

UPDATE INFORMATION SHEET

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

Vols. I & II – Portland City Code

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

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

Update Packet Enclosed	December 31, 2012
Previous Update Packet	September 30, 2012

Insertion Guide for Code Revisions
Office of the City Auditor 503-823-4082
4th Quarter 2012 (December 2012)

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Chapter 3.15

**OFFICE OF
MANAGEMENT AND FINANCE**

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

Sections:

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- 3.15.020 Bureau of Internal Business Services.
- 3.15.030 Business Operations Division.
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- 3.15.050 Bureau of Human Resources.
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3.15.010 Organization.

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

- 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 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 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 Bureau of Internal Business Services, which includes the divisions of CityFleet, Facilities, Procurement Services, Printing and Distribution, and Risk Management; the Business Operations Division, and the bureaus of Financial Services, Human Resources, Revenue, Technology Services and the Enterprise Business Solution Division.

TITLE 3

ADMINISTRATION

- 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.
 - 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.

TITLE 3 ADMINISTRATION

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 City Charter governing settlements, the Risk Manager is authorized to act on behalf of the City of Portland in the settlement of tort claims and court actions alleging employment discrimination and violations of civil rights, subject to concurrence of the Bureau of Human Resources Director.
 4. The Risk Manager is authorized to investigate complaints of discrimination filed with the Civil Rights Division of the Oregon Bureau of Labor and Industries, or the Equal Employment Opportunity Commission. During the investigation of complaints filed, the Risk Manager or designee shall be an agent of the Office of the City Attorney for purposes of representing the City. The Risk Manager is authorized to settle such complaints subject to the following provisions.
 - a. Subject to PCC Section 3.15.040, the Risk Manager may make settlements in an amount not exceeding \$5,000 and shall file a report with the Council two weeks after the end of each month with respect to the settlements entered into pursuant to this subsection.
 - b. Where a settlement agreement provides for payment of a claim in an amount in excess of \$5,000, the settlement must be approved by City Council.
 5. The Risk Manager is authorized to investigate and enter into settlements on fair and moral claims which are not covered by insurance.
- G.** Procurement Services Division shall be supervised by the Chief Procurement Officer (CPO) who shall report to the Bureau of Internal Business Services 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,

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Code or general law including, but not limited to those described in PCC Section 5.33.040 and PCC Chapter 5.68.

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 Financial Services.

(Amended by Ordinance Nos. 185652 and 185807, effective December 12, 2012.)

- A.** The Bureau of Financial Services shall be supervised by a Director, who shall be the Chief Financial Officer (CFO) of the City, and who shall report to the CAO. The Bureau of Financial Services shall consist of the following divisions: Accounting; and Public Finance and Treasury. The Bureau of Financial Services is responsible for treasury and debt management, deferred compensation, accounting and payroll, grants management and assigned grant funds, pension oversight and other services or responsibilities the Council or the CAO may assign.
- B.** The Accounting Division shall be supervised by a Controller who reports to the CFO 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.
 - 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.
- C.** Public Finance and Treasury Division shall be supervised by the City Treasurer, who shall report to the CFO. 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.

3.15.050 Bureau of Human Resources.

- 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 employee relations, labor negotiations, training, employment services, classification, compensation, affirmative action and diversity development, workforce development and employee benefits. The Bureau of Human Resources shall be responsible for the health benefit plan administration including the Health Insurance Fund and the Portland Police Association 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.
 - 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

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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 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

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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.
- 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, as approved by the Council, including provisions for:

 - 1.** Medical, dental and vision coverage;
 - 2.** Dependent Care Assistance Plan;

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3. Medical Expense Reimbursement Plan;
4. Life Insurance;
5. Long-Term Disability; and
6. Employee Assistance 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.

(Amended by Ordinance No. 185568 and Resolution No. 36939 (approved at November 6, 2012 election); effective December 5, 2012.)

- A. The Revenue Bureau shall be supervised by a Director who shall report to the CAO. The Revenue Bureau consists of the divisions of Business Solutions, License and Tax, Operations, Regulatory and the Office for Community Technology. The Revenue Bureau is responsible for collecting a wide variety of City revenues and fees, and maintaining and improving the systems that collect them. The responsibilities of the Bureau shall include, but are not limited to:
 1. Manage all billing and collection software used by the Revenue Bureau 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 all regulatory programs formerly the responsibility of the Bureau of Licenses, including the authority to enact administrative rules and regulations.
 8. Manage and collect assessments and liens formerly the responsibility of the Auditor's Office.

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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.
- B.** To the extent any other provision of the Portland City Code conflicts with this Section 3.15.060, this section shall control.

3.15.070 Bureau of Technology Services.

- 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 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

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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.
 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.

The Enterprise Business Solution Division (EBS) shall be supervised by a Manager who shall report to the CAO. With support of technical staff of the Bureau of Technology Services, the EBS Division is responsible for managing the 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 resource services. The Division's yearly workplan and long range strategic plan will be monitored by representatives from City bureaus and Offices organized into an Executive Steering Committee and a Program Advisory Committee. These committees shall provide recommendations to the CAO. The CAO is authorized to adopt administrative rules establishing EBS Operating Principles.

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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;

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- 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;
- 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.

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Chapter 3.18

BUREAU OF PERSONNEL

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

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 Oct. 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

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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.

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 Oct. 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.

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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:

(See Figure 1 at end of Title 3)

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 No. 183995, effective August 13, 2010.)

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. 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 proposed discipline is suspension without pay or greater.

c. The following incidents involving use of force:

(1) All officer involved shootings.

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- (2) Physical injury caused by an officer that requires hospitalization.
 - (3) All in custody deaths.
 - (4) Less lethal incidents 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.
 - 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.
 - (i)** The Bureau and IPR shall develop a Bureau Directive setting the criteria for Citizen selection to be approved by City Council.
 - (b)** The Auditor and the Chief shall have the authority to recommend to City Council the removal of citizen members from the pool.
 - (i)** The Bureau and IPR shall develop a Bureau Directive setting the criteria for removal to be approved by City Council.
- (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.

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- (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 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 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. Less lethal incidents where the recommended finding is “out of policy”.
- 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.

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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 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 IPR 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 IPR 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 IPR Citizen Review Committee of an appeal when deemed necessary due to the nature of the underlying complaint.

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 IPR 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) Less lethal incidents where the recommended finding "out of policy".

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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.
- 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 findings and a summary of any training and/or investigation issues or concerns. 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.

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 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, 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

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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. 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 Nov. 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 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

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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 Nov. 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 DIVISION**

(Chapter replaced by Ordinance No.
175652, effective July 1, 2001.)

Sections:

3.21.010	Purpose.
3.21.020	Definitions.
3.21.030	Independent Police Review Division.
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.

3.21.010 Purpose.

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 Division.

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3.21.020 Definitions.

(Amended by Ordinance Nos. 176317 and 183657, effective April 30, 2010.) In this chapter:

- A.** “Appellant” means either:
 - 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 IPR Citizen Review Committee, which is appointed by City Council members to assist the 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 Division.
- 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.

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- M.** "IPR Investigator" means an investigator of the Independent Police Review Division.
- N.** "IPR" means the Independent Police Review Division.
- O.** "Member" means a sworn employee of the Bureau. An "involved" member is a member about whom a complaint has been submitted to IPR or the Bureau.
- 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.

3.21.030 Independent Police Review Division.

There is established by the City Council the Independent Police Review Division within the Auditor's Office.

3.21.040 Director Selection.

The City Auditor shall select the Director of the IPR in accordance with any applicable civil service regulations and other 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.

- 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.

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- B.** The Director may delegate to his or her staff members any of his or her duties, unless otherwise specified in this chapter. The IPR Investigator shall succeed to all duties and responsibilities of the Director, including those specified by ordinance, when he or she is serving as the acting Director.

3.21.060 Office Facilities and Administration.

- 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 City 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 and 185076, effective December 14, 2011.) 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. The

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Bureau shall notify the Director that it intends to conduct an administrative investigation into misconduct before initiating the investigation. IPR will conduct these investigations in accordance with Human Resources Administrative Rules regarding process and investigation of complaints of discrimination.

- E.** Compel review. In accordance with the procedures of Code Section 3.20.140, IPR Director (or designee) may compel review by the Police Review Board of any recommended findings of or recommendation for discipline by an RU Manager or Commanding Officer resulting from an internal or IPR administrative investigation of a member. IPR Director (or designee) 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 records. 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 records, including records which are confidential by city law, and police databases, subject to any applicable state or federal laws. The Director shall not have access to legally privileged documents held by the City Attorney or Attorney-Client communications held by the City Attorney clients. The Director shall not disclose confidential records and shall be subject to the same penalties as the legal custodian of the 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.

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- 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 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.** 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.
- O.** The Auditor may work through the City Attorney's Office to hire outside legal counsel when the Auditor and the City Attorney agree that outside legal advice is necessary or advisable.

3.21.080 Citizen Review Committee.

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

- A.** The Committee shall consist of nine citizens. The Committee members shall be appointed as follows:
 - 1.** The Director shall solicit applications from the Office of Neighborhood Involvement, 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 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 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 Mayor and commissioners may each submit an applicant who may be given preference over others of equivalent background and 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, attending the Bureau Citizens' Academy, ride-alongs with officers, and training on investigative practices.
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.

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.
2. Gather community concerns. To participate in various community meetings to hear concerns about police services.

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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 No. 179162, effective March 30, 2005.)

- 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.
- 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 his or her 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.

3.21.120 Handling Complaints.

(Amended by Ordinance Nos. 179162 and 183657, effective April 30, 2010.) 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 a 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: The Auditor's Independent Police Review division 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 acting in his/her 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 IPR 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.

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- 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.

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:

- a.** Recommend that the Bureau/IAD conduct an investigation

The IPR shall gather information from the complainant and forward it to the Bureau/IAD. The 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 IAD Commander 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.

When a collective bargaining agreement is applicable and specifies

that a member may only be interviewed by a police officer, IPR personnel shall direct questions through the IAD investigator. The IAD investigator may repeat the question to the member and/or direct the member to answer the question.

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 IPR Director or designee may determine that IPR should investigate a complaint. If the Director concludes that IAD has not done an adequate job investigating complaints against a particular member, the Director may determine that IPR should investigate a complaint against the member. If the Director concludes that IAD has not done an adequate job investigating a particular category of complaints, the Director may determine that IPR should investigate a complaint or complaints falling in that category. If the Director concludes that IAD has not completed its investigations in a timely manner, the Director may determine that IPR should investigate some complaints. The Director has the discretion to conduct an independent investigation. 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. When a collective bargaining agreement is applicable and specifies that a member may only be interviewed by a police officer, the Director shall notify the IAD commander that IPR has undertaken an investigation and the reason. The IAD commander shall appoint a liaison investigator from that office within two working days to arrange and participate in interviews. When members represented by a collective bargaining unit are being interviewed by IPR

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personnel, the IAD investigator may repeat the question and/or direct the member to answer the question. When a collective bargaining agreement is not applicable and does not specify that a member may only be interviewed by a police officer, then the Director shall ask the member the question directly and/or direct the member to answer the question.

The Director shall provide the IAD commander and the Police Chief with a report on the investigation, and present the IPR investigation to the RU manager for preparation of findings and proposed 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. Dismissal. If IPR declines to take action on the complaint, IPR will send a dismissal letter to the complainant. IPR will also notify the involved officer(s) and involved commanding officer within 30 calendar days of the dismissal. The Director may dismiss the complaint for the following reasons:
 - a. 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;
 - 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. other complaints must take precedence due to limited public resources;
 - f. the complainant withdraws the complaint or fails to complete necessary complaint steps.

- g. it is more likely than not that additional investigation would not lead to a conclusion that the officer engaged in misconduct.

