of the product delivery. This includes but is not limited to full service and limited service (or fast food) restaurants, food carts, bars, coffee and tea shops, grocery stores, convenience stores, hotels and motels, caterers and food service contractors.
- I.** “Utensils” are single-use plastic utensils intended for consumption of food which include but are not limited to spoons, forks, knives, sporks and chopsticks.

17.103.310 Restrictions on Single-Use Plastic Serviceware.

- A.** As of July 1, 2019, all retail food and beverage establishments and institutional cafeterias, where beverages may be consumed at dine-in areas, shall provide plastic serviceware only after customer request.
- B.** As of July 1, 2019, all retail food and beverage establishments and institutional cafeterias, where customers order fast food, take-out or delivery, shall provide plastic serviceware to customers only after asking if the customer needs plastic serviceware and the customer responds affirmatively.

17.103.400 Authority of Director to Adopt Rules.

- A.** The Director is hereby authorized to administer and enforce the provisions of this Chapter.
- B.** The Director is authorized to adopt rules, procedures, and forms to implement the provisions of this Chapter.

 - 1.** Any rule adopted pursuant to this Section shall require a public review process. Not less than 10 nor more than 30 days before such public review process, notice shall be given by publication in a newspaper of general circulation. Such notice shall include the place, time, and purpose of the public review process and the location at which copies of the full set of the proposed rules may be obtained.
 - 2.** During the public review, the Director shall hear testimony or receive written comment concerning the proposed rules. The Director shall review the recommendations, taking into consideration the comments received 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 with the City Auditor's Portland Policy Documents repository.
 - 3.** 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 of the following, giving the language of the rule change, describing the purpose of the rule, and inviting the submission of comments:

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- a.** Neighborhood Associations recognized by the City Office of Community & Civic Life;
- b.** District Coalitions recognized by the City Office of Community & Civic Life;
- c.** Business District Associations identified by the City Office of Community & Civic Life; and
- d.** Persons on the Bureau of Planning and Sustainability list of parties interested in administrative rules.

17.103.410 Enforcement and Penalties.

- A.** Violations of Chapter 17.103 shall be subject to:
 - 1.** Upon the first violation, the Director shall issue a written warning notice to the violator 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 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 violator specifying the violation and the applicable penalty as set forth in Subsection A.
- C.** Any violator 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.

17.103.420 Severability.

If any Section, Subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Chapter. The Council declares that it would have passed this Chapter, and each Section, Subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more Sections, Subsections, sentences, clauses or phrases may be declared invalid or unconstitutional and, if for any reason this Chapter should be declared invalid or

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unconstitutional, then the remaining Section, Subsection, sentence, clause or phrases shall be in full force and effect.

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written request for exemption, together with supporting evidence, when submitting a demolition permit application.

- F.** Determination of an Exemption. The Director will make the final determination of exemption based on evidence submitted by the applicant as well as an inspection to confirm conditions and unsuitability. The demolition permit will not be issued until the final determination is made on the exemption request. Should the applicant disagree with the final determination the determination may be appealed by the applicant under Subsection 17.106.060 B.

17.106.050 Enforcement and Penalties.

(Amended by Ordinance No. 189413, effective March 6, 2019.)

- A.** The Director may impose penalties on any responsible party who fails to comply with the requirements of this Chapter or who has misrepresented any material fact in a document or evidence required to be prepared or submitted by this Chapter.
- 1.** A first violation of this Chapter may be subject to a penalty of up to \$500.
 - 2.** A second violation of this Chapter by the same person may be subject to a penalty of up to \$1,000.
 - 3.** Third and subsequent violations of this Chapter by the same person may be subject to a penalty of up to \$1,500.
 - 4.** Penalties may be imposed on a per month, per day, per incident, or such other basis as the Director may determine as appropriate based upon criteria in Subsection E below.
 - 5.** Any person receiving a notice of violation shall, within 10 days of issuance of the notice, either pay to the City the stated amount of the penalty or request an appeal as provided in Section 17.106.060.
- B.** Heavy Machinery.
- 1.** Improper use of heavy machinery in violation of this Chapter may be subject to a penalty of up to \$10,000.
 - 2.** Any person receiving a notice of violation shall, within 10 days of issuance of the notice, either pay to the City the stated amount of the penalty or request an appeal as provided in Section 17.106.060.
- C.** Additional Enforcement Actions for Certified Deconstruction Contractors. The Director may impose the following additional remedies for Certified Deconstruction Contractors.

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1. A first violation of this Chapter may result in removal from the list of approved Certified Deconstruction Contractors for up to 6 months.
 2. A second violation of this Chapter may result in removal from the list of approved Certified Deconstruction Contractors for up to 12 months.
 3. Third and subsequent violations may result in revocation of certification whereby a contractor may not apply for recertification for a period of 18 months.
 4. Temporary removal from the list of approved Certified Deconstruction Contractors will expire immediately following the term of removal and will not require further action from the Director.
- D.** Stop Work Orders. When necessary to obtain compliance with this Chapter, the Director may issue a stop work order requiring that all work, except work directly related to elimination of the violation, be immediately and completely stopped. If the Director issues a stop work order, activity subject to the order may not be resumed until such time as the Director gives specific approval in writing. The stop work order will be in writing and posted at a conspicuous location at the site. When an emergency condition exists, a stop work order may be issued orally, followed by a written stop work order. It is unlawful for any person to remove, obscure, mutilate or otherwise damage a stop work order. Any person subject to a stop work order may seek administrative review of the order and may appeal the Director's administrative determination as provided in Subsection 17.106.060 B.
- E.** The Director will consider the following criteria in determining the amount of penalties or remedies to impose under this Section:
1. The nature and extent of the person's involvement in the violation;
 2. Whether the person was seeking any benefits, economic or otherwise, through the violation;
 4. Whether other similar prior violations have occurred with that person;
 5. Whether the violation was isolated and temporary, or repeated and continuous;
 6. The length of time from any prior violations;
 7. The magnitude and seriousness of the violation;
 8. The costs of investigation and remedying the violation;
 9. Other relevant, applicable evidence bearing on the nature and seriousness of the violation.

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- F.** If the Director assesses an enforcement penalty as described in this Section, the Director will file a statement with the Revenue Division that identifies the property, the amount of the penalty, and the date from which the charges are to begin. The Revenue Division will then:
1. Notify the property owner of the assessment of enforcement penalties;
 2. Record a property lien in the Docket of City Liens;
 3. Bill the property owner monthly for the full amount of enforcement penalties owing, plus additional charges to cover administrative costs of the Revenue Division; and
 4. Maintain lien records until the lien and all associated interest, penalties, and costs are paid in full; and the Director certifies that all violations listed in the original or any subsequent notice of violation have been corrected.
- G.** Inspections. The Director may conduct inspections whenever necessary to enforce any provisions of this Chapter, to determine compliance with this Chapter or whenever the Director has reasonable cause to believe there exists any violation of this Chapter. If the responsible party is at the site when the inspection is occurring, the Director will first present proper credentials to the responsible party and request entry.

17.106.060 Right of Appeal.

- A.** Whenever the responsible party has been given a written notice or order pursuant to this Chapter or has been directed to make any correction, pay a penalty or to perform any act and the responsible party believes the finding of the notice or order was in error, the responsible party may have the notice or order reviewed by the Director. If a review is sought, the responsible party will submit a written request to the Director within 10 days of the date of the notice or order. Such review will be conducted by the Director. The responsible party requesting such review will be given the opportunity to present evidence to the Director. Following a review, the Director will issue a written determination. Nothing in this Section shall limit the authority of the Director to initiate a code enforcement proceeding under Title 22.
- B.** A responsible party may appeal the Director's written determination to the Code Hearings Officer in accordance with Portland City Code Chapter 22.10. The filing of an appeal request will remain the effective date of a penalty until the appeal is determined by the Code Hearings Officer. If, pursuant to said appeal hearing, payment of a penalty is ordered, such payment must be received by the Director or postmarked within 15 calendar days after the order becomes final.

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1. An interim rule may be adopted by the Director without prior notice upon a finding that a failure to act promptly will result in a serious threat of injury or hazard to the public health or public or private property. The rule will include specific reasons for the finding.
 2. Interim rules will be effective for a period of not longer than 180 days.
 3. Not more than 30 days after adoption of an interim rule, public notice of interim rules must be given by publication in a newspaper of general circulation. Such notice must also identify the location at which copies of the full set of the interim rules may be obtained.
- D.** All final and interim rules must be filed in the office of the Director. All final and interim rules will be available to the public at the Office of Community & Civic Life.
- E.** For the purposes of this Section, “Director” shall mean the Director of the Office of Community & Civic Life, or any duly authorized representative of the Director.

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**CHAPTER 18.18 - ENFORCEMENT AND
PENALTIES**

Sections:

- 18.18.010 Authority for Enforcement.
- 18.18.020 Violations.
- 18.18.030 Civil Penalties and Fees.
- 18.18.040 Citations.
- 18.18.050 Review by the Director.
- 18.18.060 Institution of Legal Proceedings.

18.18.010 Authority for Enforcement.

(Amended by Ordinance Nos. 159276, 175772, 176955, 186216 and 189078, effective July 18, 2018.) This Title shall be enforced by the Office of Community & Civic Life and by the Bureau of Police. Duly authorized agents of either of these bureaus shall have citation authority for purposes of enforcing this Title.

18.18.020 Violations.

(Replaced by Ordinance No. 175772, effective August 1, 2001.)

- A.** The following constitute violations of this Title:
 - 1.** Any failure, refusal or neglect to comply with any provision of this Title;
 - 2.** Allowing or causing a condition that threatens to injure the public health or safety, or threatens to damage public or private property; or
 - 3.** Any failure, refusal or neglect to correct or cease any noise that does not comply with the provisions of this Title, after being required to do so by the Director or any Police Officer.
- B.** Each specific incident and each day of non-compliance will be considered a separate violation of this Title.

18.18.030 Civil Penalties and Fees.

(Replaced by Ordinance No. 175772; amended by Ordinance No. 189413, effective March 6, 2019.) A violation of this Title may result in assessment of civil penalties or enforcement fees, as provided below:

- A.** Civil penalties.
 - 1.** For each separate violation, a civil penalty of up to \$5,000 may be assessed.
 - 2.** In determining the amount of any civil penalty to be assessed, the Director will consider the following:

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- a.** The nature and extent of the responsible party's involvement in the violation;
- b.** The benefits, economic, financial or otherwise, accruing or likely to accrue as a result of the violation;
- c.** Whether the violation was isolated and temporary, or repeated and continuing;
- d.** The magnitude and seriousness of the violation;
- e.** The City's cost of investigation and remedying the violation;
- f.** Any other applicable facts bearing on the nature and seriousness of the violation.

B. Administrative enforcement fees.

- 1.** The Director may charge a penalty in the form of a monthly enforcement fee for any violation that meets the following conditions:
 - a.** A citation, as described in Section 18.18.040, has been issued;
 - b.** A response period of at least 30 days has passed since the citation or stop work order became final; and
 - c.** The violation, as described in the initial citation of violation or any subsequent citation, has not been corrected, inspected and approved.
- 2.** If the responsible party does not have all violations corrected, inspected and approved within six months from the date of the initial citation, then monthly enforcement fees will double.
- 3.** Once the monthly enforcement fees begin, they will continue until all violations identified in the initial citation, or any subsequent citations, have been corrected, inspected and approved.
- 4.** The responsible party must notify the Director when the responsible party believes that all violations listed in the initial citation or any subsequent citations, have been corrected. Upon confirmed receipt of such notice, the Director will promptly schedule an inspection of the violation and will notify the responsible party if any violations remain uncorrected.
- 5.** When a violation meets the conditions for charging an enforcement fee as described in this Section, the Director will file a statement with the Revenue Division that identifies the property, the amount of the monthly fee, and the date from which the charges are to begin. The Revenue Division will then:

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- a.** Notify the responsible party of enforcement fees;
- b.** Record a property lien in the Docket of City Liens;
- c.** Bill the responsible party monthly for the full amount of the enforcement fee owing, plus additional charges to cover the administrative costs of the Revenue Division; and
- d.** Maintain lien records until:
 - (1)** The lien and all associated interest, penalties and costs are paid in full; and
 - (2)** The Director certifies that all violations listed in the initial and any subsequent citations or stop work orders have been corrected, inspected and approved.

18.18.040 Citations.

(Added by Ordinance Nos. 175772 and 184101, effective October 8, 2010.)

- A.** If the Director has reasonable belief that a violation has occurred, the Director may issue a citation. The citation may be personally delivered to the responsible party, or may be served by Registered or Certified Mail to the responsible party. For purposes of this Subsection, service by registered or certified mail is complete and effective when a correctly addressed notice is deposited with the postal service after being either certified or registered by the postal service. The citation will include:
 - 1.** A reference to the particular section or sections of this Title that have been or are being violated;
 - 2.** A short and plain statement of the matters asserted or charged;
 - 3.** A statement of the amount of the applicable penalties; and
 - 4.** A reference to the process by which the responsible party may request review by the Director.
- B.** The responsible party cited as violating this Title must, within 15 days of receiving the citation, pay to the City the stated penalty or request review by the Director. If, after review by the Director, the Director upholds the civil penalty, payment of the penalty must be received by the City or postmarked no later than 15 days after the review determination becomes final.

18.18.050 Review by the Director.

(Added by Ordinance No. 175772, effective August 1, 2001.)

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- A.** If a responsible party has received a written citation as described in this Chapter and the responsible party believes the citation has been issued in error, the responsible party may request that the citation be reviewed by the Director. The responsible party must submit a written request to the Director within 15 days of the date of the citation. The written request shall be submitted together with all evidence that supports the responsible party's request. The Director's determination will be served on the responsible party by regular mail.
- B.** A responsible party may appeal the Director's written determination to the Code Hearings Officer in accordance with Chapter 22.10 of Portland City Code.
- C.** Nothing in this Chapter limits the authority of the Director to initiate a code enforcement proceeding under Title 22, Hearings Officer for any violations of this Title.

18.18.060 Institution of Legal Proceedings.

(Added by Ordinance No. 175772, effective August 1, 2001.) The City Attorney, acting in the name of the City, may maintain an action or proceeding in a court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any provision of this Title as additional remedy.