D. Initial Handling and Investigation of Type II Complaints

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 IPR 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 IPR Director.
3. Bureau/IAD Investigation. If the Type II complaint is filed with IPR, the IPR shall gather information from the complainant and forward it to the Bureau/IAD. The 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/IAD Commander 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. When a collective bargaining agreement is applicable and specifies that a member may only be interviewed by a police officer, IPR personnel shall direct questions through the IAD investigator. The IAD investigator may repeat the question to the member and/or direct the member to answer the question. When a collective bargaining agreement is not applicable and does not specify that a member may only be interviewed by a police officer, then the Director shall ask the member the question directly and/or direct the member to answer the question. IPR personnel shall have an opportunity to review and comment on draft

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reports 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 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 IPR Director or designee may determine that IPR should investigate a complaint. If the Director concludes that IAD has not done an adequate job investigating complaints against a particular member, the Director may determine that IPR should investigate a complaint against the member. If the Director concludes that IAD has not done an adequate job investigating a particular category of complaints, the Director may determine that IPR should investigate a complaint or complaints falling in that category. If the Director concludes that IAD has not completed its investigations in a timely manner, the Director may determine that IPR should investigate some complaints. The Director may conduct an independent investigation based on the Director's discretion that it is warranted. 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. When a collective bargaining agreement is applicable and specifies that a member may only be interviewed by a police officer, the Director shall notify the Bureau/IAD commander that IPR has undertaken an investigation and the reason. The Bureau/IAD commander shall appoint a liaison investigator from that office within two working days to arrange and participate in interviews. When members represented by a collective bargaining unit are being interviewed by IPR personnel, the IAD investigator may repeat the question and/or direct the member to answer the question. When a collective bargaining agreement is not applicable and does not specify that a member may only be interviewed by a police officer, then the Director shall ask the member the question directly and/or direct the member to answer the question.

The Director shall provide the IAD commander and the Police Chief with a report on the investigation, and present the IPR investigation to the RU manager for preparation of findings and proposed 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 IPR Director a summary of the complaint and a summary of any subsequent investigation of a sworn member. The IPR Director may 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 is complete, IAD will provide the IPR Director or designee 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 or designee 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

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investigation is complete, IAD shall send the investigation to the appropriate RU Manager.

2. Submission of recommended findings or proposed discipline. The RU manager will review the investigation for any type of complaint when the investigation is conducted by IAD, other designated PPB division or IPR and submit recommended findings and proposed discipline to the supervising Assistant Chief. The supervising Assistant Chief will circulate the recommended findings and proposed discipline to the Director and the Captain of IAD. After receipt of the recommended findings and proposed discipline, the supervising Assistant Chief, the Director or the Captain of IAD may controvert the RU Manager's recommended findings and/or proposed discipline.
3. Police Review Board meeting. If the recommended 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 recommended 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 recommended findings 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. IPR will notify the complainant that they have a right to request a review of the Bureau's recommended 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 recommended 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 recommended findings 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. IPR will notify the complainant that they have a right to request a review of the recommended 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 recommended 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.

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 No. 183657, effective April 30, 2010.)

- 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 30 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.
- 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:

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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.

(Amended by Ordinance No. 185076, effective December 14, 2011.)

- A. When a timely appeal has been submitted to and accepted by the Director, the Director and the Committee chair will schedule a case file review meeting before the Committee to assess the completeness and readiness of the investigation for an appeal hearing.
- B. As a result of the case file review, IPR or IAD may conduct additional investigation in accordance with applicable provisions of the collective bargaining agreements covering Bureau personnel per Section 3.20.120.

3.21.160 Hearing Appeals.

(Amended by Ordinance No. 185076, effective December 14, 2011.)

- 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.
 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 recommended 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 recommended 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.

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- (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 recommended findings, the Director shall close the case.
 - (b) If, by majority vote, the Committee can not reach an agreement with the Bureau on the recommended findings, the Committee shall vote whether to present the appeal to City Council.
 - (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

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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 Commander of IAD and the Director to appear and answer questions regarding the investigation and may also require the responsible 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

- 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 the 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 the IPR is the primary means for citizens to file complaints.
- D. The 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.

- A. The Chief, after reviewing a report provided by the 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

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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, effective April 30, 2010.) 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 Section 3.21.120.

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.

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;

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- 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;
- 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.

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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.
- 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

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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:

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- 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:

$$\begin{array}{c} \text{(Cost To City Taxpayers)} \\ \text{Multiplied by} \\ \text{(Property Owner's Assessed Value)} \\ \text{Divided by} \\ \text{(Assessed Value of City Property)} \end{array}$$

- 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 Apr. 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.

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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 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

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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.

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

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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 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.
- 3.26.090 Solar Friendly Trees.

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.

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 all be in the Nuisance Section, except that removal of trees shall be subject to the approval of the Superintendent of the Bureau of Parks or his designated representative.

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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.)

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.

(Added by Ordinance No. 157993, effective Feb. 18. 1986.) The City Forester, in consultation with the Energy Office, shall recommend a methodology to the Tree Advisory Committee for determining the relative solar friendliness of trees. The City Forester shall use the methodology to create and maintain lists of all trees known to be either solar friendly or non-solar friendly.

Solar friendly trees shall be those deciduous trees which, by the determination of the City Forester, shall have a combination of low winter branch density and long period of wintertime defoliation, and as such, shall result in minimal loss of incident solar radiation during the heating season if planted or allowed to grow.

Chapter 3.27

**PORTLAND PARKS AND
RECREATION BOARD**

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

Sections:

- 3.27.010 Establishment and 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.

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- F. “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.)

- 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:

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- 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.
- 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.

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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.

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 Functions.
- 3.30.030 Development Review Advisory Committee.
- 3.30.040 Establishment of Enforcement Priorities and Remedies.
- 3.30.050 Special Jurisdiction.
- 3.30.060 Nuisance Abatement Contracts.
- 3.30.061 Contractor Eligibility.
- 3.30.062 Contract Award Procedure.
- 3.30.070 Inspections.

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 and 182962, effective July 31, 2009.) The Bureau of Development Services shall be responsible for:

- A.** The administration and enforcement of:
 - 1.** Noise Control, Title 18;
 - 2.** Building Regulations, Title 24.
 - 3.** Plumbing Regulations, Title 25.
 - 4.** Electrical Regulations, Title 26.

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5. Heating and Ventilating Regulations, Title 27.
 6. Floating Structures, Title 28.
 7. Property Maintenance Regulations, Title 29.
 8. Signs and Related Regulations, Title 32.
 9. Original Art Murals, Title 4.
 10. State of Oregon Regulations regarding manufactured dwellings.
 11. Other regulations enacted by the State of Oregon and adopted by the City Council and assigned to the Bureau.
- B.** 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.
- C.** 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.
- D.** The coordination of related permits with other bureaus and offices as required to manage the Development Services Center.
- E.** The issuance of approvals and permits required for the construction, installation, repair, or alteration of land, buildings or equipment.
- F.** The inspection of sites, buildings or other structures and equipment for compliance with plans and specifications and with applicable Code provisions and laws; and
- G.** 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 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

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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
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.
 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 Establishment of Enforcement Priorities and Remedies.

(Amended by Ordinance Nos. 175327, 176955 and 183793, effective May 19, 2010.) 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 written policies and procedures for the enforcement of applicable Code provisions and laws. Establish enforcement fees or penalties for non-compliance. Establish enforcement priorities based on the number of budgeted enforcement

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personnel, public safety and welfare factors, and any priorities established by City Council.

B. Gain compliance by:

1. Instituting an action before the Code Hearings Officer in the manner provided for by Title 22 of this Code; or
2. Causing appropriate action to be instituted in a court of competent jurisdiction; or
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 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.

C. Impose fees or penalties for non-compliance, provide notification, and allow for appeals by:

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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.
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. Providing for administrative procedures as set forth in Subsections 29.70.010 C. through E.
7. Providing for administrative review and the opportunity for appeal to the Code Hearings Officer as set forth in Section 29.80.010.
8. Allowing exceptions as provided in Section 29.60.100.

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 citations and order the towing and storage and/or removal of such vehicles and

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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.

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

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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 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 No. 176955, effective October 9, 2002.)

- 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, the responsible party may not resume work until such time as the Director give specific approval in writing. The stop work order will be in writing and will include:
 1. Date of order;
 2. Permit or registration number, where applicable;
 3. Site address, legal description or project location of 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 will be sent to the responsible party by Certified mail. Where the responsible party is not the property owner, a copy of the stop work order will also be sent to the property owner.
- C. It is unlawful for any person to remove, obscure, mutilate or otherwise damage a stop work order.

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- 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 under Section A, above, within 24 hours.

Chapter 3.32

BUREAU OF LICENSES

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

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Chapter 3.33

**BUREAU OF PLANNING
AND SUSTAINABILITY**

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

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

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 No. 184046, effective September 10, 2010.) 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,

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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;
- 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.
- K.** Carries out other tasks and functions as required by the City Council or Commissioner in Charge.

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ADMINISTRATION**

Chapter 3.34

**BUREAU OF PURCHASES AND
STORES**

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

Chapter 3.36

**BUREAU OF FACILITIES
MANAGEMENT**

(Chapter repealed by Ordinance No. 161018,
effective July 6, 1988.)

**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.

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5. Monitor and periodically recommend updates to PHB's Strategic Plan.
 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.
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.

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- 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.
- 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.

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.)

Chapter 3.46

BUREAU OF INSECT CONTROL

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.

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Chapter 3.52

BUREAU OF COMPUTER SERVICES

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

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 Oct. 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 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:

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- 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;
- 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.)

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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ADMINISTRATION

Chapter 3.62

BOXING COMMISSION

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.)

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

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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.

Chapter 3.71

ENVIRONMENTAL COMMISSION

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

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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 Sept. 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 Sept. 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 Sept. 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 Sept. 5, 1990.)

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 Jan. 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

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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.

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.

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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;
- 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;

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- 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 an 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 Citizens.
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.

The City hereby establishes, in addition to other remedies or rights of appeal, an independent, impartial office, readily available to the public, responsible to the City Auditor, empowered to investigate the administrative acts of city agencies and to recommend appropriate changes toward the goals of safeguarding the rights of persons and of promoting higher standards of competency, efficiency and justice in the provision of city services. This office shall be known as the Office of the Ombudsman.

3.77.020 Definitions.

In this chapter:

- A. "Administrative act" means an action, failure to act, omission, decision, recommendation, practice, policy or procedure.
- B. "Agent or agency" includes any 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 citizen 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.

There is established by the City Council the Office of Ombudsman.

3.77.040 Ombudsman Selection.

The City Auditor shall select the Ombudsman in accordance with any applicable civil service regulations and other laws.

3.77.050 Qualifications and Prohibitions.

- A. The Ombudsman shall be a person of recognized judgment, objectivity and integrity who is well-equipped to analyze problems pertaining to City regulations,

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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.

- 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 his or her 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.

- A.** The Ombudsman may be removed from office during his or her term 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.

- 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 his or her staff members any of his or her 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 he or she is 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.

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 he or she 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 he or she may without prior notice enter and inspect the premises of any agency. Agencies shall not restrict the Ombudsman's access to agency personnel;
- D. Notwithstanding any other provision of city law, to have access to and to examine and copy, without payment of a fee, any agency records, including records which are confidential by city law, subject to any applicable state or federal laws. Except, the Ombudsman shall not have access to legally privileged documents held by the City Attorney or Attorney-Client communications held by the City Attorney clients. The Ombudsman shall not disclose confidential records and shall be subject to the same penalties as the legal custodian of the records for any unlawful or unauthorized disclosure;
- E. To request any person or agency to give sworn testimony or to 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;

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- 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 Ombudsman Office;
- 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.

- A.** The Ombudsman shall receive complaints from any source concerning any administrative act. He or she 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;
 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 his or her 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 him or her consistent with the requirements of the Oregon Public Records Law, except insofar as disclosures may be necessary to enable the Ombudsman to carry out his or her 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.

- A. The Ombudsman may make recommendations to an agency for the resolution of complaints and inquiries in accordance with this chapter.
- B. In seeking a resolution to a complaint or inquiry the Ombudsman may draw the matter to the attention of any bureau 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 him or her 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.

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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.
- 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.

- 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 his or her 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 Citizens.

The Ombudsman shall post notices or use other appropriate means to inform citizens of their rights, protections, and availability of services provided for under this Chapter. 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.

The Ombudsman may from time to time and shall annually report his or her 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.

City employees shall cooperate with the Ombudsman in the exercise of his or her powers, and shall not mislead or attempt to mislead an Ombudsman's inquiry.

3.77.200 Ombudsman Immunities.

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.

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

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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 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 and 178935, effective December 8, 2004.)
There hereby is created an advisory committee to the Commissioner In Charge of the Bureau of Parks to be known as the Golf Advisory Committee, consisting of ten 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. 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 Mar. 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 No. 169770, effective Mar. 8, 1996.) The Golf Advisory Committee duties shall include, but not be limited to advising the Commissioner-In-Charge 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 and use of Golf System revenue. The Committee shall make an annual written report to the Commissioner-In-Charge, and to the Council.

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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 Dept 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.