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CHAPTER 18.20 - SEVERABILITY
PROVISION

Section:

18.20.010 Severability Provision.

18.20.010 Severability Provision.

If any provision of this Title, or its application to any person, or circumstances, is held to be invalid, the remainder of this Ordinance, or the application of the provision to other persons or circumstances, shall not be affected.

CHAPTER 22.06 - ASSESSMENTS

Section:

22.06.010 Assessments.

22.06.010 Assessments.

(Amended by Ordinance Nos. 171455, 173369 and 189413, effective March 6, 2019.)

- A.** Costs incurred by the City of Portland for any actions authorized by the Code Hearings Officer pursuant to Subsection 22.05.010 B and C and any civil penalty imposed as a result of an order of the Code Hearings Officer shall be an assessment lien upon the property subject to the order.
- B.** If a residential structure is ordered vacated pursuant to Sections 22.05.010 C.2. or 29.60.070 of this Code and the City of Portland relocates the tenants of such property, then the cost incurred by the City for relocating the tenants as provided by ORS 90.450 shall be an assessment lien upon the property vacated and from which the tenants are relocated.
- C.** The bureau incurring such costs shall furnish a statement of such costs on the owner, in person or by United States Mail, postage prepaid and addressed to the owner(s) at the owner(s) residence or place of business, and shall file a copy of such statement for the Code Hearings Officer with proof of service attached. If no objection to such statement is filed with the Office of the Code Hearings Officer within 15 days from the date of service or mailing, the Code Hearings Officer shall certify such statement and forward the same to the Revenue Division who shall forthwith enter the same in the City lien docket.

 - 1.** If an objection to the statement is received within the 15-day period, the Code Hearings Officer shall schedule and hold an appeal hearing pursuant to Chapter 22.10. After the hearing, the Code Hearing Officer shall certify such statement, or so much of it as the Code Hearing Officer determines is correct and proper, and forward it to the Revenue Division who shall enter it into the City lien docket.
 - 2.** The Code Hearings Officer shall certify to the Revenue Division the amount of any civil penalty imposed under any order of the Code Hearings Officer, and the Revenue Division shall enter it into the City lien docket. The lien imposed for the civil penalty shall be in addition to any lien imposed for costs actually incurred by the City.
 - 3.** The bureau incurring costs or providing services may file separate statements for the costs and services furnished as each is incurred or provided.

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- 4.** Liens imposed pursuant to this Title shall be collected in all respects as provided for in Section 5.30.025 Collection Process.
- D.** In addition to the lien imposed under this Section, any person found to be in violation of the Code of the City of Portland shall be personally liable for costs incurred by the City pursuant to Section 22.05.010 B and C and for any civil penalty imposed by order of the Code Hearings Officer. In cases of person found to be in violation of the Code of the City of Portland as owners of property, the persons shall be personally liable hereunder only if they have control of the property, the legal authority to correct the violation, and knowingly have committed the violation.

TITLE 23 - CIVIL RIGHTS

(Title added by Ordinance No. 164709, effective October 3, 1991.)

TITLE 23 CIVIL RIGHTS

CHAPTER 23.01 - CIVIL RIGHTS

Sections:

23.01.010	Policy.
23.01.020	Intent.
23.01.030	Definitions.
23.01.040	Exceptions.
23.01.050	Discrimination in Employment Prohibited.
23.01.060	Discrimination in Selling, Renting, or Leasing Real Property Prohibited.
23.01.070	Discrimination in Places of Public Accommodation Prohibited.
23.01.075	Closed Caption Activation Requirement.
23.01.080	Enforcement and Administration.
23.01.090	Authority of City Attorney to Adopt Rules.
23.01.100	Construction.
23.01.110	Severability of Provisions.

23.01.010 Policy.

(Amended by Ordinance Nos. 175158 and 189396, effective March 29, 2019.) It is the policy of the City of Portland to eliminate discrimination based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity or source of income. Such discrimination poses a threat to the health, safety and general welfare of Portland community members and menaces the institutions and foundation of our community.

23.01.020 Intent.

(Amended by Ordinance Nos. 175158 and 189396, effective March 29, 2019.) The City Council finds that discrimination on the basis of sexual orientation, gender identity, source of income, and non-religion exists in the City of Portland and that state law does not clearly prohibit such discrimination. It is the intent of the Council, in the exercise of its powers for the protection of the public health, safety, and general welfare and for the maintenance of peace and good government, that every individual shall have an equal opportunity to participate fully in the life of the City and that discriminatory barriers to equal participation in employment, housing, and public accommodations be removed.

23.01.030 Definitions.

(Amended by Ordinance Nos. 175158 and 189396, effective March 29, 2019.)

- A. “Sexual Orientation”** means the actual or supposed male or female homosexuality, heterosexuality or bisexuality.
- B. “Source of Income”** is the means by which a person supports themselves and their dependents, including but not limited to money and property from any occupation, profession or activity, from any contract, settlement or agreement, from federal or state payments, court-ordered payments, gifts, bequests, annuities, life insurance policies, and compensation for illness or injury, but excluding any money or

property derived in a manner made illegal or criminal by any law, statute or ordinance.

- C.** “**Gender Identity**” means a person’s actual or perceived sex, including a person’s identity, appearance, expression or behavior, whether or not that identity, appearance, expression or behavior is different from that traditionally associated with the person’s sex at birth.
- D.** In addition to any other definition provided by law, the term “religion” used herein expressly includes non-religion, such as atheism, agnosticism, and non-belief in God or gods as has been recognized by the courts.
- E.** All other terms used in this Ordinance are to be defined as in Oregon Revised Statutes Chapter 659 and 659A.

23.01.040 Exceptions.

(Amended by Ordinance Nos. 175158 and 189396, effective March 29, 2019.)

- A.** The prohibitions in this Chapter against discriminating on the basis of sexual orientation and gender identity do not apply:
 - 1.** To the leasing or renting of a room or rooms within an individual living unit which is occupied by the lessor as their residence;
 - 2.** To dwellings with not more than two individual living units where one of the units is owner occupied;
 - 3.** To space within a church, temple, synagogue, religious school, or other facility used primarily for religious purposes.
- B.** The prohibitions in this Chapter against discriminating on the basis of source of income do not prohibit:
 - 1.** Inquiry into and verification of a source or amount of income;
 - 2.** Inquiry into, evaluation of, and decisions based on the amount, stability, security or creditworthiness of any source of income;
 - 3.** Screening prospective purchasers and tenants on bases not specifically prohibited by this chapter or state or federal law;
 - 4.** Refusal to contract with a governmental agency under 42 U.S.C. §1437f(a) “Section 8.”
- C.** The prohibitions in this Chapter against discriminating on the basis of gender identity do not prohibit:

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1. Health or athletic clubs or other entities that operate gender-specific facilities involving public nudity such as showers and locker rooms, from requiring an individual to document their gender or transitional status. Such documentation can include but is not limited to a court order, letter from a physician, birth certificate, passport, or driver's license.
 2. Otherwise valid employer dress codes or policies, so long as the employer provides, on a case-by-case basis, for reasonable accommodation based on the health and safety needs of persons protected on the basis of gender identity.
 3. The above exceptions do not excuse a failure to provide reasonable and appropriate accommodations permitting all persons access to restrooms consistent with their expressed gender.
- D. The exceptions in ORS 659A.006(4) and ORS 659A.030(1) apply to non-religion as well as religion.

23.01.050 Discrimination in Employment Prohibited.

(Amended by Ordinance Nos. 175158 and 189396, effective March 29, 2019.)

- A. It shall be unlawful to discriminate in employment on the basis of an individual's race, religion, color, sex, national origin, marital status, age if the individual is 18 years of age or older, or disability, by committing any of the acts made unlawful under the provisions of ORS 659A.030 and 659A.142.
- B. In addition, it shall be unlawful to discriminate in employment on the basis of an individual's sexual orientation, gender identity, source of income or familial status, by committing against any such individual any of the acts already made unlawful under ORS 659A.030 when committed against the categories of persons listed therein.

23.01.060 Discrimination in Selling, Renting, or Leasing Real Property Prohibited.

(Amended by Ordinance Nos. 175158 and 189396, effective March 29, 2019.)

- A. It shall be unlawful to discriminate in selling, renting, or leasing real property on the basis of an individual's race, religion, color, sex, national origin, marital status, familial status, or disability, by committing any of the acts made unlawful under the provisions of ORS 659A.421 and 659A.145.
- B. In addition, it shall be unlawful to discriminate in selling, renting, or leasing real property on the basis of an individual's sexual orientation, gender identity, source of income, or age if the individual is 18 years of age or older except as is excluded in ORS 659A.421 subsection 6, 7(a)-(c), by committing against any such individual any of the acts already made unlawful under ORS 659A.421 when committed against the categories of persons listed therein.

23.01.070 Discrimination in Places of Public Accommodation Prohibited

(Amended by Ordinance Nos. 175158 and 189396, effective March 29, 2019.)

- A.** It shall be unlawful to discriminate in public accommodations on the basis of an individual's race, religion, color, sex, national origin, marital status, age if the individual is 18 years of age or older, or disability, by committing any of the acts made unlawful under the provisions of ORS 659A.409, 659A.142, or ORS 659A.403 to 659A.406.
- B.** In addition, it shall be unlawful in public accommodations to discriminate on the basis of an individual's sexual orientation, gender identity, source of income or familial status, by committing against any such individual any of the acts already made unlawful under ORS 659A.409 or ORS 659A.403 to 659A.406 when committed against the categories of persons listed therein.

23.01.075 Closed Caption Activation Requirement.

(Added by Ordinance No. 187454, effective December 18, 2015.)

- A. Definitions.** As used in this Section 23.01.075, the following words and phrases shall be construed as defined in this Subsection:

 - 1. “Closed Captioning”** means a transcript or dialog of the audio portion of a television program that is displayed on the bottom portion of a television receiver screen when the user activates the feature.
 - 2. “Closed Captioned Television Receiver”** means a receiver of television programming that has the ability to display closed captioning, including but not limited to a television, digital set top box, and other technology capable of displaying closed captioning for television programming.
 - 3. “Public Area”** means any part of a public facility that is open to the general public.
 - 4. “Public Facility”** shall have the same meaning as place of public accommodation, as defined in ORS 659A.400 (2013).
 - 5. “Regular Hours”** means the hours of any day in which a Public Facility is generally open to members of the general public.
- B.** Any person owning or managing a public facility must activate closed captioning on any closed captioned television receiver in use in any public area during regular hours.
- C.** A person owning or managing a public facility is not required to make a closed captioned television receiver available for viewing in a public area if:

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1. No receiver of television programming of any kind is available in a public area of the public facility; or,
2. The only receiver of television programming available in a public area of the public facility is incapable of displaying close captioning.

D. Civil Penalties. A violation of this Section may result in the assessment of civil penalties, as provided below:

1. If the City Attorney reasonably believes a violation has occurred, the City Attorney may issue a written determination addressing the following:
 - a. A reference to this Section, describing the violations that have occurred or are occurring;
 - b. The date and the time of the occurrence, and the street address or location of the public facility;
 - c. A concise statement of the matters asserted or charged; and,
 - d. A request that the addressee provide a written response to the City Attorney within 10 business days either disputing the occurrence of the violation or describing how the violation has been abated and how such violations will be prevented from reoccurring.

The determination may be personally delivered to the person, or may be served by Registered or Certified Mail. For purposes of this Subsection, service by registered or certified mail is complete and effective when a correctly addressed notice is deposited with the postal service after being either certified or registered by the postal service.

2. If the person fails to provide a written response, or the written response fails to reasonably satisfy the City Attorney regarding the identified violations, the City Attorney may file a complaint with the Code Hearings Officer, as provided under Section 22.03.020, for violations of this Section 23.01.075, asking the Code Hearings Officer to impose civil penalties not to exceed \$500 for each day such violation is committed or permitted to continue as provided in this Section. Having made a determination to ask that the Code Hearings Officer to impose civil penalties as provided by this Section, the City Attorney shall give the person written notice of the determination by causing notice to be served upon the person at their business or residence address. Service of the notice shall be accomplished by mailing the notice by regular mail, or at the option of the City Attorney, by personal service in the same manner as a summons served in an action at law. Mailing of the notice by regular mail shall be prima facie evidence of receipt of the notice. Service of notice upon the person apparently in charge of a business during

its hours of operation shall constitute prima facie evidence of notice to the business owner.

3. In determining the amount of the civil penalty to be imposed for violations of the provisions of this Chapter, the Code Hearings Officer shall consider:
 - a. The extent and nature of the person's involvement in the violation;
 - b. The harms, whether economic, financial or otherwise, which occurred or were suffered as a result of the violation;
 - c. Whether the violations were isolated or temporary, or repeated or continuous;
 - d. The magnitude and seriousness of the violation;
 - e. The City's costs of investigating the violations and correcting or attempting to correct the violation; and,
 - f. Any other applicable facts bearing on the nature and seriousness of the violation.

23.01.080 Enforcement and Administration.

(Amended by Ordinance Nos. 165319 and 189396, effective March 29, 2019.)

- A. Enforcement of all or any part of this Chapter shall be governed by the procedures established in ORS Chapter 659A. Rules adopted by the City Attorney pursuant to section 23.01.090 of this Chapter may also be used to implement enforcement and administration of this Chapter.
- B. Any person claiming to be aggrieved by an unlawful employment practice under this Chapter may file a complaint with the Commissioner of the Bureau of Labor and Industries under procedures established in ORS 659A.820, and any person claiming to be aggrieved by an unlawful practice under this Chapter relating to selling, renting or leasing real estate or discrimination in public accommodations, may file a complaint with the Commissioner under procedures established in ORS 659A.820.
- C. The Commissioner may then proceed and shall have the same enforcement powers under this Chapter, and if the complaint is found to be justified the complainant shall be entitled to the same remedies, under ORS 659A.840 to 659A.860 as in the case of any other complaint filed under ORS 659A.820.
- D. Any order issued by the Commissioner of the Bureau of Labor and Industries under this Chapter shall be viewed as one issued by a hearings officer employed by the City within the meaning of ORS 3.136(3) and shall be fully enforceable by the City.

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- E.** Any person claiming to be aggrieved by an unlawful discriminatory act under the provisions of this code shall have a cause of action in any court of competent jurisdiction for damages and such other remedies as may be appropriate. Election of remedies and other procedural issues relating to the interplay between administrative proceedings and private rights of action shall be handled as provided for in ORS 659A.870 and 659A.885. The court may grant such relief as it deems appropriate, including, but not limited to, such relief as is provided in ORS 659A.885.

23.01.090 Authority of City Attorney to Adopt Rules.

(Amended by Ordinance No. 189396, effective March 29, 2019.)

- A.** The City Attorney is hereby authorized to adopt rules, procedures and forms to assist in the implementation of the provisions of this Chapter.
- B.** Any rule adopted pursuant to this section shall require a public review process. Not less than ten nor more than thirty days before such public review process, notice shall be given by publication in a newspaper of general circulation. Such notice shall include the place, time, and purpose of the public review process and the location at which copies of the full text of the proposed rules may be obtained.
- C.** During the public review, a designee of the City Attorney shall hear testimony or receive written comment concerning the proposed rules. The City Attorney shall review the recommendation of their designee, taking into consideration the comments received during the public review process, and shall either adopt the proposal, modify it or reject it. If a substantial modification is made, additional public review shall be conducted, but no additional notice shall be required if such additional review is announced at the hearing at which the original comments are received.
- D.** Unless otherwise stated, all rules shall be effective upon adoption by the City Attorney and shall be filed in the office of the City Auditor.
- E.** Notwithstanding paragraphs B and C of this section, an interim rule may be adopted 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. The finding shall state the specific reasons for such prejudice. Any rule adopted pursuant to this paragraph shall be effective for a period of not longer than 180 days.

23.01.100 Construction.

This Chapter shall be broadly construed, consistent with its remedial purpose.

23.01.110 Severability of Provisions.

If any part or provision of this Chapter, or application thereof to any person or circumstance, is held invalid, the remainder of this Chapter and the application of the

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provision or part thereof, to other persons not similarly situated or to other circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Chapter are severable.

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**CHAPTER 23.10 - REMOVING BARRIERS
TO EMPLOYMENT**

(Chapter added by Ordinance No. 187459, effective
December 25, 2015.)

Sections:

- 23.10.010 Purpose.
- 23.10.020 Definitions.
- 23.10.030 Use of Criminal History in Employment Decisions.
- 23.10.040 Exceptions.
- 23.10.050 Administrative Rules Implementing this Chapter.
- 23.10.060 Enforcement.
- 23.10.070 Confidentiality and Nondisclosure.
- 23.10.080 Public Education and Outreach.
- 23.10.090 Severability.
- 23.10.100 Application.

23.10.010 Purpose.

The purpose of this Chapter is to remove barriers to employment so that people with criminal histories can provide for themselves and their families; to reduce disparate impacts on people of color that result from the use of criminal history information in hiring and employment decisions; and to reduce recidivism through the reintroduction of formerly incarcerated persons into community life.

23.10.020 Definitions.

(Amended by Ordinance No. 187678, effective May 13, 2016.) For purposes of this Chapter, the following definitions apply:

- A. “City” means the City of Portland as defined in Title 1 of the Code of the City of Portland.
- B. “Employer” means any person or entity who directly or through an agent employs another for a position being performed a majority of the time within the City of Portland, but does not include:
 - 1. The United States Government;
 - 2. The State of Oregon and any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary;
 - 3. Any political subdivision of the State of Oregon or any county, city, district, authority, public corporation or public entity other than the City of Portland;
or

- 4. Employers with fewer than six employees.
- C. “Employ” means to engage or use the personal service of another person on a full-time, part-time, temporary or seasonal basis, where the Employer reserves the right to control the means by which such service is performed.
- D. “Conditional Offer of Employment” means any offer for a position that is conditioned solely on:
 - 1. The results of an Employer’s inquiry into or gathering of information about a person’s arrest or conviction history; and/or
 - 2. Some other contingency expressly communicated to the applicant at the time of the offer.

23.10.030 Use of Criminal History in Employment Decisions.

- A. It is an unlawful practice for an Employer to exclude an applicant from consideration solely because of the applicant’s criminal history.
- B. An Employer may consider an applicant’s criminal history in the hiring process only after making a Conditional Offer of Employment. An Employer violates this Chapter if an Employer accesses an applicant’s criminal history prior to making a Conditional Offer of Employment.
- C. It is not an unlawful practice for an Employer to rescind a Conditional Offer of Employment based upon an applicant’s criminal history if an Employer determines in good faith that a specific offense or conduct is job related for the position in question and consistent with business necessity.
- D. In making the determination of whether an applicant’s criminal history is job related for the position in question and consistent with business necessity, an Employer must conduct an individualized assessment of:
 - 1. The nature and gravity of the criminal offense;
 - 2. The time that has elapsed since the criminal offense took place; and
 - 3. The nature of the Employment held or sought.
- E. Nothing in this Section prevents an employer from considering an applicant’s criminal history after making a conditional offer of employment, except that an employer shall not consider:
 - 1. An arrest not leading to a conviction, except where a crime is unresolved or charges are pending against an applicant;

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2. Convictions that have been judicially voided or expunged; or
 3. Charges that have been resolved through the completion of a diversion or deferral of judgment program for offenses not involving physical harm or attempted physical harm to a person.
- F.** If, after consideration of an applicant's criminal history an employer rescinds the conditional offer of employment, the employer shall notify the applicant in writing of its decision and shall identify the relevant criminal convictions on which the decision is based.

23.10.040 Exceptions.

- A.** The prohibitions in this Chapter do not apply:
1. If federal, state or local law, including corresponding rules and regulations, requires the consideration of an applicant's criminal history;
 2. To an employer that is a law enforcement agency;
 3. To an employer in the criminal justice system; or
 4. To an employer seeking a nonemployee volunteer.
- B.** For the following positions, an Employer may consider an applicant's criminal history at any point in the hiring process, and may use the City Criminal History Matrix provided by administrative rule to screen applicants, but must nonetheless comply with all other requirements of this Chapter. An individualized assessment shall be required for any criminal convictions not contained on the City Criminal History Matrix.
1. Positions involving direct access to or the provision of services to children, the elderly, persons with disabilities, persons with a mental illness, or individuals with alcohol or drug dependence or substance abuse disorders;
 2. Positions which have been determined by administrative rule to present heightened public safety concerns or a business necessity;
 3. Positions designated by the Employer as part of a federal, state or local government program designed to encourage the employment of those with criminal histories.

23.10.050 Administrative Rules Implementing this Chapter.

- A.** The City Attorney shall draft rules, procedures and forms to assist in the implementation of the provisions of this Chapter and bring these rules, procures and forms before Council for authorization.
- B.** All rules adopted to implement this Chapter shall be subject to a public review process.
- C.** Not less than 10 or more than 30 days before such public review process, a notice shall be published in a newspaper of general circulation and sent to stakeholders who have requested notice. The notice shall include the place and time, when the rules will be considered and the location at which copies of the full text of the proposed rules may be obtained.
- D.** The duration of public review process shall be a minimum of 21 calendar days from the date of notification for written comment.
- E.** During the public review process a designee of the City shall hear testimony or receive written comment concerning the proposed rules.
- F.** The City shall review and consider the comments received during the public review process, and shall either adopt, modify, or reject the proposed rules.
- G.** All initial rules shall be effective July 1, 2016, and all subsequent rules shall be effective 30 days after adoption by the City Attorney and shall be filed in the Office of the City Auditor.
- H.** Notice of changes in Administrative Rules shall be published in a newspaper of general circulation, sent to stakeholders who have requested notice and posted on the BOLI and City web sites.

23.10.060 Enforcement.

- A.** The City may contract with BOLI to enforce this Chapter.
- B.** Pursuant to agreement between BOLI and the City, enforcement may be governed by the procedures established pursuant to ORS 659A.820 through 659A.865, or such other procedures as may be agreed upon by BOLI and the City. Rules adopted by the City pursuant to Section 23.10.050 of this Chapter may also be used to implement enforcement and administration of this Chapter.
- C.** Pursuant to agreement between BOLI and the City, any person claiming to be aggrieved by an unlawful employment practice under this Chapter, the State Attorney General or the City Attorney may file a complaint with BOLI under procedures established under ORS 659A.820 through 659A.865, or such other

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procedures as BOLI or the City may establish for taking complaints which shall include options for resolution of complaints through such means as mediation.

- D.** Pursuant to agreement, BOLI shall have the same enforcement powers with respect to the rights established under this Chapter as are established under ORS 659A.820 through 659A.865, and if the complaint is found to be justified, the complainant may be entitled to any remedies provided under ORS 659A.820 through 659A.865, and their implementing regulations and any additional remedies, provided that those remedies are specified in the agreement between the City and the BOLI Commissioner.

23.10.070 Confidentiality and Nondisclosure.

Any criminal history information obtained by an Employer shall remain confidential except where disclosure is required by law.

23.10.080 Public Education and Outreach.

The City shall develop and implement an outreach program to inform Employers and members of the public about the terms of this Chapter.

23.10.090 Severability.

If a provision of this Chapter or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect the other provisions or application of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared severable.

23.10.100 Application.

This Chapter is effective immediately for drafting of the administrative rules under Section 23.10.050, contracting with BOLI under Subsection 23.10.060 A. and public education and outreach under Section 23.10.080. Enforcement of this Chapter under Subsection 23.10.060 B., C. & D. shall commence July 1, 2016.

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Zones within the Flood fringe areas, and other identified Flood Zones. Identified Flood Zones are depicted on the National Flood Insurance Rate Map (FIRM). Both identified and unidentified Flood Hazard areas along with flood protection elevations are described in the following. Figure 1 illustrates the basic flood hazard areas and elevations.

(See Figure 1 at the end of Title 24)

- A.** Columbia River FIRM Flood Zone AE. These flood zones represent areas for which base flood elevations are determined. The flood protection elevation shall be the base flood elevation plus one foot of freeboard. The nominal one-foot increase for freeboard reflects the relatively wide flood plain of the Columbia River. In the vicinity of the confluence of the Columbia and Willamette Rivers, the Columbia River floodplain shall be considered to be east of the westerly floodway fringe boundary of the Columbia Slough.
- B.** Multnomah Drainage District No. 1 and Peninsula Drainage District No. 2 FIRM Zone AH. This flood zone represents isolated areas of shallow flooding (1 to 3 feet in depth, resulting from upslope runoff) for which base flood elevations are determined. In the case of unidentified watercourses occurring within the boundaries of the Drainage Districts, the base flood elevation shall be estimated by procedures described in paragraph G. below. The flood protection elevation shall be the base flood elevations plus one foot of freeboard.
- C.** Columbia River FIRM Flood Zone A. These flood zones represent areas for which base flood elevations are not determined. The flood protection elevation shall be either the grade at the adjacent flood fringe boundary or the crown of the nearest street, whichever is higher, plus one foot of freeboard.
- D.** Willamette River FIRM Flood Zone AE. These flood zones represent areas for which the base flood elevations are determined. The flood protection elevation shall be the base flood elevation plus two feet of freeboard.
- E.** Johnson Creek, Fanno Creek and Crystal Springs Creek FIRM Flood Zone AE. This flood zone represents area for which the base flood elevations are determined. The flood protection elevation shall be the base flood elevation plus two feet of freeboard.
- F.** Johnson Creek FIRM Flood Zone AH. This flood zone represents areas of shallow flooding depth (1 to 3 feet) for which base flood elevations are determined. The flood protection elevation shall be the base flood elevation plus two feet of freeboard.
- G.** Johnson Creek FIRM Flood Zone AO. This flood zone represents areas of shallow flooding depth (1 to 3 feet) for which the depths of flooding are determined. The flood protection elevation shall be the depth of flooding shown on the FIRM map plus two feet of freeboard above the highest adjacent grade.

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- H.** Johnson Creek, Fanno Creek, Tryon Creek, and Crystal Springs Creek FIRM Flood Zone A. These flood zones represent areas for which base flood elevations are not determined. The flood protection elevation shall be the base flood elevation plus two feet of freeboard. Base flood elevations shall be calculated in accordance with paragraph I. below.
- I.** Unidentified Watercourse Flood Zones. These watercourses, generally draining one acre or more, are not identified in a Federal Insurance Study and may not be identified on the Water Features map. The flood protection elevation shall be the base flood elevation plus two feet of freeboard. The width of the floodway shall not be less than 15 feet. The floodway boundary, flood fringe boundary, and flood protection elevation data shall be based upon watercourse geometry, slope, channel roughness, effect of obstructions, backwater and other factors which affect flood flow. The requisite flood hazard data, maps, and sections shall be obtained and developed by procedures approved by the Sewage System Administrator. When appropriate and necessary data are available, the flood protection elevation and floodway and flooding fringe boundary data may be provided by the Sewage System Administrator. If pertinent hydrologic data and topographic data are not available, inaccurate, or outdated, and where substantial alterations or relocations of a watercourse are involved, the Sewage System Administrator may require the permit applicant to secure a registered engineer and surveyor to develop and supply the requisite flood hazard data, maps, and sections.
- J.** Metro Flood Management Areas. Flood 1996 inundation areas shown on Metro Title 3 Water Quality and Flood Management Area Maps shall have a flood protection elevation which provides two feet of freeboard above the Flood 1996 level. Flood 1996 inundation areas adjacent to Columbia River FIRM Flood Zone AE, Multnomah Drainage District No. 1, Peninsula Drainage District No. 2 Firm Zone AH and Columbia River FIRM Flood Zone A shall have freeboard of one foot.

24.50.060 Provisions for Flood Hazard Reduction.

(Amended by Ordinance Nos. 165678, 169905, 172209, 173979, 176955, 178741, 182370, 184235 and 189338, effective January 9, 2019.) In all flood hazard areas defined in Section 24.50.050, the following provisions are required:

- A.** Permits. All permit applications shall be reviewed to determine whether proposed building sites will be reasonably safe from flooding. A development or building permit shall be obtained before construction or development begins within any area of flood hazard. Such applications for permits shall include the following specific information:

 - 1.** Elevation of lowest floor, including basement, for all structures and floodproofed elevations for nonresidential structures.