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.)

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 NEIGHBORHOOD
INVOLVEMENT**

(Chapter replaced by Ordinance No. 179418,
effective August 12, 2005.)

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 Neighborhood Involvement.

3.96.010 Purpose.

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 Neighborhood Involvement 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.

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 Neighborhood Involvement, 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 Neighborhood Involvement:** 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 Neighborhood Involvement 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 Neighborhood Involvement.

3.96.030 Neighborhood Associations.

- 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

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ADMINISTRATION

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,
4. Undertake projects and activities deemed appropriate by the Neighborhood Association; and,
5. Cooperate with other Neighborhood Associations and ONI to create District Coalitions.

C. Responsibilities of Neighborhood Associations.

1. Neighborhood Associations shall abide by the Standards established by the Office of Neighborhood Involvement.
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 Neighborhood Involvement pursuant to the adopted Standards.
2. If a Neighborhood Association fails to meet the minimum requirements of 3.96.030, the Office of Neighborhood Involvement 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.

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 Neighborhood Involvement.

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 Neighborhood Involvement.

There is hereby established and created an Office of Neighborhood Involvement 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 Neighborhood Involvement shall:

- A.** Assist Neighborhood Associations, District Coalitions and others in planning and developing programs for public involvement, crime prevention, dispute resolution and budget review; and,
- B.** Act as an information clearinghouse and resource to Neighborhood and Business Associations, other groups and the public; and,
- C.** Notify interested persons of meetings, hearings, elections and other public participation events of the Office of Neighborhood Involvement neighborhood system; and,

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- D.** Enter into, monitor, administer contracts, and memorandums of understanding for Neighborhood Associations through District Coalitions; and,
- 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; and,
- F.** Support and promote public involvement within the Neighborhood Association framework; and,
- 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 Neighborhood Associations and District Coalitions. In so doing, the Office of Neighborhood Involvement 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; and,
- 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 Neighborhood Involvement may suspend partial or all benefits and may ultimately revoke formal recognition of a Neighborhood Association or acknowledgement of a Business District Association; and,
- I.** Promote, encourage and support diverse and multicultural public involvement; and,
- J.** Establish open and fair grievance procedures for Neighborhood Associations, District Coalitions, and the Office of Neighborhood Involvement; and,
- K.** Establish open meetings and public records standards for Neighborhood Associations and District Coalitions.

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, and 172488 effective July 22, 1998.)

- 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 Business License Director 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.

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- 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 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 and 157639, effective July 25, 1985.) The Bureau of Licenses 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 Aug. 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;
 - 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.

(New Section substituted 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.
- 3.99.015 Compliance.
- 3.99.020 Adjustments.

3.99.005 Policy.

It is the policy of the City of Portland that employees performing certain categories of work under formal service contracts with the City of Portland be guaranteed a minimum fair wage including benefits to equal a specified minimum total compensation. City bureaus and operating units have the discretion to implement this policy in a reasonable manner.

3.99.010 Covered Services.

The Fair Wage Policy applies to formal service contracts entered into by the City of Portland for janitorial, security, and parking attendant services.

3.99.015 Compliance.

City of Portland bureaus or operating units entering into formal contracts for covered services shall include the annual minimum wage and total compensation amount established by the City Office of Management and Finance in all procurement announcements and resulting contracts. Compliance with the minimum wage and total compensation requirements shall be monitored through submission of monthly certified payroll, mandatory employee notification of annual minimum wage and total compensation rates via on-site postings, designation of a bureau-based individual responsible for compliance monitoring and complaint resolution, and other measures deemed appropriate by the City. 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

The fiscal year 2000/01 minimum wage shall be \$8.00/hour with a minimum total compensation of \$9.50/hour. "Total compensation" includes wages and the employer's cost of paid leave, life or health insurance, or retirement, but does not include mandated employer costs such as FICA, state unemployment insurance, or other payroll taxes. The Office of Management and Finance shall provide City bureaus with a yearly minimum

wage and minimum total compensation figure for covered services which is anticipated to be adjusted annually in light of any year-to-year percentage increase in the Portland/Salem Consumer Price Index wage earners (cpi-w) as published by the Bureau of Labor Statistics in February of each year. In making these adjustments, the Office of Management and Finance shall take into account the City's overall financial picture, and this code shall not be interpreted to require any increase which is inconsistent with the City's financial health and capabilities.

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.

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- 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 Apr. 29, 1992.)

3.100.011 Definitions.

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

3.100.012 Policy.

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

3.100.013 Objectives.

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

3.100.014 Management Commitment.

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

- 3.100.015 Regulatory Committee.**
(Repealed by Ordinance No. 165383, effective Apr. 29, 1992.)
- 3.100.016 Bureau EEO Advisory Committees.**
(Repealed by Ordinance No. 165383, effective Apr. 29, 1992.)
- 3.100.017 Reports and Audits.**
(Repealed by Ordinance No. 165383, effective Apr. 29, 1992.)
- 3.100.018 Complaints of Discrimination.**
(Repealed by Ordinance No. 165383, effective Apr. 29, 1992.)
- 3.100.019 Sanction.**
(Repealed by Ordinance No. 165383, effective Apr. 29, 1992.)
- 3.100.020 Rules and Regulations.**
(Repealed by Ordinance No. 165383, effective Apr. 29, 1992.)
- 3.100.021 Identification of Handicapped.**
(Repealed by Ordinance No. 165383, effective Apr. 29, 1992.)
- 3.100.022 Management Commitment.**
(Repealed by Ordinance No. 165383, effective Apr. 29, 1992.)
- 3.100.023 Objectives.**
(Repealed by Ordinance No. 165383, effective Apr. 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.)

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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 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;

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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)

- 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:

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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.
- 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;

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- 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 Dec. 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 Dec. 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 Dec. 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

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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 Dec. 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.

3.100.065 Rules and Regulations.

(Amended by Ordinance No. 150738, effective Dec. 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 Dec. 13, 1980.)

3.100.081 Definitions.

(Amended by Ordinance No. 150738, effective Dec. 13, 1980.) As used in this Section:

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- 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 Dec. 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 Dec. 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 Aug. 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 Aug. 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

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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 Aug. 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 Aug. 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 and 185043, effective December 7, 2011.)
As used in this Chapter:

- A. “Low income”** means 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.
- 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 and 185043, effective December 7, 2011.)

- 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 April 1 of the assessment year for which the exemption is applied for, except that when the property designated is acquired after April 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;

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8. A certification of income levels of low-income occupants;
 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 April 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. If the applicant is denied, the City

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shall retain that portion of the application fee attributable to its own administrative costs and shall refund the balance to the applicant.

3.101.050 Review of Application.

(Amended by Ordinance Nos. 167356, 182671 and 185043, effective December 7, 2011.)

- A.** Within 30 days after the April 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.** 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.
- D.** 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.
- E.** The application shall be assigned an application and receipt number.

3.101.060 Annual Application Renewal.

(Amended by Ordinance Nos. 167356, 178286 and 185043, effective December 7, 2011.)

- 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.

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- 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 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 and 185043, effective December 7, 2011.)
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 April 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.
- 3.102.070 Designation of Homebuyer Opportunity Areas.
- 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.

As used in this Chapter:

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- 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 terms and conditions of an approved tax exemption, including but not limited to any compliance requirements under this Chapter.
- C.** “**Homebuyer opportunity area**” means those areas of the City of Portland designated by the Portland Housing Bureau that meet the requirements set forth in ORS 307.651 to 307.657 for a "distressed area" and Section 3.102.070 of this Code.
- D.** “**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.

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 a homebuyer opportunity area;
 - 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;

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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 homebuyer opportunity areas, in which case 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

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.

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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.

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.

- A.** Upon approval, applicants must execute a document to be recorded on title of the single-unit housing requiring Portland Housing Bureau verification of homebuyer

affordability and owner-occupancy qualification prior to the sale of each dwelling unit to an initial homebuyer.

- 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 owner to repay any exempted taxes consistent with ORS 307.687.

3.102.070 Designation of Homebuyer Opportunity Areas.

- A.** The Portland Housing Bureau shall be responsible for designating homebuyer opportunity areas. The designation of such areas shall occur in the form of a public hearing conducted before the Portland Bureau of Planning and Sustainability's Planning and Sustainability Commission and approval through a resolution with City Council. Portland Housing Bureau shall review the homebuyer opportunity areas for possible amendment at least every two years.
- B.** The criteria for designating homebuyer opportunity areas shall include consideration of the following factors:
 - 1.** A distressed area as described in ORS 307.651(1);
 - 2.** The incentive of limited property tax exemption in a homebuyer opportunity area will help to carry out adopted policies, or area-wide or district plans of the City related to housing or neighborhood revitalization; and
 - 3.** The probability of revitalization in the area without the assistance of the exemption.

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. 185477,
effective August 1, 2012.)

Sections:

- 3.103.010 Purpose.
- 3.103.020 Definitions.
- 3.103.030 Benefit of the Exemption; Annual Maximum Exemption Amount.
- 3.103.040 Minimum Threshold Requirements.
- 3.103.050 Application Review and Scoring of Public Benefits.
- 3.103.060 Application Approval.
- 3.103.070 Rental Project Rate of Return.
- 3.103.080 For-Sale Unit Compliance.
- 3.103.090 Extension of the Exemption for Low Income Housing Projects.
- 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 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.

3.103.020 Definitions.

As used in this Chapter:

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- A. “Accrued Payment Liability”** means the amount determined by the Portland Housing Bureau that must be paid to Multnomah County if a rental project’s rate of return exceeds the maximum rate of return allowed under this program.
- B. “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.
- C. “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.
- D. “Extended Use Agreement”** means a recorded agreement between the owner and the Portland Housing Bureau stating the approval and compliance criteria of a project’s tax exemption.
- E. “Multiple-unit housing”** has the meaning set forth in ORS 307.603(5).
- F. “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 extended use agreement and any compliance requirements under this Chapter.
- G. “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 annually by Council.

3.103.040 Minimum Threshold Requirements.

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 minimum threshold requirements:

- A.** Financial need for the exemption

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1. Rental projects

- a.** The project would not otherwise be financially feasible without the benefit provided by the property tax exemption.
- b.** The applicant must submit proof that the anticipated internal rate of return for the project for the period of the exemption will not exceed 10 percent.

2. For-sale projects

- a.** Units receiving tax exemption will be sold to buyers meeting the affordability requirements contained in this Section.

B. Property eligibility

- 1.** Projects must be located within identified Designated Plan Areas/Metro 2040 Centers, within a quarter mile radius of Max Station Areas, or within a quarter mile from either Metro 2040 Corridors with Frequent Transit Service or Metro 2040 Main Streets with Transit Service within the City of Portland.
- 2.** Projects must conform to City of Portland's zoning and density requirements.
- 3.** Applications for tax exemption must be submitted and approved prior to application for the project's building permit.

C. Affordability

- 1.** For rental projects, during the term of the exemption, a minimum of 20 percent of the number of units must be affordable to households earning 60 percent or less of the area median family income, with possible allowance to have units affordable to households earning 80 percent or less of the area median family income based on the market for similar units in the same geographic area. 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. Equity

1. Applicants must provide a plan to meet Portland Housing Bureau's business equity goals for participation of Minority, Women, and Emerging Small Businesses (MWESB) in professional services and construction contracting and City workforce training and hiring goals.
2. Applicants must describe their efforts to engage community stakeholders and integrate feedback in the project concept plan, including but not limited to: neighborhood impacts, plan for commercial tenants, the use of gathering and commercial space in the project, and outreach and marketing of residential units to target markets.

E. Green Building. The project must be built to meet healthy and energy efficient environmental building standards.

3.103.050 Application Review and Scoring of Public Benefits.

- A.** The Portland Housing Bureau will review and approve or deny applications consistent with ORS 307.621.
- B.** Applications which satisfy the requirements of Section 3.103.040 will be scored as part of a competitive process. Applicants must demonstrate additional public benefits beyond the threshold requirements in their applications. Additional benefits may include but are not limited to the following:
1. Affordability in addition to threshold requirements described in Section 3.103.040 for rental projects or units available for sale below prices for comparable properties in the area;
 2. Applicant's demonstration in its MWESB and community engagement plans of how the project will help Portland Housing Bureau achieve the vision contained in Portland Housing Bureau's Guiding Principles on Equity and Social Justice;
 3. A portion of or all units fully "accessible" to persons with special needs and of established accessible design features at both unit and site level;
 4. Family sized units in areas lacking housing units with two or more bedrooms, with appropriate family friendly amenities;

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5. Access to grocery stores, schools, day care, etc.;
6. Quality gathering space available to the community at large; and
7. A portion of units reserved for and an established partnership with an agency to provide services to vulnerable populations, including but not limited to youth who have transitioned or are transitioning out of foster care.

3.103.060 Application Approval.

- A. Portland Housing Bureau shall select the applications which meet the minimum threshold requirements (see Section 3.103.40) and provide the most public benefit to the City (see Section 3.103.50). The Portland Housing Bureau Housing Investment Committee shall review the selected applications and determine which should proceed towards approval. Applicants with selected applications shall pay an application fee.
- B. Portland Housing Bureau shall present the selected applications to the Portland Housing Advisory Commission at a public hearing, for which notice will be given and public testimony will be heard.
- C. Portland Housing Bureau shall 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.
- D. 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 Rate of Return.

- A. The owner of a rental project approved for exemption will be required to sign an extended use agreement (“EUA”) to be recorded on the title to the property.
- B. During the exemption period, the owner must submit project financial information annually to the Portland Housing Bureau.
- C. Portland Housing Bureau will prepare an annual analysis of the project’s financial data including a to-date calculation of the rate of return for the project.

- D.** Portland Housing Bureau will advise the owner in writing whether the projected rate of return will exceed 10 percent for the entire exemption period and may result in an Accrued Payment Liability (“APL”).
- E.** If Portland Housing Bureau determines that the number and unit mix of affordable units is less than the approved percentage or does not match the unit mix of the project, the next available units must be rented to households meeting the income requirements and the project must be brought into compliance before the next reporting period.
- F.** At the end of the final year of the exemption, Portland Housing Bureau will calculate the rate of return for the project during the exemption.
 - 1.** If the rate of return does not exceed 10 percent, then the EUA terminates at the end of exemption.
 - 2.** If the rate of return exceeds 10 percent, then Portland Housing Bureau sends a written notice to the last known address of the owner requiring the owner to elect one of the following:
 - a.** The EUA may remain in full force and effect for an additional 5 years after the end of the tax exemption, extending the affordability requirements approved for the exemption; provided that the number of units subject to the rent restrictions as approved is the same number necessary to reduce the net present value, using a 10 percent annual discount rate of the project’s projected market-rate (unrestricted) annual cash flows by an amount equal to the APL; or
 - b.** The owner pays an APL in an amount equal to the lesser of either:
 - (1)** The net present value using a 10 percent annual discount rate of the difference between the project’s actual annual cash flows during the exemption and the proforma projected cash flows for the project that would provide a 10 percent rate of return during the exemption; or
 - (2)** The maximum amount of the property taxes that would have been assessed if no exemption had been granted.

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

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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.

Projects subject to a low income housing assistance contract may be eligible for extension pursuant to ORS 307.612.

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.

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

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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.

3.106.040 Exposition - Recreation Commission Action Not Subject to Council Review.

(Amended by Ordinance No. 170667, effective Oct. 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

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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.)

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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:

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- 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.
- 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.

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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.

Chapter 3.111

**OFFICE OF
SUSTAINABLE DEVELOPMENT**

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

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 No. 185568, effective September 28, 2012.) 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 Bureau, as provided under Subsection 3.15.060 A., 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 Bureau 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

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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.

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.

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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 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.

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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-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

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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.)

- 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.

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- 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.
- 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.

Chapter 3.120

METROPOLITAN ARTS COMMISSION

(Chapter added by Ordinance No. 157240;
repealed by Ordinance No. 168592,
effective March 8, 1995.)

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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.

3.122.020 Definitions.

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;

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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;
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;

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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.
- 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.

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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. The City Auditor or a representative designated by the City Auditor 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.

- A.** The Council shall consider creation of an Economic Improvement District whenever owners of Subject Properties file with the Auditor 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;
 - 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.

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- 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.

- 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 the City Auditor shall appoint the city Auditor's representative, by notification to the head of the lead bureau.
- B.** The City Auditor'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 City Auditor'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 Economic Improvement District should go forward, the Council shall adopt the ordinance including any modifications.

3.122.080 Notice to Owners.

- A. Following adoption of the ordinance under Section 3.122.070 B, the Auditor 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 Auditor and where the file can be viewed. It should state that:

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- 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.

- A.** Property within the proposed District is conclusively presumed subject to assessment unless the owner files with the Auditor a claim for exemption not later than 21 days after the date of mailing or personal delivery of the notice.
- B.** The Auditor, in his or her discretion, may audit a claim or claims for exemption to determine whether property claimed to be exempt from assessment is exempt property. The audit may include review of such evidence as the Auditor deems appropriate and may include a viewing of the property. In the event the Auditor determines that the property for which an exemption is claimed is not exempt, the Auditor 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 Auditor 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 Auditor's decision. The Auditor'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.

- A.** Following Council adoption of a resolution establishing an Economic Improvement District based on the final Economic Improvement Plan, the Auditor shall 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 Auditor 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.

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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 Auditor 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.
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.

- 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 Auditor 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.

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.

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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;
- 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

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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.

- A.** On adoption of an assessment ordinance under Section 3.122.120 D, the City Auditor 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.
- 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.)

Chapter 3.123

PORTLAND UTILITY REVIEW BOARD

(Chapter replaced by Ordinance No. 177275,
effective March 21, 2003.)

Sections:

- 3.123.010 Created - Purpose.
- 3.123.020 Scope.
- 3.123.030 Membership.
- 3.123.040 Appointments - Composition.
- 3.123.050 Recruitment Process.
- 3.123.060 Terms.
- 3.123.070 Standing Committees.
- 3.123.080 Staffing.
- 3.123.090 Meeting Schedule.
- 3.123.100 By-Laws.
- 3.123.110 Annual Report and Work session.

3.123.010 Created - Purpose.

A Portland Utility Review 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 water, sewer, stormwater and solid waste financial plans and rates. The Board will advise Council on the establishment of fair and equitable rates, consistent with customer needs, legal mandates, existing public policies, operational requirements, and the long-term financial stability and viability of the utilities.

3.123.020 Scope

The Board shall perform the following functions:

- A. Participation in the financial planning process. The Bureau of Water Works, the Office of Sustainable Development 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 bureaus update their financial plans throughout the year to reflect significant changes in revenues or requirements, and re-do 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.

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- B.** Participation in the rate design process. The Board will make recommendations to the Council on the equitable distribution of rate adjustments among customer classes, as determined 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, stormwater and solid waste rates. The Board will also participate in the periodic review and analysis of alternative rate designs proposed by Council. The Board shall report on other city activities or proposed policies with significant impacts to water, sewer and solid waste rates.
- C.** Relationship to other citizen advisory groups. The Council and the bureaus may form other groups, as necessary, to advise on utility matters. The Board and its staff will exchange information with these other advisory groups to coordinate policy advice to the Council and the bureaus.
- D.** 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.

The Board shall have nine (9) permanent members. The Mayor shall appoint the Chair of the Board. Five members shall constitute a quorum of the Board.

3.123.040 Appointments - Composition.

- A.** General Criteria. All members must reside in or work predominantly in the City of Portland and have an interest in sewer, water and solid waste issues, such as system development and maintenance, service delivery, service costs and impacts on low-income households, economic development, conservation or environmental concerns. In making appointments, the Mayor and City Council will attempt to have a range of professional and academic expertise, and volunteer experience, represented on the Board in disciplines such as accounting, civil engineering, conservation, environmental sciences, health sciences, public administration, urban planning, or utility economics. In making Board appointments, the Mayor and Council shall strive to have a Board which reflects the diversity of the Portland community, especially regarding customer classes, income levels, cultural and ethnic identity, geographic location, age and gender.

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- B.** Restrictions. No individual with any direct financial interest in a city utility or solid waste franchises, whether by ownership, employment, contract or otherwise, shall be appointed to or serve on the Board.
- C.** Board Appointments. Board members shall be appointed by the Mayor and confirmed by the Council. Any Council member may submit recommendations to the Mayor on potential appointments to the board. Nominations shall reflect four general categories:
- 1.** Residential Geographic Representation. The Mayor will seek nominations from neighborhood associations, district coalitions and residential customers (renters and land owners) in various City neighborhoods. Three seats shall be filled from residential geographic nominations. The Mayor will appoint members representing residential customers from each of three geographic areas within the City comprised of:
 - a.** West Portland - the area west of the Willamette River,
 - b.** Northeast/Southeast Portland - the area east of the Willamette River and west of Interstate 205, and
 - c.** East Portland - the area east of Interstate 205.
 - 2.** Public Interest Advocacy. The Mayor will seek nominations from organizations working to support low and moderate income issues, environmental concerns, senior, fixed income and special needs populations. Two seats shall be filled from public interest advocacy nominations. The council will strive to create diversity in making nominations for these two seats.
 - 3.** Large Commercial/Industrial Businesses: The Mayor will seek nominations from businesses which have a current industrial discharge permit, discharge at least 10,000 gallons per day of waste-water to the sewer system, or use 10,000 cubic feet of water per month. One seat shall be filled from commercial/industrial business nominations.
 - 4.** Local Businesses: The Mayor will seek nominations from businesses headquartered in the City that predominantly serve Portland-area residents. Retail, service or neighborhood businesses, and those not otherwise meeting the Large Commercial/Industrial category criteria, are eligible for inclusion in this category. One seat shall be filled from local business nominations.

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5. At-Large: To provide flexibility in meeting the Board's goal of membership diversity, the Mayor will appoint one member from applications received "at-large." Any individual or any group interested in participating on the Board may submit nominations in this category. Two seats shall be filled from At-Large nominations.

- D. Council Liaisons. Each member of the City Council may appoint one member of their staff to serve as a representative of their office to the Board. These representatives shall serve as communications contacts and shall not have voting privileges.

3.123.050 Recruitment Process.

- A. Board positions and vacancies will be announced to local media publications and broadcasts, including local neighborhood newspapers, cable stations and radio, with a goal of widespread outreach. Nomination requests will also be sent to the city's Neighborhood Associations and District Coalition Boards, to consumer advocacy and environmental interest groups, and to Business District associations. The City's standard Boards and Commissions application form shall be used, with all nominations to be submitted to the Mayor's office.
- B. The City's staff to the Board shall develop and keep current a list of publications to meet the requirements described in Subsection A. of this Section.
- C. City Council members shall also seek nominations for the Board through publications or communications generated in their offices.

3.123.060 Terms.

- A. Board members will serve, without compensation, for a term of two 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. No member may serve on the Board for more than six consecutive years. The Board shall develop a brief process and/or form for recommendations to the Mayor in regard to members desiring reappointment.
- C. If any member of the Board is absent more than three regularly scheduled meetings of the Board during any twelve-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.

3.123.070 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 Chair, one other member of the Board, as approved by a majority vote of all Board members, and any Council liaisons to the Board will serve as the Board Executive Committee. The Executive Committee will facilitate on-going communication between the Board, the City Council, the Board staff, and the bureaus.
- C.** The Board may designate more specific roles and responsibilities for the Executive Committee and any standing committee in the Board by-laws.

3.123.080 Staffing.

The Office of Management and Finance will provide staffing for the Board, with logistical and topic-related support from the Bureau of Water Works, the Bureau of Environmental Services, the Office of Sustainable Development and other bureaus or agencies as needed.

3.123.090 Meeting Schedule.

The Board shall meet once monthly on a regular date established in the Board by-laws. Additional meetings may be scheduled during annual budget and rate review periods as determined by the Board Chair. The Board's Executive Committee and other standing committees will meet on an as-needed basis.

3.123.100 By-Laws.

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 ordinance and which are subject to the approval of the Commissioner in Charge of the Board. 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.

3.123.110 Annual Report and Work session.

- A.** By September 30 of each year, the Board shall prepare and submit to the Council an annual report summarizing the work performed by the Board during the previous fiscal year (July 1 through June 30). The annual report shall include, but need not be limited to, a summary of issues reviewed and analyzed; a list of

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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.** Upon the completion of each Annual Report described in Subsection 3.123.110 A. of this section, the Board shall participate in a work session with the City Council. The purpose of this work session is to present the Annual Report and to create a work plan for the upcoming year.

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.

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- 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.
- 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;

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- 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.

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- 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.

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.

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- 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.