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2. Elevation of lowest point of bridge structures.
 3. Existing and proposed topography of the site taken at a contour interval (normally 1 foot) sufficiently detailed to define the topography over the entire site and adjacent watercourses subject to flooding. Ninety percent of the contours shall be plotted within 1 contour interval of the true location.
 4. All necessary permits obtained from the federal and state governmental agencies from which prior approval is required.
 5. Where elevation data is not available either through the Flood Insurance Study or from another authoritative source (Section 24.50.050 G.), applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of any available hydrological data, drainage basin hydrology, historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.
- B.** Elevation reference. The survey reference datum for finished lowest floor including basement, floodproofed elevations, and finished site grades shall be either the North American Vertical Datum of 1988 or City of Portland datum, whichever is appropriate. When approved by the City Engineer, a local onsite survey reference datum may be adopted for FIRM Zones A and Unidentified Watercourse Flood Zones. The survey reference datum shall be indicated on all relevant plan and Section drawings, and the certified Flood-Elevation Certificate.
- C.** Certification of elevations and floodproofing. All finished elevations as specified hereunder shall be certified on a FEMA (FIA) Elevation Certificate by a licensed surveyor secured by the permittee, and made part of the permit records.
1. As-built elevation of lowest floor including basement, of all new or substantially improved structures;
 2. As-built floodproofed elevation of all new or substantially improved nonresidential structures;
 3. As-graded elevation of lowest grade within 25 feet of structures;
 4. As-graded elevation of lowest crawl space grade, as applicable.
- All floodproofing materials and methods for nonresidential structures shall be certified by a licensed professional engineer or architect as meeting the criteria in Section 24.50.060 F7.

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- D.** Floodway. Encroachments into the floodway by development and structures defined in Section 24.50.020 are prohibited unless it is demonstrated by technical analysis from a registered engineer that the development will result in no increase in the base flood elevation. In areas where a regulatory floodway has not been designated, no new construction, substantial improvement or other development (including fill) shall be permitted within Zone AE, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than 1 foot at any point within the community. Technical analysis shall be reviewed and approved by the Sewage System Administrator. However, the minimum width of the floodway shall not be less than 15 feet.
- E.** Alteration of watercourses. The Bureau of Development Services shall:
- 1.** Notify adjacent communities and the Department of Land Conservation and Development prior to any alteration or relocation of a watercourse as identified in the Flood Insurance Study and Flood Insurance Rate Map, and submit evidence of such notification to the Federal Insurance Administration.
 - 2.** Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
- F.** Flood hazard areas.
- 1.** General. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
 - 2.** Residential construction.
 - a.** New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above flood protection elevation. Floodproofing of “lowest floor” space is not permitted.
 - b.** Fully closed areas below the lowest floor that are subject to flooding are prohibited or shall be used solely for parking of vehicles, building access or limited storage and be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

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**CHAPTER 24.80 - DERELICT COMMERCIAL
BUILDINGS**

(Chapter repealed by Ordinance No. 171455,
effective August 29, 1997.)

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CHAPTER 24.85 - SEISMIC DESIGN REQUIREMENTS FOR EXISTING BUILDINGS

(Chapter added by Ordinance No. 168627, effective
March 22, 1995.)

Sections:

- 24.85.010 Scope.
- 24.85.015 Structural Design Meeting.
- 24.85.020 Seismic Related Definitions.
- 24.85.030 Seismic Improvement Standards.
- 24.85.040 Change of Occupancy or Use.
- 24.85.050 Building Additions or Structural Alterations.
- 24.85.051 Mezzanine Additions.
- 24.85.055 Structural Systems Damaged by Catastrophic Events.
- 24.85.056 Structural Systems Damaged by an Earthquake.
- 24.85.060 Required Seismic Evaluation
- 24.85.065 Seismic Strengthening of Unreinforced Masonry Bearing Wall Buildings.
- 24.85.067 Voluntary Seismic Strengthening.
- 24.85.070 Phasing of Improvements.
- 24.85.075 Egress Through Existing Buildings.
- 24.85.080 Application of Other Requirements.
- 24.85.090 Fee Reductions.
- 24.85.095 Appeals.

24.85.010 Scope.

(Amended by Ordinance Nos. 178831, 189201 and 189309, effective January 18, 2019.)

- A.** The provisions of this chapter prescribe the seismic design requirements for existing buildings undergoing changes of occupancy, additions, alterations, catastrophic damage, fire, or earthquake repair, or mandatory or voluntary seismic strengthening. Except for the provisions in Subsections 24.85.065 C. through I., the requirements of this chapter only apply to buildings for which a building permit has been applied for to change the occupancy classification, add square footage to the building, alter or repair the building.
- B.** Under the authority provided by State law, the provisions of this chapter prescribing seismic rehabilitation standards for existing buildings can be used in lieu of meeting the requirements of the current edition of the State of Oregon Structural Specialty Code.

24.85.015 Structural Design Meeting.

(Added by Ordinance No. 178831, effective November 20, 2004.) Upon request, BDS engineering staff is available to meet with an owners design engineer to review proposed

seismic strengthening plans in a pre-design meeting. A written record of the meeting discussion and determinations will be placed in the permit record.

24.85.020 Seismic Related Definitions.

(Amended by Ordinance Nos. 169427, 170997, 178831, 180917, 187192 and 189201, effective November 9, 2018.) The definitions contained in this Section relate to seismic design requirements for existing buildings outlined in this Chapter.

- A.** ASCE 41 means the Seismic Evaluation and Retrofit of Existing Buildings ASCE/SEI 41-13 published by the American Society of Civil Engineers and the Structural Engineering Institute.
- B.** ASCE 41 Evaluation means the process of evaluating an existing building for the potential earthquake-related risk to human life posed by that building, or building component, and the documentation of that evaluation, performed and written according to the provisions of ASCE 41. Tier 1 and Tier 2 deficiency based evaluation for both structural and non-structural components using the Basic Performance Objective for Existing Buildings (BPOE) as defined in ASCE 41 shall be the performance objective for the evaluation, unless a Tier 3 evaluation is required by ASCE 41
- C.** ASCE 41-BPOE Improvement Standard means the Tier 1 and Tier 2 Deficiency based retrofit for both structural and non-structural components using the Basic Performance Objective for Existing Buildings (BPOE) as defined in ASCE 41, unless a Tier 3 evaluation is required by ASCE 41.
- D.** ASCE 41-BPON Improvement Standard means Tier 3 Retrofit for both structural and non-structural components using the Basic Performance Objective Equivalent to New Buildings (BPON) as defined in ASCE 41.
- E.** ATC 20 means the latest Edition of the manual on “Procedures for Post Earthquake Safety Evaluation of Buildings” published by Applied Technology Council.
- F.** BDS means the City of Portland’s Bureau of Development Services.
- G.** BPOE- Basic Performance Objective for Existing Buildings: A series of defined Performance Objectives based on a building’s Risk Category meant for evaluation and retrofit of existing buildings; See Table 2-1 of ASCE 41.
- H.** BPON- Basic Performance Objective Equivalent to New Building Standards: A series of defined Performance Objectives based on a building’s Risk Category meant for evaluation and retrofit of existing buildings to achieve a level of performance commensurate with the intended performance of buildings designed to a standard for new construction; See Table 2-2 of ASCE 41.

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- I.** BSE-1E: Basic Safety Earthquake-1 for use with the Basic Performance Objective for Existing Buildings, taken as a seismic hazard with a 20 percent probability of exceedance in 50 years, except that the design spectral response acceleration parameters S_x s and S_x1 for BSE-1E seismic hazard level shall not be taken as less than 75 percent of the respective design spectra response acceleration parameters obtained from BSE-1N seismic hazard level and need not be greater than BSE-2N at a site.
- J.** BSE-1N: Basic Safety Earthquake-1 for use with the Basic Performance Objective Equivalent to New Buildings Standards, taken as two-thirds of the BSE- 2N.
- K.** BSE-2E: Basic Safety Earthquake-2 for use with the Basic Performance Objective for Existing Buildings, taken as a seismic hazard with a 5 percent probability of exceedance in 50 years, except that the design spectral response acceleration parameters of S_x s and S_x1 for BSE-2E seismic hazard level shall not be taken as less than 75 percent of the respective design spectra response acceleration parameters obtained from BSE- 2N Seismic hazard level and may not be greater than BSE-2N at a site.
- L.** BSE-2N: Basic Safety Earthquake-2 for use with the Basic Performance Objective Equivalent to New Buildings Standards, taken as the ground shaking based on Risk-Targeted Maximum Considered Earthquake (MCER) per ASCE 7 at a site.
- M.** Building Addition means an extension or increase in floor area or height of a building or structure.
- N.** Building Alteration means any change, addition or modification in construction.
- O.** Catastrophic Damage means damage to a building that causes an unsafe structural condition from fire, vehicle collision, explosion, or other events of similar nature.
- P.** Essential Facility has the same meaning as defined in the OSSC.
- Q.** FM 41 Agreement means a joint agreement between Portland Fire & Rescue, the Bureau of Development Services and a building owner to schedule improvements to the building following a determination of the fire and life safety hazards posed by the existing condition of the building as provided under Oregon law.
- R.** Live/Work Space means a combination working space and dwelling unit. A live/work space includes a room or suite of rooms on one or more floors designed for and occupied by not more than one family and including adequate working space reserved for the resident's occupancy. A live/work space is individually equipped with an enclosed bathroom containing a lavatory, water closet, shower/and or bathtub and appropriate venting.

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- S.** Net Floor Area means the entire area of a structurally independent building, including an occupied basement, measured from the inside of the permanent outer building walls, excluding any major vertical penetrations of the floor, such as elevator and mechanical shafts.
- T.** Non-profit building means a building owned by an organization registered as a non-profit entity with the Oregon Secretary of State.
- U.** Occupant Load means the number of persons for which the means of egress of a building or portion thereof is designed. The occupant load shall be calculated based on occupant load factors in the table assigned to each space in the Oregon Structural Specialty Code (OSSC).
- V.** Oregon Structural Specialty Code (OSSC) means the provisions of the State of Oregon Structural Specialty Code as adopted by Section 24.10.040 A.
- W.** Publicly-owned building means a building owned by a government agency, including a federal, state, or local government, or a special district.
- X.** Reinforced Masonry means masonry having both vertical and horizontal reinforcement as follows:
- 1.** Vertical reinforcement of at least 0.20 in² in cross-section at each corner or end, at each side of each opening, and at a maximum spacing of 4 feet throughout. One or two story buildings may have vertical reinforcing spaced at greater than 4 feet throughout provided that a rational engineering analysis is submitted which shows that existing reinforcing and spacing provides adequate resistance to all required design forces without net tension occurring in the wall.
 - 2.** Horizontal reinforcement of at least 0.20 in² in cross-section at the top of the wall, at the top and bottom of wall openings, at structurally connected roof and floor openings, and at a maximum spacing of 10 feet throughout.
 - 3.** The sum of the areas of horizontal and vertical reinforcement shall be at least 0.0005 times the gross cross-sectional area of the element.
 - 4.** The minimum area of reinforcement in either direction shall not be less than 0.000175 times the gross cross-sectional area of the element.
- Y.** Risk Category: A categorization of a building for determination of earthquake performance based on Oregon Structural Specialty Code (OSSC).
- Z.** Roof Covering Repair or Replacement means the installation of a new roof covering following the removal of an area of the building's roof covering exceeding 50 percent or more of the total roof area within the previous 15 year period.

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- AA.** Unreinforced Masonry (URM) means adobe, burned clay, concrete or sand-lime brick, hollow clay or concrete block, hollow clay tile, rubble and cut stone and unburned clay masonry that does not satisfy the definition of reinforced masonry as defined herein. Plain unreinforced concrete shall not be considered unreinforced masonry for the purpose of this Chapter.
- BB.** Unreinforced Masonry Bearing Wall means a URM wall that provides vertical support for a floor or roof for which the total superimposed vertical load exceeds 100 pounds per lineal foot of wall.
- CC.** Unreinforced Masonry Bearing Wall Building means a building that contains at least one URM bearing wall.

24.85.030 Seismic Improvement Standards.

(Amended by Ordinance Nos. 170997 and 178831, effective November 20, 2004.) For changes of occupancy structural additions, building alterations and catastrophic or earthquake damage repair, the design standard shall be the current edition of the OSSC unless otherwise noted by this Chapter.

24.85.040 Change of Occupancy or Use.

(Amended by Ordinance Nos. 169905, 170997, 178831, 187192 and 189201, effective November 9, 2018.) The following table shall be used to classify the relative hazard of all building occupancies:

TABLE 24.85-A		
Relative Hazard Classification	OSSC Occupancy Classification	Seismic Improvement Standard
5 (Highest)	A, E, I-2, I-3, H-1, H-2, H-3, H-4, H-5	OSSC or ASCE 41-BPON
4	R-1, R-2, SR, I-1, I-4	
3	B, M	41-BPOE
2	F-1, F-2, S-1, S-2	
1 (Lowest)	R-3, U	

- A.** Occupancy Change to a Higher Relative Hazard Classification. An occupancy change to a higher relative hazard classification will require seismic improvements based upon the factors of changes in the net floor area and the occupant load increases as indicated in Table 24.85-B below. All improvements to either the OSSC or ASCE 41 improvement standard shall be made such that the entire building conforms to the appropriate standard indicated in Table 24.85-B.

TABLE 24.85-B				
Percentage of Building Net Floor Area Changed		Occupant Load Increase	Required Improvement Standard	Relative Hazard Classification
1/3 of area or less	and	Less than 150	None	1 through 5
More than 1/3 of area	or	150 and above	ASCE 41-BPOE	1, 2, and 3
More than 1/3 of area	or	150 and above	OSSC or ASCE 41-BPON	4 and 5

Multiple occupancy changes to a single building may be made under this section without triggering a seismic upgrade provided the cumulative changes do not exceed 1/3 of the building net floor area or add more than 149 occupants with respect to the legal building occupancy as of October 1, 2004.