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Chapter 3.125

DISASTER POLICY COUNCIL

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

Sections:

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

3.125.010 Disaster Policy Council.

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

3.125.020 Duties.

(Amended by Ordinance 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 No. 185304, effective June 1, 2012.) The DPC shall consist of the following members:

- A.** The Mayor, who shall be Chair;
- B.** Commissioner serving as President of the City Council, who shall be Vice Chair;
- C.** Chief Administrative Office;
- D.** City Attorney;
- E.** City Auditor;
- F.** Director, Portland Bureau of Emergency Management;
- G.** Chief of Portland Fire & Rescue;
- H.** Chief of Portland Police Bureau;
- I.** Director, Bureau of Emergency Communications;
- J.** Administrator, Portland Water Bureau;
- K.** Director, Bureau of Transportation;
- L.** Director, Human Resources;
- M.** Director, Bureau of Environmental Services.
- O.** 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.-M. 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.

**TITLE 3
ADMINISTRATION**

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 No. 185304, effective June 1, 2012.) The EMSC shall consist of qualified staff from the following Bureaus:

- 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 Neighborhood Involvement

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.

**TITLE 3
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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.

3.128.010 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.

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;

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- 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;
- 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.

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Chapter 3.129

HUMAN RIGHTS COMMISSION

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

Sections:

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

3.129.010 Staffing and Membership.

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

3.129.020 Mission.

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

be established) on the progress of the Commission and any recommendations to the Council for further action.

3.129.030 Jurisdiction.

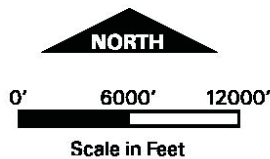
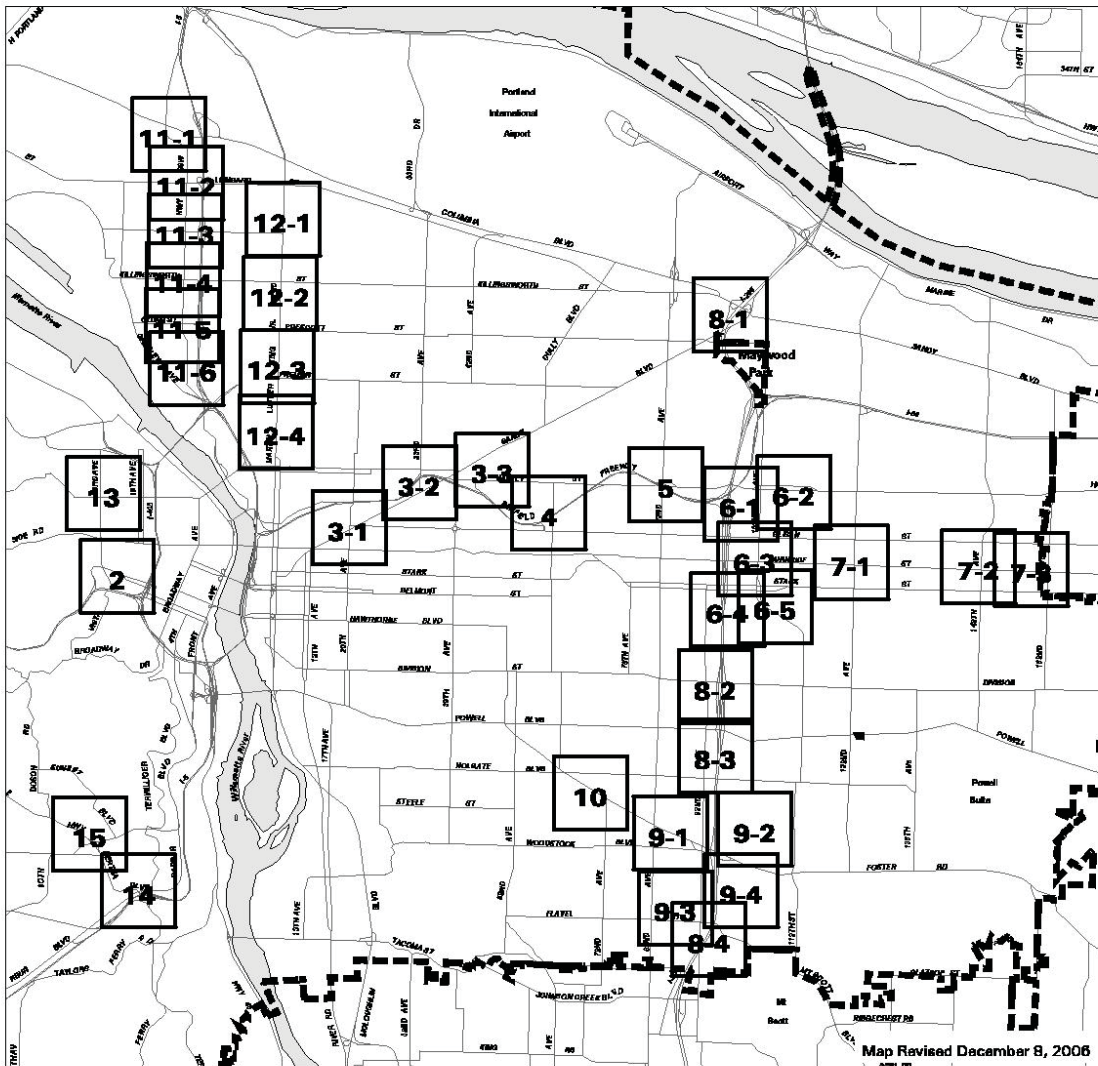
The jurisdiction of the Commission will include all practices and incidents occurring in the City of Portland which affect people who live, work, study, worship, travel or play in the City. The Commission shall have jurisdiction to address such practices and incidents through education, research, advocacy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

TITLE 3
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POLICE ARREST DOCKET AND MUNICIPAL COURT TRANSCRIPT
City of Portland, Oregon
DEPARTMENT OF FINANCE AND ADMINISTRATION
Bureau of Police

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

FIGURE 1 - (Section 3.20.130)

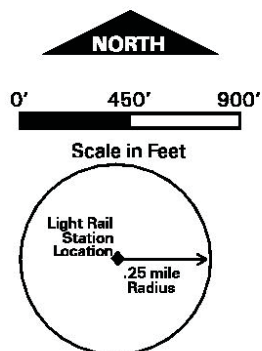
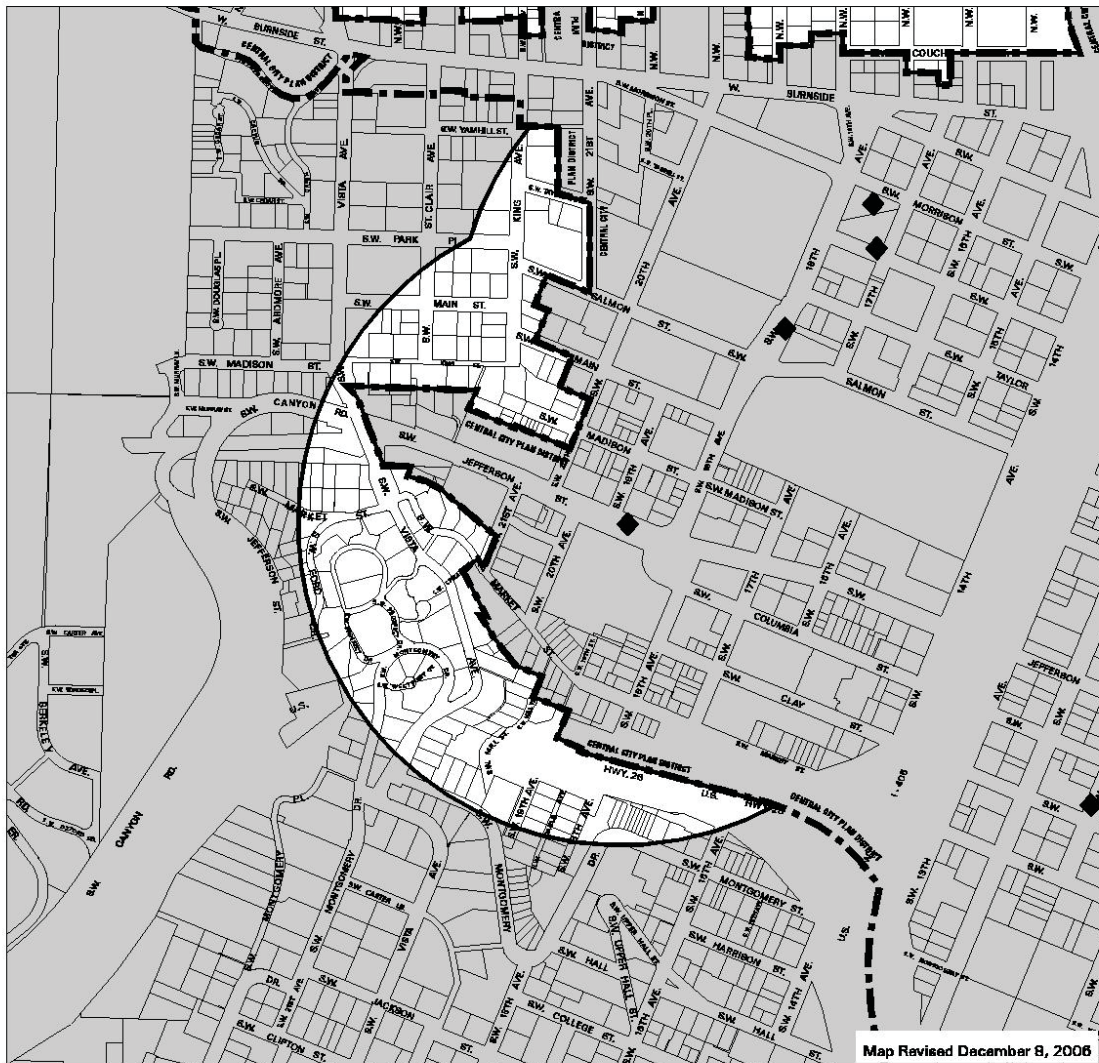


Map 3.103-1 **Property Tax Exemption for** **New Transit Supportive Residential** **or Mixed Use Development**

Index Map

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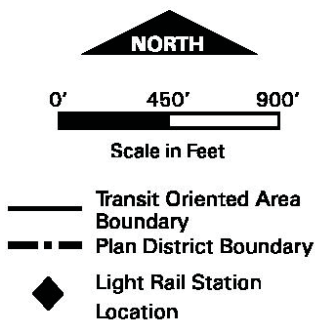
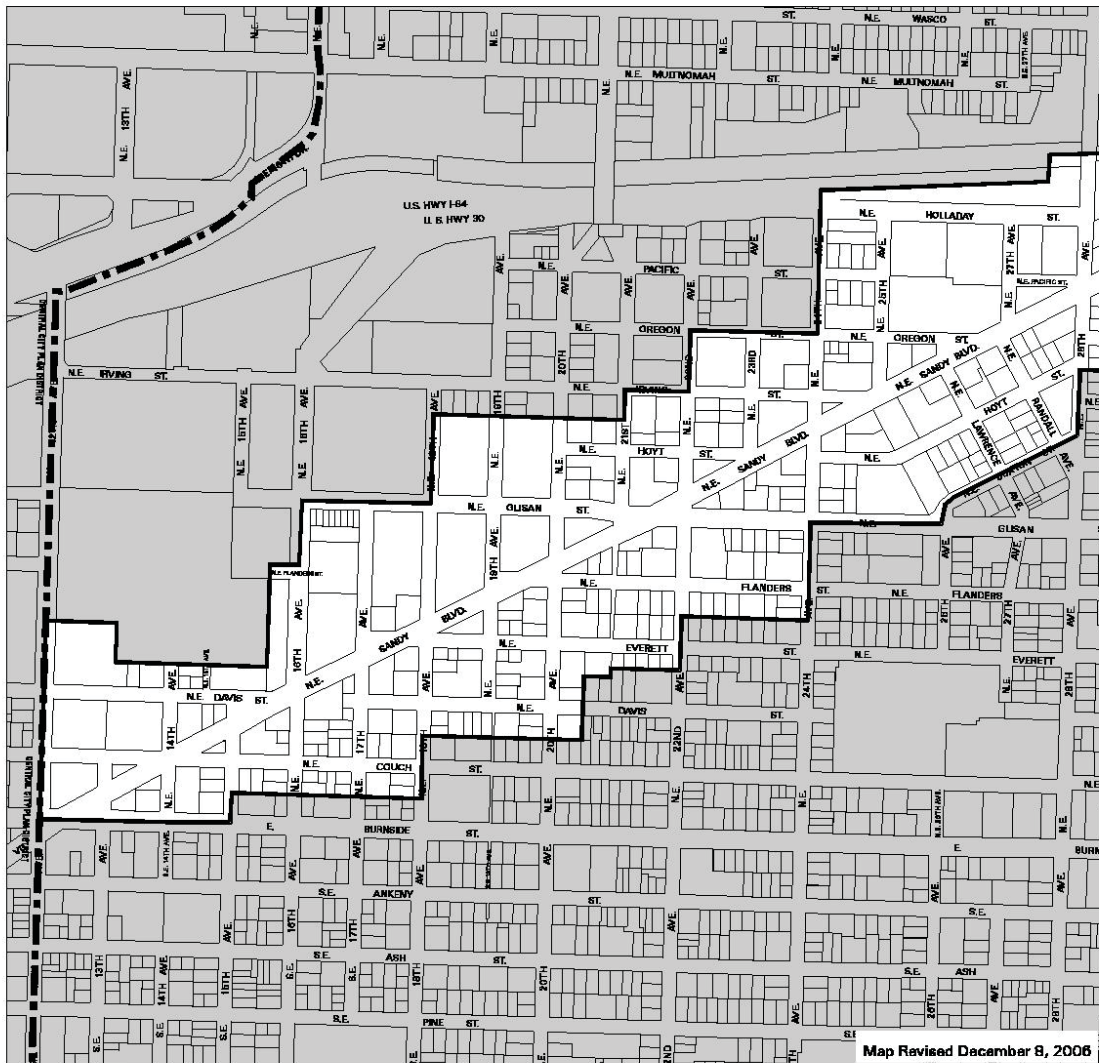
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**Map 3.103-2
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Goose Hollow Light Rail Station Areas