- B. Occupancy Change to Same or Lower Relative Hazard Classification.** An occupancy change to the same or a lower relative hazard classification or a change in use within any occupancy classification will require seismic improvements using either the OSSC or ASCE 41 improvement standard, as identified in Table 24.85-A above, where the change results in an increase in occupant load of more than 149 people as defined by the OSSC. Where seismic improvement is required, the entire building shall be improved to conform to the appropriate improvement standard identified in Table 24.85-A.

Multiple occupancy changes to a single building may be made under this section without triggering a seismic upgrade provided the cumulative changes do not result in the addition of more than 149 occupants with respect to the legal building occupancy as of October 1, 2004.

- C. Occupancy Change to Live Work Space.** Any building occupancy classified as relative hazard category 1, 2, or 3 may undergo a change of occupancy to live/work space provided that:
- 1.** The building shall be improved such that the entire building conforms to the ASCE 41-BPOE improvement standard; and
 - 2.** The building meets the fire and life safety standards of the current OSSC.
 - 3.** Any Unreinforced Masonry bearing wall building converted to live/work space, regardless of construction costs, shall be improved such that the entire building conforms to the ASCE 41-BPOE improvement standard.
- D. Occupancy Change to Essential Facilities.** All structures which are being converted to essential facilities, as defined in the OSSC, shall comply with current state code

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seismic requirements or ASCE 41-BPON improvement standard, regardless of other requirements in this section.

24.85.050 Building Additions or Structural Alterations.

(Amended by Ordinance Nos. 178831 and 187192, effective July 17, 2015.) An addition that is not structurally independent from an existing building shall be designed and constructed such that the entire building conforms to the seismic force resistance requirements for new buildings unless the following two conditions listed below are met. Furthermore, structural alterations to an existing building or its structural elements shall also meet the following two conditions:

- A.** The addition or structural alteration shall comply with the requirements for new buildings; and
- B.** Any existing lateral load-carrying structural element whose demand-capacity ratio with the addition(s) or structural alteration(s) considered is no more than 10 percent greater than its demand-capacity ratio with the addition(s) or structural alteration(s) ignored shall be permitted to remain unaltered. For purposes of this paragraph, comparisons of demand-capacity ratios and calculation of design lateral loads, forces, and capacities shall account for the cumulative effects of additions and structural alterations since original construction.

24.85.051 Mezzanine Additions.

(Added by Ordinance No. 178831, effective November 20, 2004.) A mezzanine addition shall not require seismic strengthening of the entire building when all of the following conditions are met:

- A.** Entire building strengthening is not required by any other provision contained in this Title;
- B.** The net floor area of the of the proposed mezzanine addition is less than 1/3 of the net floor area of the building;
- C.** The mezzanine addition does not result in an occupant load increase, as defined by the OSSC, of more than 149 people; and
- D.** Subsections 24.85.050 A. - C. shall also apply to mezzanine additions.

24.85.055 Structural Systems Damaged by Catastrophic Events.

(Added by Ordinance No. 170997; amended by Ordinance Nos. 178831 and 187192, effective July 17, 2015.)

- A.** Building Lateral Load Resisting systems along any principal axis damaged less than or equal to 50 percent.

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1. If a building is damaged by a catastrophic event such that less than or equal to 50 percent of the capacity of the existing lateral load resisting system along any principal axis of the building are damaged, only the damaged lateral load resisting components of the building's structural system must be designed and constructed to current provisions of the OSSC. These components must also be connected to the balance of the undamaged lateral load resisting system in conformance with current code provisions. Undamaged components need not be upgraded to current lateral load provisions of the current code, unless required by other provisions of this title.
 2. New lateral system vertical elements must be compatible with any existing lateral system elements, including foundations. In multistory buildings, the engineer shall confirm that the new lateral system vertical elements do not introduce soft or weak story seismic deficiencies, as defined by ASCE 41, where they did not previously exist, or make existing conditions more hazardous.
- B.** Building Lateral Load Resisting systems along any principal axis damaged more than 50 percent. Where a building is damaged by a catastrophic event such that more than 50 percent of the capacity of the existing lateral load resisting system along any principal axis of the building is damaged, all lateral load resisting components of the entire building's structural system along that principal axis must be designed and constructed to the current provisions of the OSSC or ASCE 41-BPON improvement standard.

24.85.056 Structural Systems Damaged by an Earthquake.

(Added by Ordinance No. 178831; amended by Ordinance No. 187192, effective July 17, 2015.) As a result of an earthquake, the Director may determine through either an ATC 20 procedure or through subsequent discovery any structure or portion thereof to be in an unsafe condition as defined by State law. As a result of making this determination, the Director may declare the structure or portion thereof to be a public nuisance and to be repaired or rehabilitation as provided in Subsections 24.85.056 A.-C., or abated by demolition or removal in accordance with Title 29. For the purposes of this Section, an "unsafe condition" includes, but is not limited to any portion, member or appurtenance of a building that has become detached or dislodged or appears likely to fail or collapse and thereby injure persons or damage property; or any portion of a building or structure that has been damaged to the extent that the structural strength or stability of the building is substantially less than it was prior to the damaging event.

- A.** Buildings built prior to January 1, 1974 with lateral support systems that have unsafe conditions shall be repaired or improved to resist seismic forces such that the repaired lateral system conforms to the ASCE 41-BPOE improvement standard.

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1. Where less than 50 percent of the lateral support system has been damaged, only the damaged elements must be repaired.
 2. Where 50 percent or more of the lateral support system has been damaged, then the entire lateral support system must be repaired to resist seismic forces such that the repaired system conforms to the ASCE 41-BPOE improvement standard.
- B.** Buildings built on or after January 1, 1974 with lateral support systems that have unsafe conditions shall be repaired or improved to resist seismic forces such that the repaired lateral system conforms to the code to which the building was originally designed, but not less than that required to conform to the ASCE 41-BPOE improvement standard.
1. Where less than 50 percent of the lateral support system has been damaged, only the damaged elements must be repaired.
 2. Where 50 percent or more of the lateral support system has been damaged, then the entire lateral support system must be repaired to resist seismic forces such that the repaired system conforms to the code to which the building was originally designed, but not less than that required to conform to the ASCE 41-BPOE improvement standard.
- C.** New lateral system vertical elements must be compatible with any existing lateral system elements, including foundations. In multistory buildings, the engineer shall confirm that the new lateral system vertical elements do not introduce soft or weak story seismic deficiencies, as defined by ASCE 41, where they did not previously exist, or make existing conditions more hazardous.

24.85.060 Required Seismic Evaluation.

(Added by Ordinance No. 169427; amended by Ordinance Nos. 178831 and 187192, effective July 17, 2015). When an alteration for which a building permit is required has a value (not including costs of mechanical, electrical, plumbing, permanent equipment, painting, fire extinguishing systems, site improvements, eco-roofs and finish works) of more than \$175,000, an ASCE 41 evaluation is required. This value of \$175,000 shall be modified each year after 2004 by the percent change in the R.S Means Construction Index for Portland on file with the Director. A letter of intent to have an ASCE 41 evaluation performed may be submitted along with the permit application. The evaluation must be completed before any future permits will be issued. The following shall be exempted from this requirement:

- A.** Buildings constructed or renovated to seismic zone 2, 2b or 3 under a permit issued after January 1, 1974.
- B.** Detached One- and two-family dwellings, and their accessory structures.

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- C. Single story, light frame metal and light wood frame buildings, not more than 20 feet in height from the top surface of the lowest floor to the highest interior overhead finish and ground area of 4,000 square feet or less.

A previously prepared seismic study may be submitted for consideration by the Director as equivalent to an ASCE 41 evaluation.

24.85.065 Seismic Strengthening of Unreinforced Masonry Bearing Wall Buildings.

(Added by Ordinance No. 169427; amended by Ordinance Nos. 170997, 178831, 187192, 189201 and 189399, effective March 29, 2019.) When any building alterations or repairs occur at an Unreinforced Masonry Bearing Wall Building, all seismic hazards shall be mitigated as set forth in Subsections 24.85.065 A. and B. A previously permitted seismic strengthening scheme designed in accordance with FEMA 178/310/ASCE 31 may be submitted for consideration by the Bureau Director as equivalent to the ASCE 41 improvement standard.

- A. Roof Repair or Replacement. When a roof covering is repaired or replaced, as defined in 24.85.020, the building structural roof system, anchorage, and parapets shall be repaired or rehabilitated such that, at a minimum, the wall anchorage for both in-plane and out-of-plane forces at the roof and parapet bracing conform to the ASCE 41-BPOE improvement standard. In-plane brick shear tests are not required as part of the ASCE evaluation under this subsection.

- B. Additional Triggers.

1. Building alterations or repair. When the cost of alteration or repair work which requires a building permit exceeds the following criteria, then the building shall be improved to resist seismic forces such that the entire building conforms to the ASCE 41-BPOE improvement standard.

Table 24.85-C		
Building Description	Cost of Alteration or Repair in a 5-Year Period	Cost of Alteration or Repair in a 15-Year Period (including the first 5 years)
Single Story Building	\$60 per square foot	\$120 per square foot
Buildings Two Stories or Greater	\$45 per square foot	\$90 per square foot
Special building hazard: buildings in a relative hazard category 5 or with vertical or plan irregularities	\$45 per square foot	\$90 per square foot

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2. Special building hazards. Where an Unreinforced Masonry Building of any size contains any of the following hazards, the building shall be seismically improved if the cost of alteration or repair exceeds \$45 per square foot:
 - a. The Building possesses an Occupancy Classification listed within the Relative Hazard Category 5 as determined in Section 24.85.040 of this Chapter; or
 - b. The building is classified as possessing either vertical or plan irregularities as defined in the OSSC.
3. Exclusions from cost calculations. Costs for site improvements, eco-roofs, mandated FM41 agreements, mandated ADA improvements, mandated non-conforming upgrades under Title 33, mandated elevator improvements and mandated or voluntary seismic improvements or work exempted from permit as described in Chapter 1 of the OSSC will not be included in the dollar amounts listed in Subsections 24.85.065 B.1. and 2.
4. Live/Work spaces in Unreinforced Masonry buildings. See Section 24.85.040 B for requirements when a Unreinforced Masonry building is converted to contain live/work spaces.
5. Automatic cost increase. The dollar amounts listed in Subsections 24.85.065 B.1. and 2. shall be modified each year after 2018 by the percent change in the R.S. Means of Construction Cost Index for Portland, Oregon. The revised dollar amounts will be made available at the Development Services Center.

C. Placard requirement for unreinforced masonry buildings.

On or before the dates set forth in the timetable below, all unreinforced masonry buildings that have not been retrofitted to the standard specified in Subsection 24.85.065 F. below must be posted with a placard in a conspicuous place on the exterior at the main entrance of the building. The criteria for the placard are as follows:

1. Font. The font must be at least 50-point bold type, legible sans serif.
2. Size. The placard must be at least 8 inches by 10 inches.
3. Material. The placard must be constructed of a durable material that can withstand the elements and must be maintained to ensure that it is not defaced, removed, damaged, or degraded to the point where the placard is no longer legible.
4. Content. The placard must contain the following language: "THIS IS AN

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UNREINFORCED MASONRY BUILDING. UNREINFORCED MASONRY BUILDINGS MAY BE UNSAFE IN THE EVENT OF A MAJOR EARTHQUAKE.”

5. Duration. The placard must remain in place until the building is either: retrofitted and the Bureau of Development Services confirms that the retrofit specified in Subsection 24.85.065 F. has been completed and approved by BDS; or the building is demolished.
6. Timeline. Placards must be posted according to the following timeline:
 - a. Publicly-owned buildings. Publicly-owned URM buildings must post the required placard on or before January 1, 2019.
 - b. All other buildings. All other URM buildings that do not fall into a. above must post the required placard on or before November 1, 2020.

D. Tenant notification for unreinforced masonry buildings.

Applications for leases and rental. Every application for lease or rental supplied to a prospective tenant after June 1, 2019 involving a building subject to the requirements of Subsection 24.85.065 C., must contain a statement that: the building is an unreinforced masonry building, and unreinforced masonry buildings may be unsafe in the event of a major earthquake.

E. Documentation of compliance.

The owner of a building subject to Subsections 24.85.065 C. and D. must not to remove the placard required in Subsection 24.85.065 C. and acknowledge compliance with the prospective tenant notification requirements outlined in Subsection 24.85.065 D. on a form provided by the Bureau of Development Services. This documentation of compliance must be submitted to the Bureau by November 1, 2020.

F. Evidence that a building is exempt from placard requirements.

The following are evidence that an unreinforced masonry building meets the required retrofit standards and will exempt the building owner from complying with Subsections 24.85.065 C., D., and E.

1. Buildings that have been fully retrofitted to or shown to meet or exceed the following standards:

The Basic Performance Objective for Existing Buildings (BPOE) or better as defined in ASCE 41-17 or ASCE 41-13 for collapse prevention structural

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performance level under BSE-2E seismic hazard or life safety structural performance level under BSE-1E seismic hazard; and URM parapets, cornices and chimneys for life safety non-structural performance level under BSE-1E seismic hazard. The seismic hazards BSE-1 and BSE-2 are as previously defined in Section 24.85.020; or

2. Buildings that have previously been fully retrofitted prior to January 1, 2018 to one of the following standards:
 - a. Life Safety performance level or better using FEMA-178, FEMA 310, or ASCE 31, including bracing of parapets, cornices and chimneys; or
 - b. Oregon Structural Specialty Code, 1993 edition or later.

G. Enforcement.

1. Fire Marshal Inspections. As part of Portland Fire & Rescue's periodic inspections program outlined in Chapter 31.50, the Portland Fire Marshal is granted authority to inspect unreinforced masonry buildings for compliance with the provisions of Subsection 24.85.065 C. If the Fire Marshal determines there is a violation of Subsection 24.85.065 C., the Fire Marshal will issue a notice of violation to the owner of the building. The building owner will have 40 calendar days from the date of the notice of violation to comply with the requirements of Subsection 24.85.065 C., and the Fire Marshal will re-inspect the building for compliance. If the violation still exists at the time of the re-inspection, the Fire Marshal will charge a re-inspection fee and turn the case over to the Bureau of Development Services for further enforcement.
2. Bureau of Development Services' enforcement. BDS will use its existing enforcement authority as outlined in Section 3.30.040 to enforce the provisions of Subsections 24.85.065 C., D., and E.