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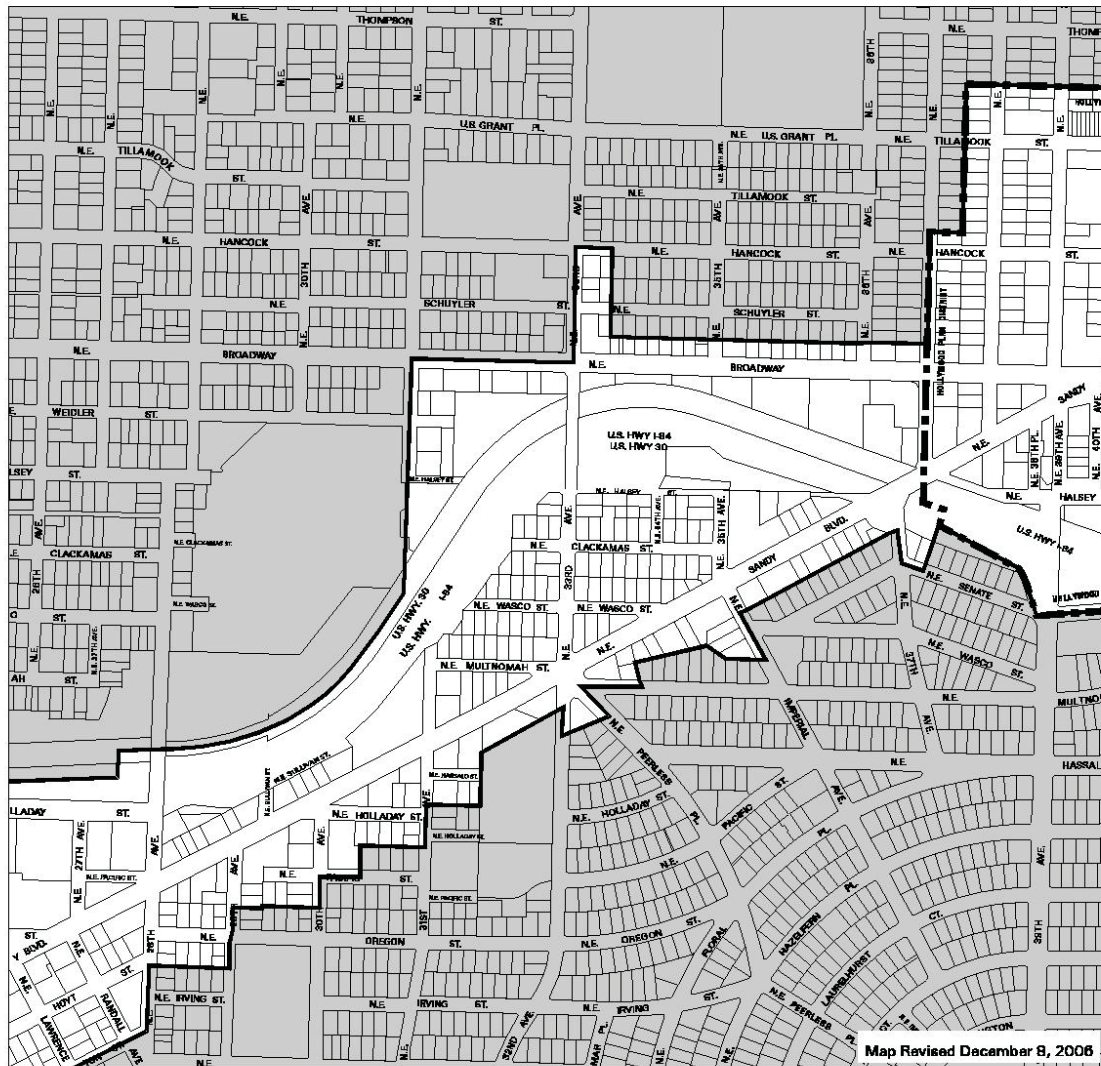
Map 3.103-3 Property Tax Exemption for New Transit Supportive Residential or Mixed Use Development

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

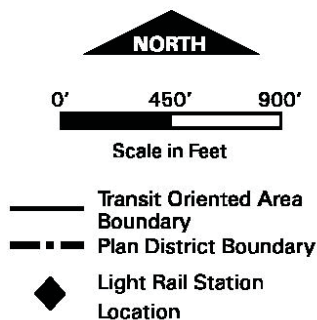
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Map Revised December 8, 2006

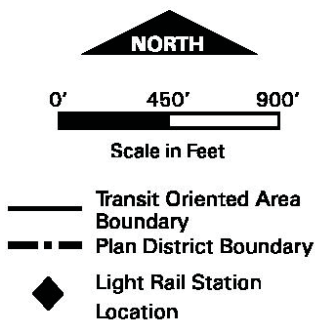
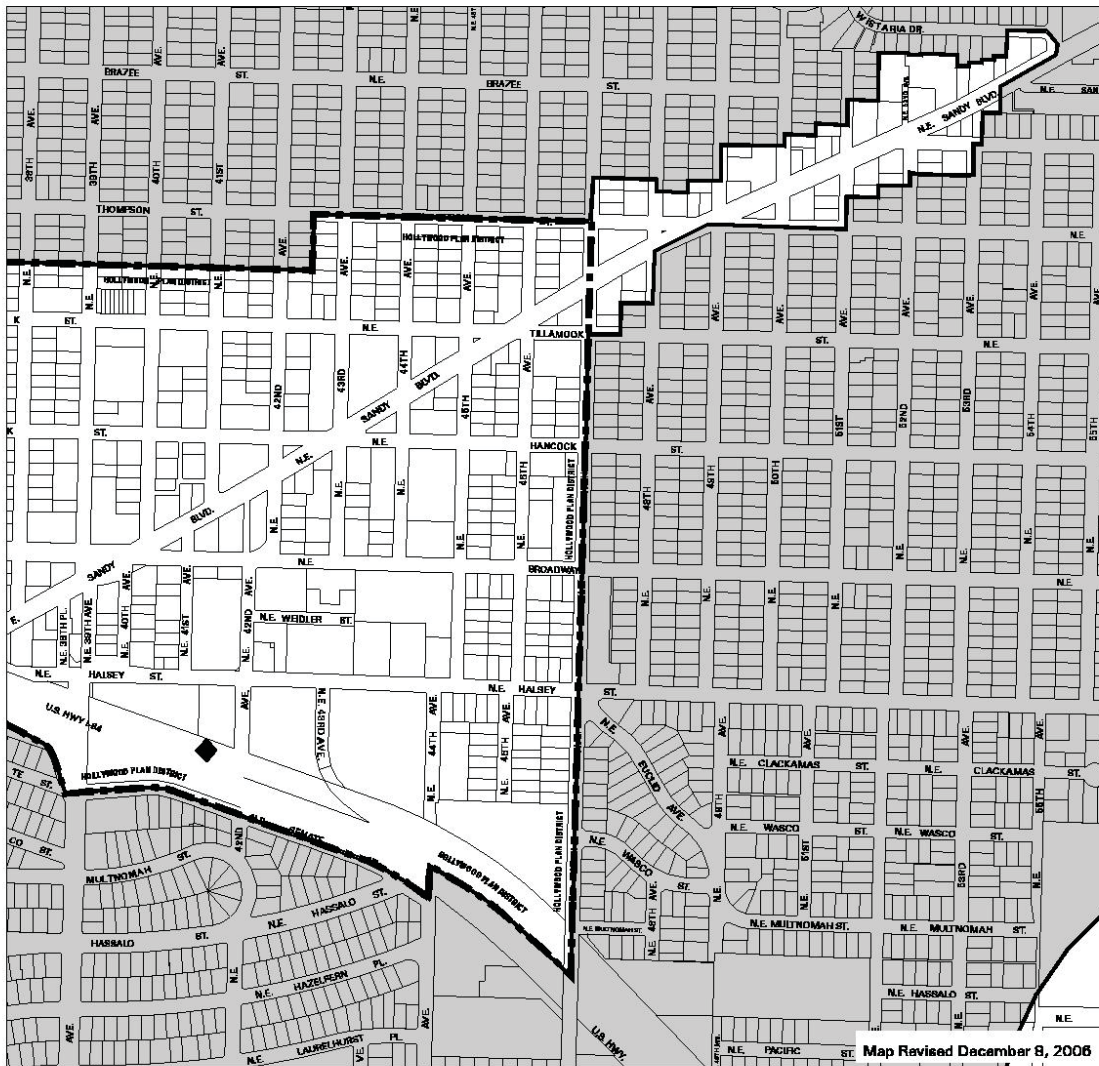


Map 3.103-3 Property Tax Exemption for New Transit Supportive Residential or Mixed Use Development

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

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

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

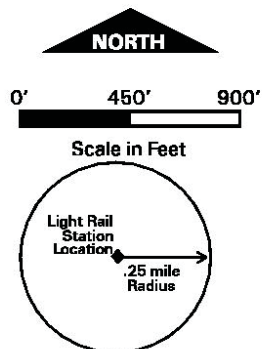
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Map Revised December 8, 2006



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

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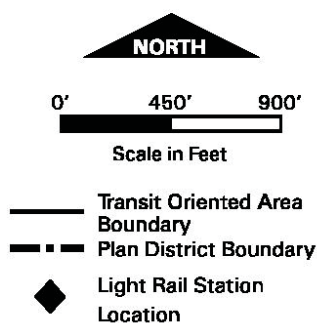
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Property Tax Exemption for New Transit Supportive Residential or Mixed Use Development

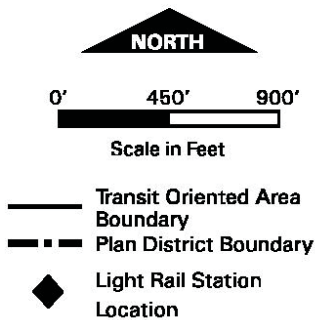
Gateway Plan District and Light Rail Station Areas

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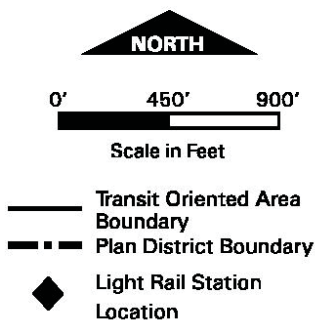


**Map 3.103-6
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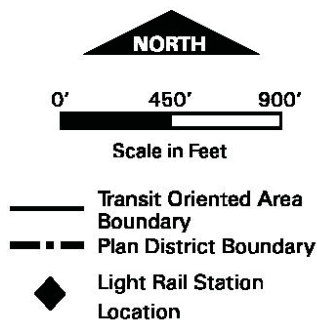
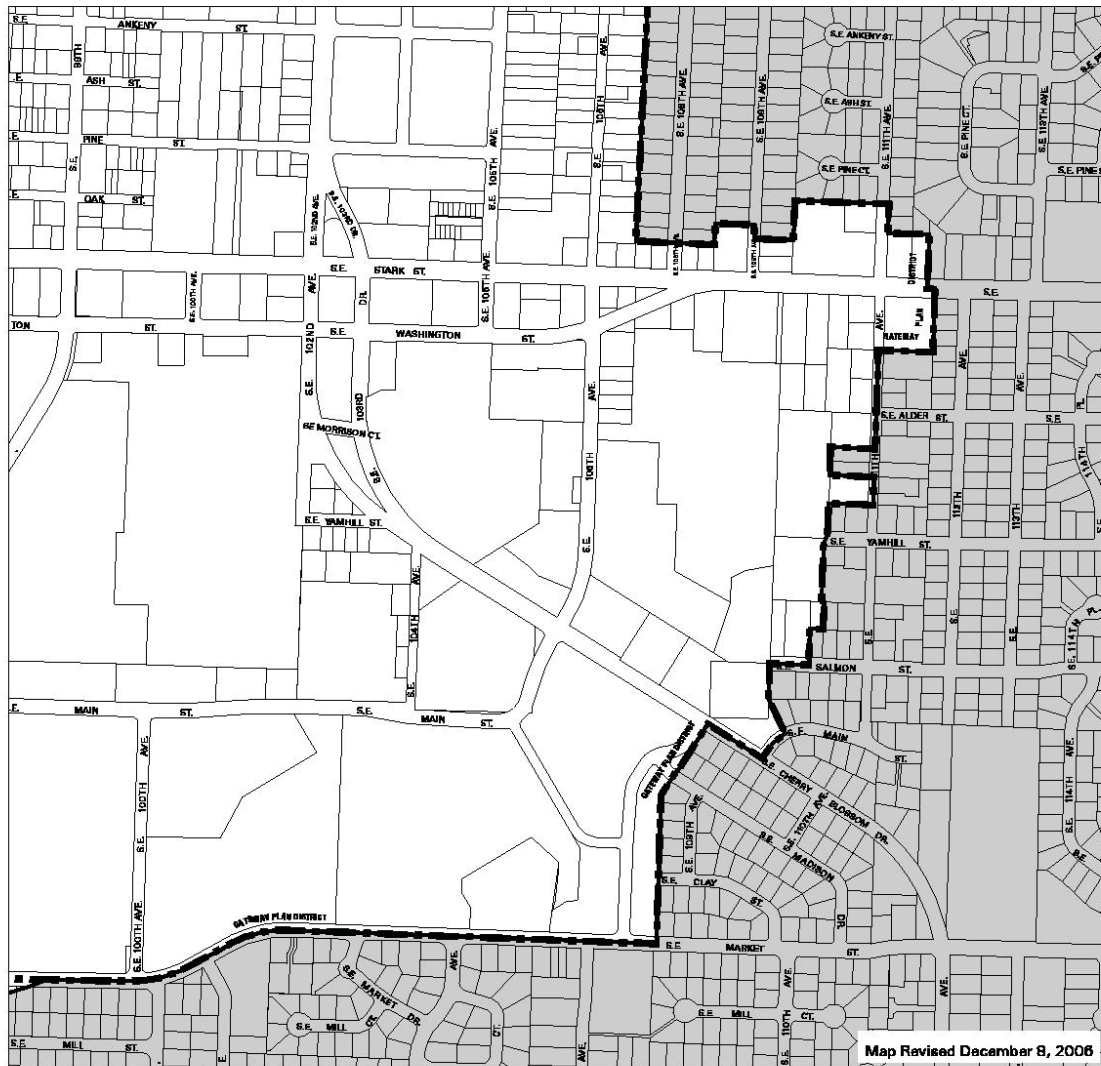
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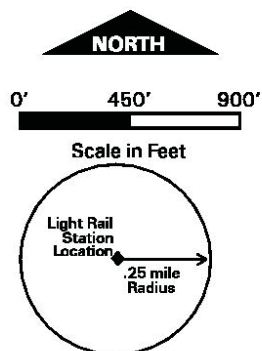


Map 3.103-6 Property Tax Exemption for New Transit Supportive Residential or Mixed Use Development

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Map 3.103-7 Property Tax Exemption for New Transit Supportive Residential or Mixed Use Development

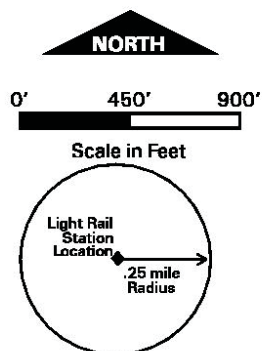
Light Rail Station Areas East of Gateway Plan District

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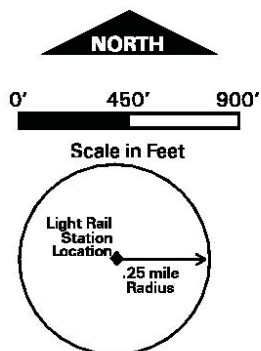


Map 3.103-7
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Light Rail Station Areas East of Gateway Plan District

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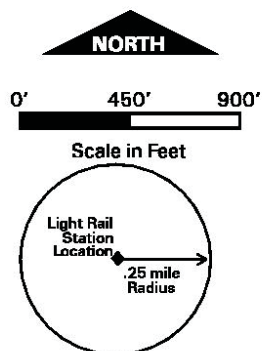
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**Map 3.103-8
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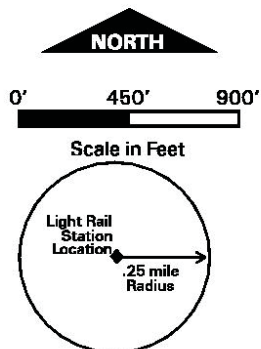
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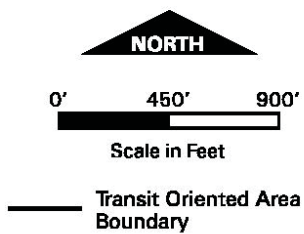
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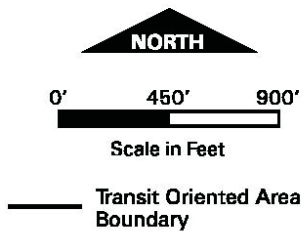
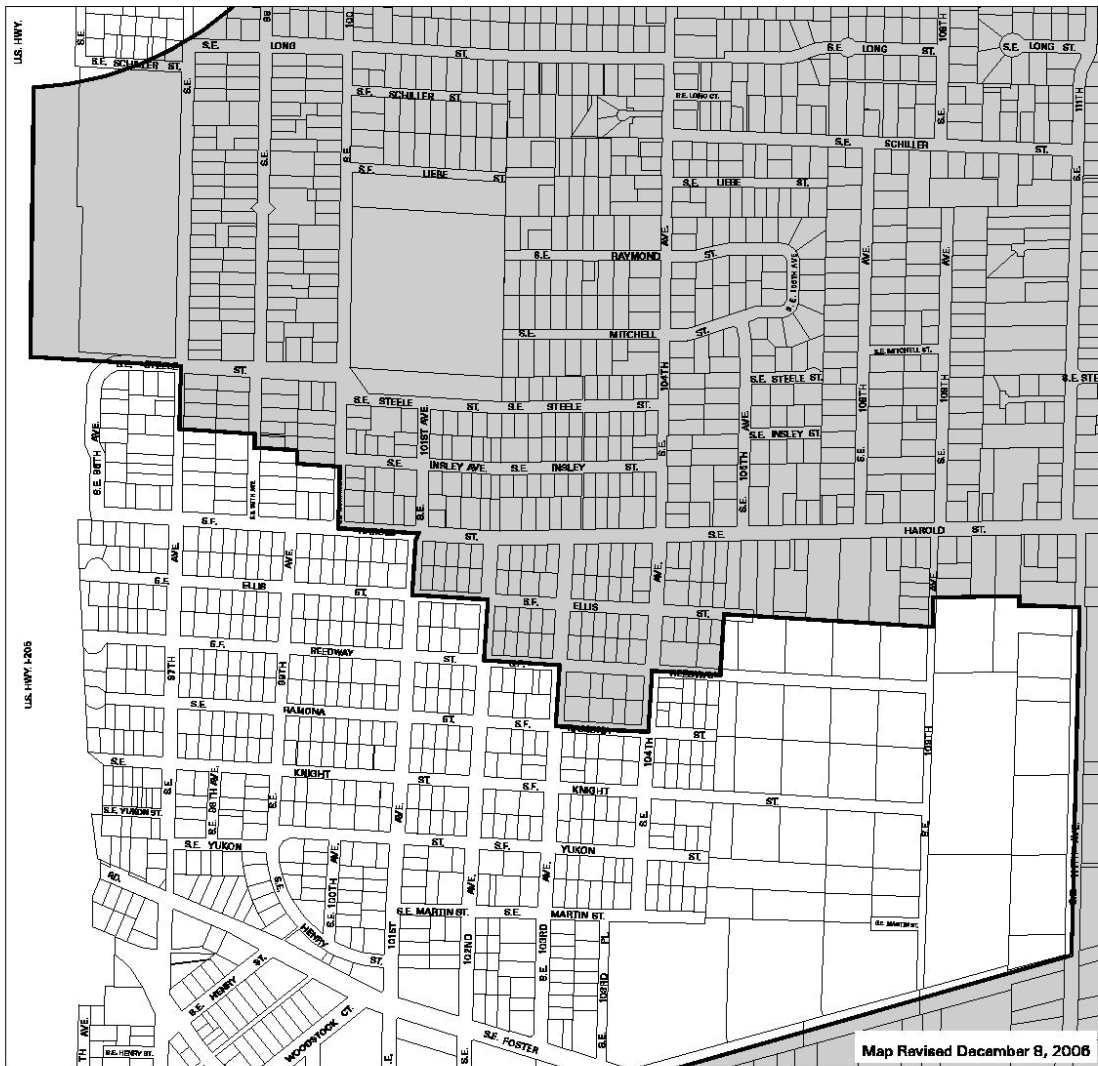


**Map 3.103-9
Property Tax Exemption for
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or Mixed Use Development**

Lents Town Center

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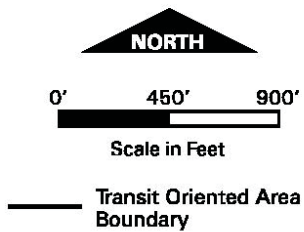


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**Map 3.103-9
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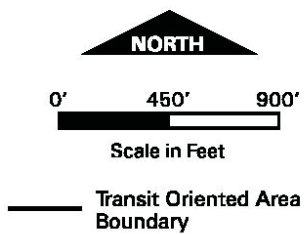
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Map 3.103-10 Property Tax Exemption for New Transit Supportive Residential or Mixed Use Development

Transit Oriented Areas along
Foster Road Main Street

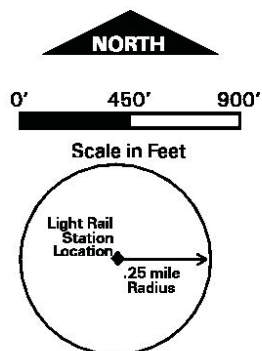
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Interstate Corridor Light Rail Station Areas