H. Appeals.

1. Appeals of determination that building is unreinforced masonry or whether the building has been retrofitted: if the building owner disagrees with the determination that the building is an unreinforced masonry building or that the building was retrofitted to the standards outlined in Subsection 24.85.065 F., the building owner may appeal that determination as provided in Section 24.85.095.
2. If a building owner appeals the determination that the building is an unreinforced masonry building or that it has been retrofitted to the standards

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outlined in Subsection 24.85.065 F., and the Director upholds the URM determination, then the building owner has until the relevant date set forth in the timetable in Subsection 24.85.065 C.6., or two months from the written determination, whichever is later, to install the placard in accordance with Subsection 24.85.065 C. and complete the prospective tenant notification outlined in Subsection 24.85.065 D.

3. Appeals related to BDS enforcement actions under Section 3.30.040 that do not fall under Subsection 24.85.065 H.1.-2. will follow the procedures laid out in that Chapter.

I. Future-discovered unreinforced masonry buildings.

If the Bureau of Development Services discovers that a building is an unreinforced masonry building that has not been retrofitted to the standards outlined in Subsection 24.85.065 F. after the relevant date set forth in the timetable in Subsection 24.85.065 C.6., the Bureau will provide written notice to the building owner that the building must comply with the provisions of Subsections 24.85.065 C., D., E, and F. The building owner will have three months from the Bureau's written determination and notice to property owner to either comply or file an appeal as described in Subsection 24.85.065 H.

24.85.067 Voluntary Seismic Strengthening.

(Added by Ordinance No. 178831, effective November 20, 2004.) Subject to permit approval, a building may be strengthened to resist seismic forces on a voluntary basis provided all of the following conditions are met:

- A. Mandatory seismic strengthening is not required by other provisions of this Title;
- B. The overall seismic resistance of the building or elements shall not be decreased such that the building is more hazardous;
- C. Testing and special inspection are in accordance with the OSSC and the City of Portland Administrative Rules;
- D. The standard used for the seismic strengthening is clearly noted on the drawings along with the pertinent design parameters; and
- E. A written narrative shall be clearly noted on the drawings summarizing the building lateral system, seismic strengthening and known remaining deficiencies. The summary information shall reflect the level of analysis that was performed on the building.

24.85.070 Phasing of Improvements.

(Amended by Ordinance No. 178831, effective November 20, 2004.)

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- A.** The Director may approve a multi-year phased program of seismic improvements when the improvements are pre-designed and an improvement/implementation plan is approved by the Director. The maximum total time allowed for completion of phased improvements shall be ten years. A legal agreement between the building owner and the City of Portland shall be formulated outlining the phased seismic improvements and shall be recorded with the property deed at the County.
- B.** Upon review, the Director may extend the maximum time for the phased improvements. The Director shall adopt rules under Section 3.30.035 describing the process for granting an extension.

24.85.075 Egress Through Existing Buildings.

(Added by Ordinance No. 178831, effective November 20, 2004.) The building structure and seismic resistance of an egress path through, under or over an existing building must meet the required seismic improvement standard specified in Section 24.85.040, Table 24.85-A, under any of the following conditions:

- A.** The egress path is from an adjacent new building or addition and the new building or addition area equals 1/3 or more of the existing building area; or,
- B.** The egress path is from an adjacent existing building that undergoes alterations or a change of occupancy requiring its egress path(s) meet the seismic improvement standards as required by this Chapter; or
- C.** The additional occupant load, as determined by the OSSC, using the egress path through the existing building is 150 people or more.

24.85.080 Application of Other Requirements.

(Amended by Ordinance No. 178831, effective November 20, 2004.) Building permit applications to improve the seismic capability of a building shall not trigger: accessibility improvements so long as the seismic improvement does not lessen accessibility; fire life safety improvements so long as the seismic improvement does not lessen the buildings fire resistance or exiting capability; landscape improvements required by Chapter 33; street tree improvements required by Section 20.40.070.

Conformance with these regulations may not exempt buildings from future seismic regulations.

24.85.090 Fee Reductions.

(Amended by Ordinance No. 178831, effective November 20, 2004.) Building permit, plan review and fire life safety review fees for structural work related to seismic strengthening covered by this Chapter will be waived when such fees total less than \$2,500, and will be and reduced by 50 percent when such fees would total \$2,500 or more.

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24.85.095 Appeals.

(Amended by Ordinance Nos. 178831 and 189201, effective November 9, 2018.) Except as otherwise provided in this Chapter 24.85, a property owner or the property owner's agent may appeal application of this Chapter 24.85 as outlined in Section 24.10.075.

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**CHAPTER 24.90 - MANUFACTURED
DWELLING INSTALLATION AND
ACCESSORY STRUCTURES,
MANUFACTURED DWELLING PARKS,
RECREATION PARKS, RECREATIONAL
PARK TRAILER INSTALLATION AND
ACCESSORY STRUCTURES**

(Chapter added by Ordinance No. 169312;
Amended by Ordinance No. 185798 effective
December 12, 2012).

Sections:

- 24.90.010 Purpose.
- 24.90.020 Scope.
- 24.90.030 Adoption of Codes and Regulatory Authority.
- 24.90.040 Definitions.
- 24.90.050 Administration and Enforcement.
- 24.90.060 Special Regulation.
- 24.90.070 Permit Application.
- 24.90.080 Violations.
- 24.90.090 Appeals.

24.90.010 Purpose.

The purpose of this Chapter is to provide minimum standards for the following:

- A.** Installation and maintenance of manufactured dwellings and accessory structures.
- B.** Development and maintenance of manufactured dwelling parks.
- C.** Installation and maintenance of park trailers and recreational vehicle accessory structures.
- D.** Development and maintenance of recreational vehicle parks.

24.90.020 Scope.

(Amended by Ordinance No. 185798, effective December 12, 2012.) Regulation under this Chapter covers all installations or alteration of manufactured dwellings, recreational park trailers and other recreational vehicles, and accessory structures. Regulation under this Chapter covers the development and maintenance of manufactured dwelling parks, recreational vehicle parks, recreation parks, picnic parks, and organizational camps.

24.90.030 Adoption of Codes and Regulatory Authority.

(Amended by Ordinance Nos. 176955 and 185798, effective December 12, 2012.)

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CHAPTER 29.70 - COSTS AND PENALTIES

Sections:

- 29.70.005 Generally.
29.70.010 Enforcement Fees or Penalties for Nuisance, Housing and Dangerous and Derelict Buildings.
29.70.020 Costs and Penalties for Abatement of Nuisances, Disable Vehicles, and Re-occupancy in Violation.
29.70.030 Building Demolition Costs and Penalties.
29.70.040 Chronic Offender.

29.70.005 Generally.

In order to defray the costs of enforcement of, and to encourage compliance with, this Title, the Director shall impose penalties on those properties which are found to be in violation of this Title.

29.70.010 Enforcement Fees or Penalties for Nuisance, Housing and Dangerous and Derelict Buildings.

(Amended by Ordinance Nos. 176528, 181699, 182488, 183793 and 189413, effective March 6, 2019.)

- A.** The City may charge a penalty in the form of a monthly enforcement fee for each property found in violation of Chapters 29.20, 29.30, 29.35 or 29.40 of this Title that meets the following conditions:
- 1.** The property is a subject of a notice of violation of this Title as described in Section 29.60.050; and
 - 2.** A response period of 30 days has passed since the effective date of the initial notice of violation; and
 - 3.** The property remains out of compliance with the initial notice of violation or any subsequent notice of violation.
- B.** The amount of the monthly enforcement fee shall be charged as set forth in the Enforcement Fee and Penalty Schedule as approved by City Council. If all violations are not corrected within three months from the date of the initial notice of violation, subsequent enforcement fees or penalties shall be twice the amount listed in the Enforcement Fee and Penalty Schedule as approved by City Council.
- C.** Whenever the property owner believes that all violations have been corrected, the property owner shall so notify the Director. Upon receipt of such notice, the Director shall promptly schedule an inspection of the property and shall notify the property owner if any violations remain uncorrected.

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- D.** Once monthly enforcement fees or penalties begin, they shall continue until all violations have been corrected, inspected and approved.
- E.** When a property meets the conditions for charging an enforcement fee or penalty, the Director shall file a statement with the Revenue Division that identifies the property, the amount of the monthly fee or penalty, and the date from which the charges are to begin. The Revenue Division shall then:
 - 1.** Notify the property owner(s) of the assessment of enforcement fees or penalties and the 10 percent Revenue Division charge; and
 - 2.** Record a property lien in the Docket of City Liens; and
 - 3.** Bill the property owner(s) monthly for the full amount of enforcement fees or penalties owing, plus additional charges to cover administrative costs of the Revenue Division; and
 - 4.** Maintain lien records until:
 - a.** The lien and all associated interest, penalties, charges and costs are paid in full; and
 - b.** The Director certifies that all violations listed in the original or any subsequent notice of violation have been corrected.
- F.** When a property meets the conditions for assessment of fees or penalties as described in this Title, the Director may also cause appropriate collection measures, including legal action in a court of competent jurisdiction, to be instituted against the property owner in order to collect the assessed fees or penalties.

29.70.020 Costs and Penalties for Abatement of Nuisances, Disable Vehicles, and Re-occupancy in Violation.

(Replaced by Ordinance No. 176528; amended by Ordinance Nos. 176955, 183793 and 189413, effective March 6, 2019.)

- A.** Nuisances.
 - 1.** Whenever a nuisance is abated by the City, the Director shall keep an accurate account of all expenses incurred for each nuisance abated including but not limited to abatement costs, civil penalties, fees, administrative costs, recorders fees and title report charges as set forth in the Enforcement Fee and Penalty Schedule as approved by City Council.
 - 2.** When the City has abated a nuisance maintained by any owner of real property, for each subsequent nuisance which is abated by the City within 2 consecutive calendar years concerning real property, owned by the same

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person, an additional civil penalty as set forth in the Enforcement Fee and Penalty Schedule shall be added to the costs, charges and civil penalties. The additional civil penalty shall be imposed without regard to whether the nuisance abated by the City involved the same real property or are of the same character.

3. Costs and penalties resulting from nuisance abatement shall be assessed as a lien upon the real property as provided in Subsection D.

B. Disabled Vehicles.

1. Whenever a vehicle is removed from real property by the City, the Director shall keep an accurate account of all expenses incurred for each disabled vehicle removed including but not limited to abatement costs, civil penalties, administrative costs, inspection fees, recording fees, and title report charges as set forth in the Enforcement Fee and Penalty Schedule as approved by City Council.
2. Whenever a vehicle, which has been tagged by the City, is removed from real property and placed on the public right-of-way, the owner of the real property shall be responsible for that vehicle. The Director shall remove the vehicle from the right-of-way and keep an accurate account of all expenses incurred for each disabled vehicle removed including but not limited to abatement costs, civil penalties, administrative costs, fees, recording fees and title report charges as set forth in the Enforcement Fee and Penalty Schedule as approved by City Council.
3. Costs and penalties resulting from the abatement of disabled vehicles shall be assessed as a lien upon the real property as provided in Subsection D.

C. Occupancy of Property After Notice of Violation.

1. Whenever a property owner causes or permits a vacant structure or portion thereof to be occupied in violation of this Title, a penalty as set forth in the Enforcement Fee and Penalty Schedule as approved by City Council shall be imposed per structure or portion thereof.
2. Costs and penalties resulting from the occupancy of property after notice of violation shall be assessed as a lien upon the real property as provided in Subsection D.

D. When a property meets the conditions for assessment of fees or penalties as described in Subsections A., B. or C. above, the Bureau of Development Services shall file a statement of such fees or penalties with the Revenue Division. Upon receipt of the statement, the Revenue Division shall mail an assessment notice to

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the property owner. The notice shall include the amount due plus 10 percent charges to cover the administrative costs of the Revenue Division. At the same time the notice is mailed by the Revenue Division, the Revenue Division shall enter the amount due or the amount of the unpaid balance, plus charges to cover the administrative cost of the Revenue Division, in the Docket of City Liens which shall thereafter constitute a lien against the property. The property owner is responsible for paying all liens assessed against the property.

- E.** When a property meets the conditions for assessment of fees or penalties as described in this Title, the Director may also cause appropriate collection measures, including the legal action in a court of competent jurisdiction, to be instituted against the property owner in order to collect the assessed fees or penalties.

29.70.030 Building Demolition Costs and Penalties.

(Amended by Ordinance Nos. 176528, 183793 and 189413, effective March 6, 2019.)

- A.** Whenever a building is demolished by the City, the Director shall keep an accurate account of all expenses incurred for each building demolished, including but not limited to abatement costs, civil penalties, administrative costs, recorders fees and title report charges as set forth in the Enforcement Fee and Penalty Schedule as approved by City Council.
- B.** Costs and penalties resulting from demolition by the City of any structure pursuant to this Title plus 10 percent charges to cover the administrative costs of the Revenue Division shall be assessed as a lien upon the real property on which the structure was located pursuant to the provisions of Chapter 22.06 of City code.
- C.** When a property meets the conditions for assessment of fees or penalties as described in this Title, the Director may also cause appropriate collection measures, including legal action in a court of competent jurisdiction, to be instituted against the property owner in order to collect the assessed fees or penalties.

29.70.040 Chronic Offender.

(Added by Ordinance No. 181699, effective April 25, 2008.)

- A.** A Chronic Offender is any person whose property has accumulated, within any 12-month period, multiple violations under Title 29 which have a negative impact on the public health or welfare and cause repeat inspections and enforcement efforts by the Director.
- B.** The Director shall adopt policies and procedures setting forth the type and number of Title 29 violations that result in a Chronic Offender designation.
- C.** The Director may pursue any of the following actions against a Chronic Offender:

- B.** Any civil fines received shall be used only for creating replacement housing serving households at or below 50 percent MFI.

30.01.080 Local Preservation Projects - Tenant and City Notice Provisions.

(Amended by Ordinance No. 186028, effective May 15, 2013.)

- A.** When the owner of a Local Preservation Project takes action which will make the affordable housing no longer affordable, whether the affordability requirements which were established under prior agreement with the City, PDC or State have expired or are still in effect, the owner must provide a notice of 90 days to the City. The notice shall meet standards developed by PHB. During the 90-day notification period, the owner may not sell or contract to sell the property, but may engage in discussions with other interested parties. Within this period, the City or its designee may make an offer to purchase or attempt to coordinate a purchase by an owner committed to maintaining affordability.
- B.** Owners of Local Preservation Projects who have decided to take action described in 30.01.080 A., must provide a notice of 90 days to tenants. This shall be in addition to the City notice to be provided to the City under 30.01.080 A. During this notice period the Owner may not initiate a no-cause eviction. The notice must meet standards developed by PHB.

30.01.085 Portland Renter Additional Protections.

(Added by Ordinance No. 187380; amended by Ordinance Nos. 188219, 188519, 188558, 188628, 188849 and 189421, effective March 13, 2019.)

- A.** In addition to the protections set forth in the Residential Landlord and Tenant Act, the following additional protections apply to Tenants that have a Rental Agreement for a Dwelling Unit covered by the Act. For purposes of this chapter, unless otherwise defined herein, capitalized terms have the meaning set forth in the Act.
- B.** A Landlord may terminate a Rental Agreement without a cause or for a qualifying landlord reason specified in the Act only by delivering a written notice of termination (the "Termination Notice") to the Tenant of (a) not less than 90 days before the termination date designated in that notice as calculated under the Act; or (b) the time period designated in the Rental Agreement, whichever is longer. Not less than 45 days prior to the termination date provided in the Termination Notice, a Landlord shall pay to the Tenant, as relocation assistance, a payment ("Relocation Assistance") in the amount that follows: \$2,900 for a studio or single room occupancy ("SRO") Dwelling Unit, \$3,300 for a one-bedroom Dwelling Unit, \$4,200 for a two-bedroom Dwelling Unit and \$4,500 for a three-bedroom or larger Dwelling Unit. For purposes of this Subsection, a Landlord that declines to renew or replace an expiring Rental Agreement is subject to the provisions of this Subsection. The requirements of this Subsection are intended to apply per Dwelling Unit, not per individual Tenant.

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- C.** As allowed by the Act, a Landlord may not increase a Tenant's Rent or Associated Housing Costs by 5 percent or more over a rolling 12-month period unless the Landlord gives notice in writing (the "Increase Notice") to each affected Tenant: (a) at least 90 days prior to the effective date of the Rent increase; or (b) the time period designated in the Rental Agreement, whichever is longer. The Increase Notice must specify the amount of the increase, the amount of the new Rent or Associated Housing Costs and the date, as calculated under the Act, when the increase becomes effective. If, within 45 calendar days after a Tenant receives an Increase Notice indicating a Rent increase of 10 percent or more within a rolling 12-month period and a Tenant provides written notice to the Landlord of the Tenant's request for Relocation Assistance (the "Tenant's Notice"), then, within 31 calendar days of receiving the Tenant's Notice, the Landlord shall pay to the Tenant Relocation Assistance in the amount that follows: \$2,900 for a studio or SRO Dwelling Unit, \$3,300 for a one-bedroom Dwelling Unit, \$4,200 for a two-bedroom Dwelling Unit and \$4,500 for a three-bedroom or larger Dwelling Unit. After the Tenant receives the Relocation Assistance from the Landlord, the Tenant shall have 6 months from the effective date of the Rent increase (the "Relocation Period") to either: (i) pay back the Relocation Assistance and remain in the Dwelling Unit and, subject to the Act, shall be obligated to pay the increased Rent in accordance with the Increase Notice for the duration of the Tenant's occupancy of the Dwelling Unit; or (ii) provide the Landlord with a notice to terminate the Rental Agreement in accordance with the Act (the "Tenant's Termination Notice"). In the event that the Tenant has not repaid the Relocation Assistance to the Landlord or provided the Landlord with the Tenant's Termination Notice on or before the expiration of the Relocation Period, the Tenant shall be in violation of this Subsection. For purposes of this Subsection, a Landlord that conditions the renewal or replacement of an expiring Rental Agreement on the Tenant's agreement to pay a Rent increase of 10 percent or more within a rolling 12-month period is subject to the provisions of this Subsection. For purposes of this Subsection, a Landlord that declines to renew or replace an expiring Rental Agreement on substantially the same terms except for the amount of Rent or Associated Housing Costs terminates the Rental Agreement and is subject to the provisions of this Subsection. The requirements of this Subsection are intended to apply per Dwelling Unit, not per individual Tenant. For purposes of this Subsection, a Tenant may only receive and retain Relocation Assistance once per tenancy per Dwelling Unit.
- D.** A Landlord shall include a description of a Tenant's rights and obligations and the eligible amount of Relocation Assistance under this Section 30.01.085 with each and any Termination Notice, Increase Notice, and Relocation Assistance payment.
- E.** A Landlord shall provide notice to the Portland Housing Bureau (PHB) of all payments to Tenants of Relocation Assistance within 30 days of making such payments. This Subsection shall be effective beginning May 1, 2018.

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- F.** For the purposes of this Section 30.01.085, the expiration of Rent concessions specified in the Rental Agreement is not considered a substantial change to a Rental Agreement.
- G.** For the purposes of this Section 30.01.085 and determining the amount of Relocation Assistance a Landlord shall pay, a Rental Agreement for a single bedroom in a Dwelling Unit as defined by PCC 33.910 is considered a SRO Dwelling Unit.
- H.** For the purposes of this Section 30.01.085 and determining the amount of Relocation Assistance a Landlord shall pay, if a Landlord is paying relocation assistance required by the Act and Relocation Assistance required by Section 30.01.085 to the Tenant for the same Termination Notice, the Relocation Assistance required by Section 30.01.085 may be reduced by the relocation assistance required by the Act if both payments are paid at the same time and as a single payment.
- I.** The provisions of this Section 30.01.085 that pertain to Relocation Assistance do not apply to the following so long as the Landlord has submitted a required exemption application form to PHB for which PHB shall have issued an exemption acknowledgement letter, a copy of which the Landlord shall have provided to the Tenant:

 - 1. Rental Agreements for week-to-week tenancies;
 - 2. Tenants that occupy the same Dwelling Unit as the Landlord;
 - 3. Tenants that occupy one Dwelling Unit in a Duplex where the Landlord's principal residence is the second Dwelling Unit in the same Duplex;
 - 4. Tenants that occupy an Accessory Dwelling Unit that is subject to the Act in the City of Portland so long as the owner of the Accessory Dwelling Unit lives on the site;
 - 5. a Landlord that temporarily rents out the Landlord's principal residence during the Landlord's absence of not more than 3 years;
 - 6. a Landlord that temporarily rents out the Landlord's principal residence during the Landlord's absence due to active duty military service;
 - 7. a Dwelling Unit where the Landlord is terminating the Rental Agreement in order for an Immediate Family member to occupy the Dwelling Unit;
 - 8. a Dwelling Unit regulated or certified as affordable housing by a federal, state or local government is exempt from paying Relocation Assistance for a Rent increase of 10 percent or more within a rolling 12-month period:

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- a.** so long as such increase does not increase a Tenant's portion of the Rent payment by 10 percent or more within a rolling 12-month period; or
- b.** in Lease Agreements where the Rent or eligibility is periodically calculated based on the Tenant's income or other program eligibility requirements and a Rent increase is necessary due to program eligibility requirements or a change in the Tenant's income.

This exemption by Subsection 30.01.085 I.8. does not apply to private market-rate Dwelling Units with a Tenant who is the recipient of a federal, state, or local government voucher;

This exemption by Subsection 30.01.085 I.8. applies to Rent increases and does not apply to Termination Notices;

- 9.** a Dwelling Unit that is subject to and in compliance with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- 10.** a Dwelling Unit rendered immediately uninhabitable not due to the action or inaction of a Landlord or Tenant;
- 11.** a Dwelling Unit rented for less than 6 months with appropriate verification of the submission of a demolition permit prior to the Tenant renting the Dwelling Unit;
- 12.** a Dwelling Unit where the Landlord has provided a Fixed Term Tenancy and notified the Tenant prior to occupancy, of the Landlord's intent to sell or permanently convert the Dwelling Unit to a use other than as a Dwelling Unit subject to the Act.

A Landlord that authorizes a property manager that is subject to, and manages property in accordance with ORS 696, to manage a Dwelling Unit, does not waive a Dwelling Unit exemption as a result of the collective number of Dwelling Units managed by such a property manager. For purposes of the exemptions provided in this Subsection, "Dwelling Unit" is defined by PCC 33.910, and not by ORS 90.100. For purposes of the exemptions provided in this Subsection, "Accessory Dwelling Unit" is defined by PCC 33.205. For purposes of the exemptions provided in this Subsection, "Duplex" is defined by PCC 33.910. For purposes of the exemptions provided in this Subsection, "Immediate Family" is defined by PHB in administrative rules.

- J.** A Landlord that fails to comply with any of the requirements set forth in this Section 30.01.085 shall be liable to the Tenant for an amount up to 3 times the monthly

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Rent as well as actual damages, Relocation Assistance, reasonable attorney fees and costs (collectively, "Damages"). Any Tenant claiming to be aggrieved by a Landlord's noncompliance with the foregoing has a cause of action in any court of competent jurisdiction for Damages and such other remedies as may be appropriate.

- K.** In carrying out the provisions of this Section 30.01.085, the Director of PHB, or a designee, is authorized to adopt, amend and repeal administrative rules to carry out and administer the provisions of this Section 30.01.085.

30.01.090 City Subsidy Projects - Long-Term Affordability Requirements.

(Amended by Ordinance Nos. 186028, 187380 and 188440, effective July 8, 2017.)

- A.** City Subsidy Projects that in the future request and receive a City Subsidy from PDC, PHB or other City bureau or agency for the purpose of creating or preserving rental housing affordable to households below 80 percent of MFI, will be subject to a minimum of 60 year affordability contract requirements developed by PHB consistent with the implementing charge in Subsection 30.01.090 B. Notwithstanding the foregoing, City Subsidy Projects that receive a Rental Rehabilitation Conditional Grant will be subject to a minimum of 10 year affordability contract requirement in accordance with the Rental Rehabilitation Conditional Grant Product Guidelines.
- B.** All City Bureaus and agencies administering affordable rental housing subsidy programs will be responsible for implementing this section. As the primary agency charged by the City to negotiate and confer affordable housing subsidies, PHB will develop implementing strategies consistent with the 60 year affordability principles contained in this section, the Administrative Procedures Implementing Title 30.01 and the approved 1998/99 Consolidated Plan, Principle III (Ordinance No. 172259).

30.01.095 Partial and Full Exemptions of System Development Charges for Affordable Housing Developments.

(Added by Ordinance No. 183448; Amended by Ordinance Nos. 186712, 186744, 187380, 187975 and 189323, effective December 19, 2018.)

- A.** The purpose of this Section is to reduce the costs of developing permanent affordable housing by exempting system development charges for qualified affordable housing developments. This section advances a Council-recognized public policy goal to provide for a diversity of housing types to meet the needs of the citizens of the City.
- B.** The City will exempt qualified affordable housing developments from paying all or part of system development charges required by Code. The Applicant must apply for exemptions under this Section prior to the date the City issues the permit on the new development. Where new development consists of only part of one or more

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of the uses described in this Section, only that portion of the development that qualifies under this Section is eligible for an exemption. The balance of the new development that does not qualify for any exemption under this Section is subject to system development charges to the full extent authorized by Code or general ordinance. The Applicant has the burden to prove entitlement to exemptions so requested.

- C.** The City shall calculate exemptions in the manner authorized for calculating system development charges for rented and owner-occupied residential properties. Non-residential properties or the non-residential portion of mixed-use developments are not eligible for exemptions provided by this Section. Exemptions are applicable to the portions of residential properties that are directly used in providing housing for its low-income residents such as on-site manager units and shared space including but not limited to restrooms, community rooms and laundry facilities.
- D.** To obtain the exemption, the applicant must present to the City, at the time of Application, documentation from PHB that the development qualifies for the exemption pursuant to this Chapter. Applicant must also pay an administration fee per unit on rental and/or owner-occupied units as determined by PHB.
- E.** The City shall require the recording of real property covenants in the deed records for properties receiving exemptions under this Section in order to ensure compliance, or to provide remedies for failure to restrict units, or both. Deed restrictions may be used by PHB in order to restrict sale prices and rents charged for exempt units, or to provide remedies for failure to restrict units, or both.
- F.** Applicants shall meet the following affordable housing qualifications to be exempt from paying all or a portion of system development charges based on the type of housing provided:

 - 1.** Rental Units.

 - a.** For purposes of this Section, "affordable" for rental housing means that the rent and expenses associated with occupancy such as utilities or fees, does not exceed 30 percent of the gross household income at the level of the rent restrictions.
 - b.** The units receiving an exemption shall be affordable to households earning 60 percent or less of MFI at time of occupancy and shall be leased, rented or made available on a continuous basis to persons or households whose incomes are 60 percent or less of MFI, as adjusted by household size and as determined by HUD for the Portland Metropolitan Area, except as provided for below. Such units shall remain affordable for a period of 60 years.

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- c. Effective July 1, 2014, developments of new buildings in Old Town/Chinatown shall be eligible for exemption subject to the following conditions:
 - (1) Units must be located in the Old Town/Chinatown Action Plan Focus Area;
 - (2) Financial need must be verified through project pro forma underwriting conducted by the PDC;
 - (3) All units shall remain affordable for a period of not less than 10 years, to persons or households whose incomes are 100 percent or less of MFI, as adjusted by household size and as determined by HUD for the Portland Metropolitan Area, and for not less than 5 years thereafter shall continue to remain affordable to persons or households whose incomes are 120 percent or less of MFI, as so described; and
 - (4) The exemption granted by this Subsection shall not be available to developments for which a building permit application is filed on or after July 1, 2019, or after permit applications have been filed for development of 500 qualifying units, in the aggregate, whichever occurs first.

2. Owner-Occupied Units.

- a. For the purposes of this Section, “Affordable” means that ownership units are sold to persons or households whose incomes are at or below 100 percent of MFI for a family of four as determined annually for the Portland Metropolitan Area by HUD, which income may be adjusted upward for households with more than four persons; and
- b. The ownership units sell at or below the price limit as provided by Subsection 3.102.090 D.

- G. Pursuant to Section 30.01.040, the PHB is responsible for enforcing property covenants and other agreements with applicants that are conditions of receiving exemptions provided by this Section. PHB may adopt, amend and appeal administrative rules, establish procedures, and prepare forms for implementation, administration and compliance monitoring consistent with the provisions of this Section.

In the event that an applicant violates the covenants, agreements or other requirements that were established by the City as a condition of approval of an

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exemption application, or the owner of the property wants to remove the affordability covenants of Subsection 30.01.095 F., the City shall terminate the exemption and make due and payable all previously exempt portions of system development charges based on rates in effect on the date of the submittal of a complete building permit application, plus accrued interest from the date of the issuance of the building permit to the date of the termination of the exemption calculated with the interim interest rate in effect on the date of the termination of the exemption as set by general ordinance pursuant to Section 17.12.140, and a processing fee of \$250 due to each City bureau exempting system development charges and to PHB as the administrator. The City may collect reinstated system development charges, processing fees, carrying charges and the actual costs of collections by recording a property lien pursuant to Title 22.

30.01.096 Partial and Full Exemptions of System Development Charges for Mass Shelters and Short-Term Housing.

(Added by Ordinance No. 189323, effective December 19, 2018.)

- A.** The purpose of this Section is to reduce the costs of developing permanent transitional housing in the form of mass shelters and short-term housing by exempting system development charges for qualified developments. This section advances a Council-recognized public policy goal of providing a continuum of safe and affordable housing opportunities including transitional housing, emergency shelters, and campgrounds/rest areas to meet the needs of Portland residents.
- B.** The City will exempt qualified mass shelter and short-term housing developments from paying all or part of system development charges required by Code. The applicant must apply for exemptions under this Section prior to the date the City issues the permit on the new development. Where new development consists of only part of one or more of the uses described in this Section, only that portion of the development that qualifies under this Section is eligible for an exemption. The balance of the new development that does not qualify for any exemption under this Section is subject to system development charges to the full extent authorized by Code or general ordinance. The applicant has the burden to prove entitlement to exemptions so requested.
- C.** The City shall calculate exemptions in the manner authorized for calculating system development charges. Exemptions are applicable to the portions of mass shelter and short-term housing projects that are directly used in providing shelter and services for their residents such as on-site manager facilities and shared space including but not limited to restrooms, kitchens, community rooms, social service facilities, and laundry facilities.
- D.** To obtain the exemption, the applicant must present to the City, at the time of application, documentation from the Joint Office of Homeless Services, or other

designated agency, that the development qualifies for the exemption pursuant to this Chapter.

- E.** The applicant must provide permit drawings that clearly note the exemption, if granted, in order to ensure compliance. Alternatively, the drawings must provide remedies for failure to comply that are acceptable to the City. Permit drawings must state the following, “This project received SDC exemptions for mass shelters or short-term housing. The exemptions only apply to the mass shelter or short-term housing development and associated facilities including social services. If a future tenant improvement or change of occupancy creates a use that is not a mass shelter or short-term housing or associated service, system development charges will be assessed for the new use. It is the permittee’s responsibility to maintain proper documentation of the continued mass shelter or short-term housing use.”

30.01.100 Compliance and Enforcement.

(Amended by Ordinance No. 186028, effective May 15, 2013.)

- A.** PHB shall develop and implement procedures to enforce the provisions of this code. Such procedures should include, where feasible, record notice of the applicability of this code to affected properties, filing a lien to enforce the provisions of this code, and developing civil penalties or other enforcement provisions necessary or appropriate to enforce this code.
- B.** The City Attorney’s Office may enforce the provisions of this code on behalf of the City in any court of competent jurisdiction or City administrative body.

30.01.110 No Restriction of Powers of Eminent Domain; Severability.

- A.** This Chapter shall not be construed to restrict the City’s existing authority to exercise powers of eminent domain through condemnation as outlined in state law.
- B.** If any part or provision of this Chapter, or application thereof to any person or circumstance, is held invalid, the remainder of this Chapter and the application of the provision or part thereof, to other persons not similarly situated or to other circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Chapter are severable.

30.01.120 Inclusionary Housing.

(Added by Ordinance No. 188163; amended by Ordinance Nos. 189071, 189213 and 189302, effective December 12, 2018.)

- A. Purpose Statement.** The purposes of the Inclusionary Housing (“IH”) Program are:

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1. Increase the number of units available to households earning 80 percent or less of MFI, with an emphasis on households earning 60 percent or less of MFI;
2. Responsibly allocate resources to increase housing opportunities for families and individuals facing the greatest disparities;
3. Create affordable housing options in high opportunity neighborhoods, those with superior access to quality schools, services, amenities and transportation; and
4. Promote a wide range of affordable housing options with regard to size, amenities and location.

B. Administration.

1. PHB will certify whether the applicant's proposed development meets the standards and any administrative requirements set forth in this Section.
2. PHB may adopt, amend and repeal Administrative Rules and prepare forms for the implementation, administration and compliance monitoring consistent with the provisions of this Section. The Director of PHB, or a designee, has authority to make changes to the Administrative Rules as is necessary to meet current program requirements. PHB Administrative Rules will set forth clear and objective criteria for determining whether a development meets the minimum standard of affordable units ("IH Units").
3. PHB will review the Inclusionary Housing outcomes periodically in order to determine if the IH Program options and incentives in Subsection 30.01.120 C. are consistent with City goals and market conditions.

C. Financial Incentives. The following financial incentives are provided for the respective options of IH Program compliance:

1. When the proposed development will include 20 percent of the units or total number of bedrooms configured into IH Units at or below 80 percent MFI, or for developments outside of the Central City Plan District, 15 percent of the units or total bedrooms configured into IH units at or below 80 percent MFI for applications filed on or before December 31, 2020:
 - a. Ten-year property tax exemption in accordance with City Code Chapter 3.103 for the IH Units. If the development is in the Central City Plan district, as designated in City Code Chapter 33.510, and has a built or base FAR of 5:1 or greater the tax exemption applies to all residential units; and

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- b. Construction Excise Tax exemption for the IH Units in accordance with Subsection 6.08.060 A.2.
 2. When the proposed development will include 10 percent of the units or total number of bedrooms configured into IH units at or below 60 percent MFI, or for developments outside the Central City Plan District, 8 percent of the units or total number of bedrooms configured into IH units at or below 60 percent MFI for applications filed on or before December 31, 2020:
 - a. Ten-year property tax exemption according to City Code Chapter 3.103 for the IH units. If the development is in the Central City Plan District, as designated in City Code Chapter 33.510, and has a built or base FAR of 5:1 or greater, the tax exemption applies to all residential units; and
 - b. Construction Excise Tax exemption for the IH Units in accordance with Subsection 6.08.060 A.2.; and
 - c. SDC exemption for the IH Units in accordance with Section 30.01.095.
 3. When the proposed development elects to construct IH Units offsite:
 - a. Construction Excise Tax exemption for the Receiving Site's IH Units in accordance with Subsection 6.08.060 A.2.; and
 - b. SDC exemption for the Receiving Site's IH Units in accordance with Section 30.01.095.
 4. When the applicant elects to dedicate IH Units in an existing development, there are no financial incentives provided under Section 30.01.120.
 5. When the applicant elects the fee-in-lieu option, there are no financial incentives provided under Section 30.01.120.
- D. Standards.** Developments providing IH Units must satisfy the following standards:
1. The IH Units must meet clear and objective administrative criteria that ensure a reasonable equivalency between the IH Units and the market-rate units in the development;
 2. The IH Units shall remain affordable for a period of 99 years;
 3. Owners of property subject to the IH Program are required to sign a Regulatory Agreement to be recorded with the property where the IH Units are located;

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4. The owner or a representative shall submit annual documentation of tenant income and rents for the IH Units to PHB;
 5. The City may inspect the IH Units for fire, life and safety hazards and for compliance with IH Program requirements and may inspect files documenting tenant income and rents of the IH Units; and
 6. Subsequent failure to meet the requirements of the IH Program previously determined at the time the permit is reviewed will result in a penalty equal to the amount of the current fee-in-lieu calculation plus accrued interest, and could result in legal action if unpaid.
 7. When the IH Units are configured based on a percentage of the total number of bedrooms within the proposed development, the IH Units must be provided in 2 or more bedrooms per unit.
- E.** To the extent that a financial incentive as set forth in this Section is not available to a development that otherwise complies with City Code Chapter 33.245, the IH Program will not be applicable to the development. If the IH Program is not applicable to the development, PHB will provide a letter certifying that the development is not subject to any IH Program requirements.
- F. Fee-In-Lieu.** When the applicant elects the fee-in-lieu option, the fee-in-lieu per gross residential and residential related square foot (GSF) of the proposed development is:

1. For developments in zones outside the Central City Plan District

Fee per GSF on or before December 31, 2020
\$19
Fee per GSF after December 31, 2020
\$23

2. For developments in zones within the Central City Plan District

Fee per GSF
\$27

3. For Bonus FAR in non-residential developments

Fee Schedule for Bonus FAR for non-residential occupancy/use
\$24 per square foot of Bonus FAR

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- D.** Re-inspections. The Director may conduct re-inspections whenever a sign or awning is found not to be in compliance with this Title or with the issued permit or registration.

32.64.030 Refusal of Entry.

No person may refuse entry or access to a site of a permitted or registered sign or awning to any authorized representative of the Director who provides proper credentials and requires entry for the purpose of conducting an inspection. In addition, no person may obstruct, hamper or interfere with representatives of the Director while in the process of carrying out their official duties.

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SIGNS AND RELATED REGULATIONS

CHAPTER 32.66 - ENFORCEMENT

Sections:

- 32.66.010 Violations.
- 32.66.020 Civil Penalties and Fees.
- 32.66.030 Citations.
- 32.66.040 Stop Work Orders.
- 32.66.050 Review by the Director.

32.66.010 Violations.

- A.** The following constitute violations of this Title:
 - 1.** Any failure, refusal or neglect to comply with any provision of this Title;
 - 2.** Allowing or causing a condition that threatens to injure the public health or safety, or threatens to damage public or private property; or
 - 3.** Any failure, refusal or neglect to correct or remove any sign, awning, strobe light, banner or balloon that does not comply with the provisions of this Title, after being required to do so by the Director.
- B.** Each specific incident and each day of non-compliance will be considered a separate violation of this Title.

32.66.020 Civil Penalties and Fees.

(Amended by Ordinance Nos. 176469, 183793 and 189413, effective March 6, 2019.) A violation of this Title may result in assessment of civil penalties or enforcement fees, as provided below:

- A.** Civil penalties.
 - 1.** For each separate violation, a civil penalty of up to \$1,000 may be assessed.
 - 2.** In determining the amount of any civil penalty to be assessed, the Director will consider the following:
 - a.** The nature and extent of the responsible party's involvement in the violation;
 - b.** The benefits, economic, financial or otherwise, accruing or likely to accrue as a result of the violation;
 - c.** Whether the violation was isolated and temporary, or repeated and continuing;

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- d.** The magnitude and seriousness of the violation;
- e.** The City's cost of investigation and remedying the violation;
- f.** Any other applicable facts bearing on the nature and seriousness of the violation.

B. Administrative enforcement fees.

- 1.** In addition to other penalties and fines, the Director may charge a penalty in the form of a monthly enforcement fee or penalty for any violation that meets the following conditions:
 - a.** Either a citation, as described in Section 32.66.030, Citations, or a stop work order, as described in Section 32.66.040, Stop Work Orders, has been issued; and
 - b.** A response period of at least 30 days has passed since the citation or stop work order became final; and
 - c.** The violation, as described in the initial citation of violation or stop work order or any subsequent citation or stop work order, has not been corrected, inspected and approved.
- 2.** The amount of the monthly enforcement fee or penalty shall be charged as set forth in the Enforcement and Penalty Fee Schedule as approved by City Council. If the responsible party does not have all violations corrected, inspected and approved within three months from the date of the initial notice of citation or stop work order, then monthly enforcement fees or penalties will subsequently be twice the amount stated in the Enforcement Fee and Penalty Schedule as approved by City Council.
- 3.** Once the monthly enforcement fees or penalties begin, they will continue until all violations identified in the initial citation or stop work order, or any subsequent citations or stop work orders, have been corrected, inspected and approved.
- 4.** The responsible party must notify the Director when the responsible party believes that all violations listed in the initial citation or stop work order, or any subsequent citations or stop work orders, have been corrected. Upon confirmed receipt of such notice, the Director will promptly schedule an inspection of the violation and will notify the responsible party if any violations remain uncorrected.
- 5.** When a violation meets the conditions for charging an enforcement fee or penalty as described in this Section, the Director will file a statement with

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the Revenue Division that identifies the property, the amount of the monthly fee or penalty, the amount of citations fines, and the date from which the charges are to begin. The Revenue Division will then:

- a.** Notify the responsible party of fines and enforcement fees and penalties;
 - b.** Record a property lien in the Docket of City Liens;
 - c.** Bill the responsible party monthly for the full amount of the accumulated fines and enforcement fee or penalty owing, plus additional 10 percent charges to cover the administrative costs of the Revenue Division; and
 - d.** Maintain lien records until:
 - (1)** The lien and all associated interest, fines, penalties, charges, and costs are paid in full; and
 - (2)** The Director certifies that all violations listed in the initial and any subsequent citations or stop work orders have been corrected, inspected and approved.
- C.** Portable sign penalties. In addition to other penalties and fees established in this section, where a registered or temporary portable sign has been the subject of multiple citations, the Director may either impound the sign, or revoke the registration of a sign or prohibit future portable sign registrations to the owner of the sign, or any combination of these actions. The Director may charge, in addition to any other fine, the administrative costs of impounding a portable sign.

32.66.030 Citations.

- A.** If the Director has reasonable belief that a violation has occurred, the Director may issue a citation. The citation may be personally delivered to the responsible party, or may be delivered by Registered or Certified Mail to the responsible party. The citation will include:
- 1.** A reference to the particular section or sections of this Title that have been or are being violated;
 - 2.** A short and plain statement of the matters asserted or charged;
 - 3.** A statement of the amount of the applicable penalties; and
 - 4.** A reference to the process by which the responsible party may request review by the Director.