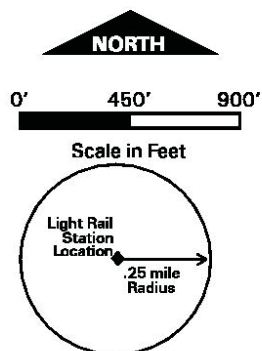
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or Mixed Use Development
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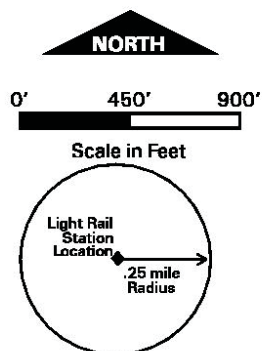
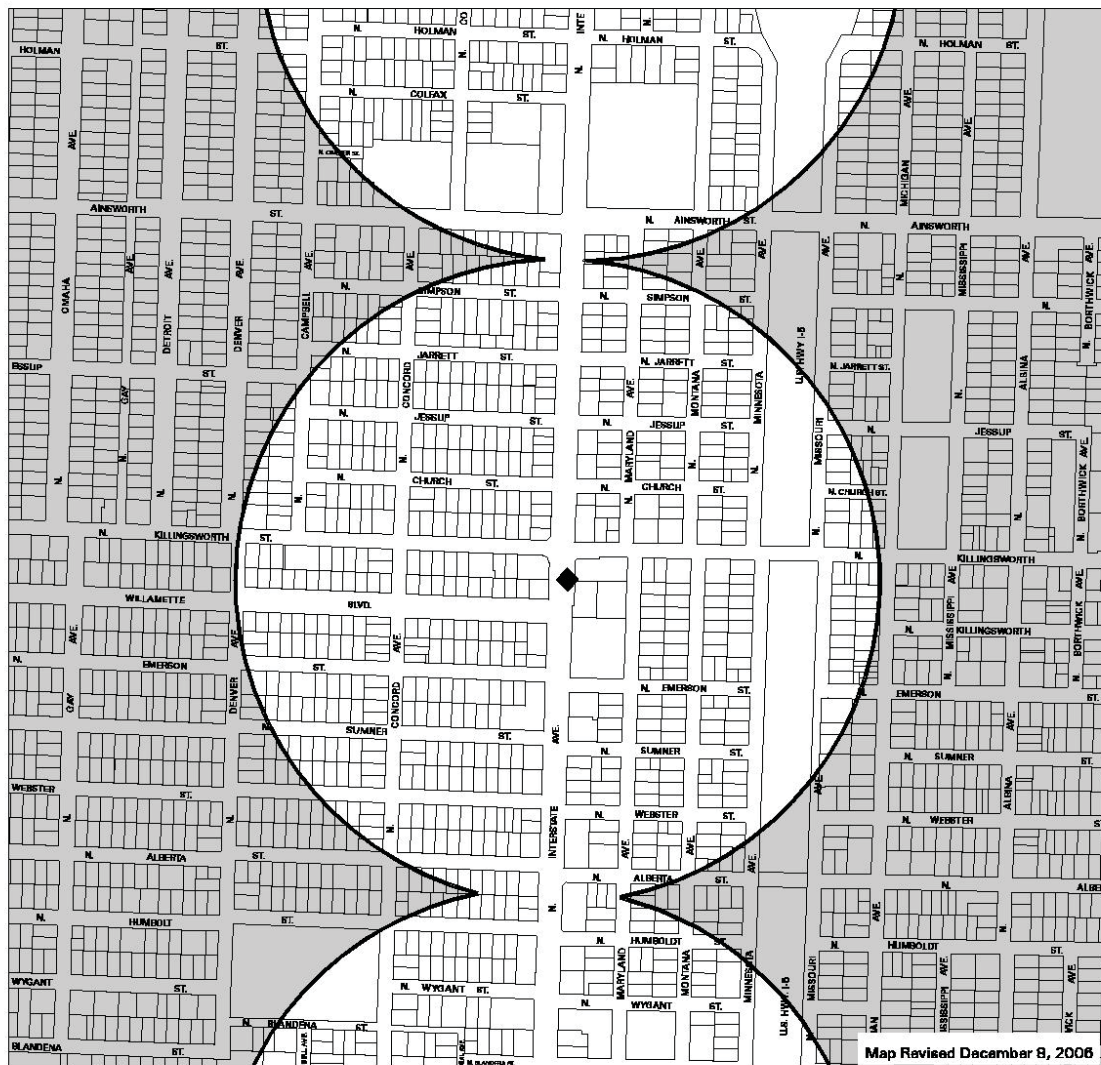
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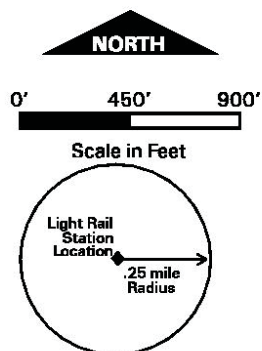
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**Map 3.103-11
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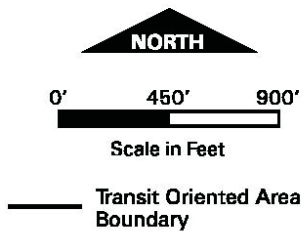
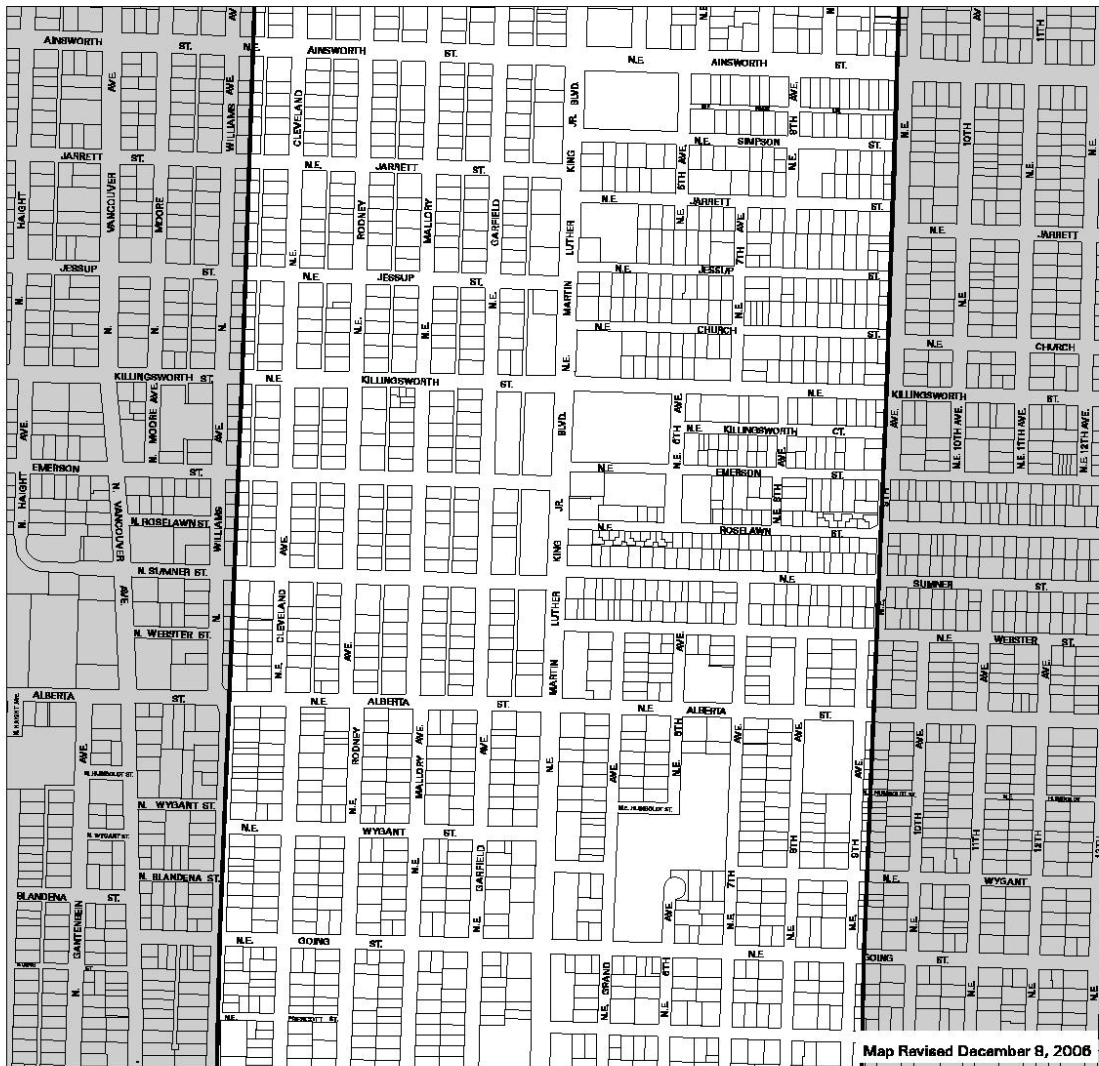
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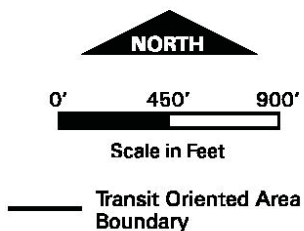


**Map 3.103-12
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**Transit Oriented Areas along
NE Martin Luther King Jr. Blvd. Main Street**

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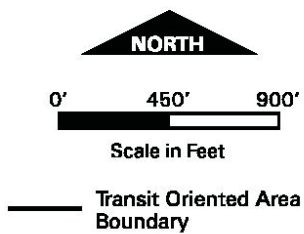
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**Map 3.103-12
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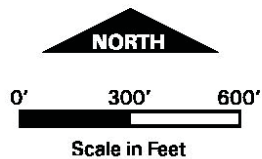
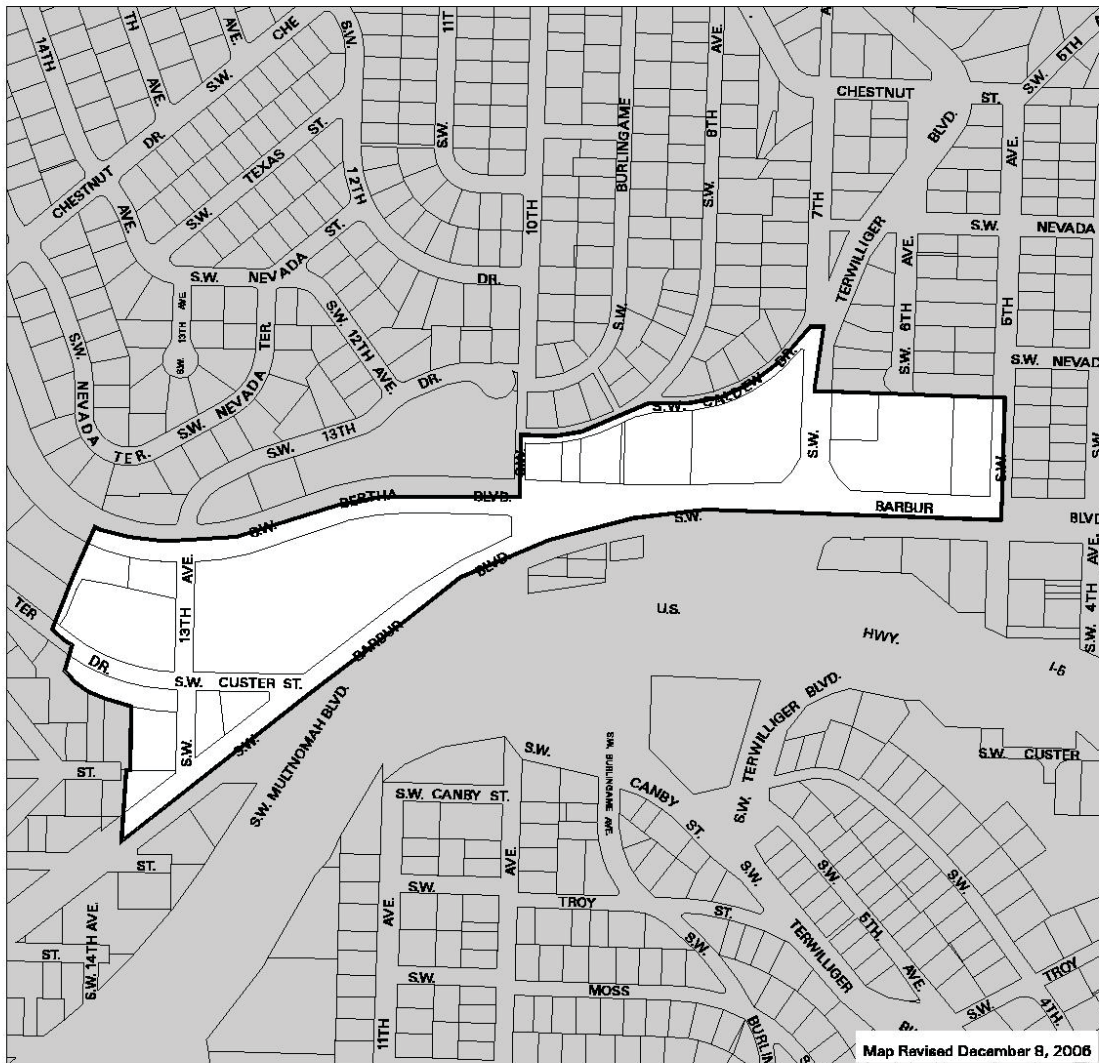
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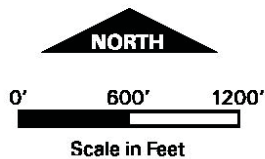
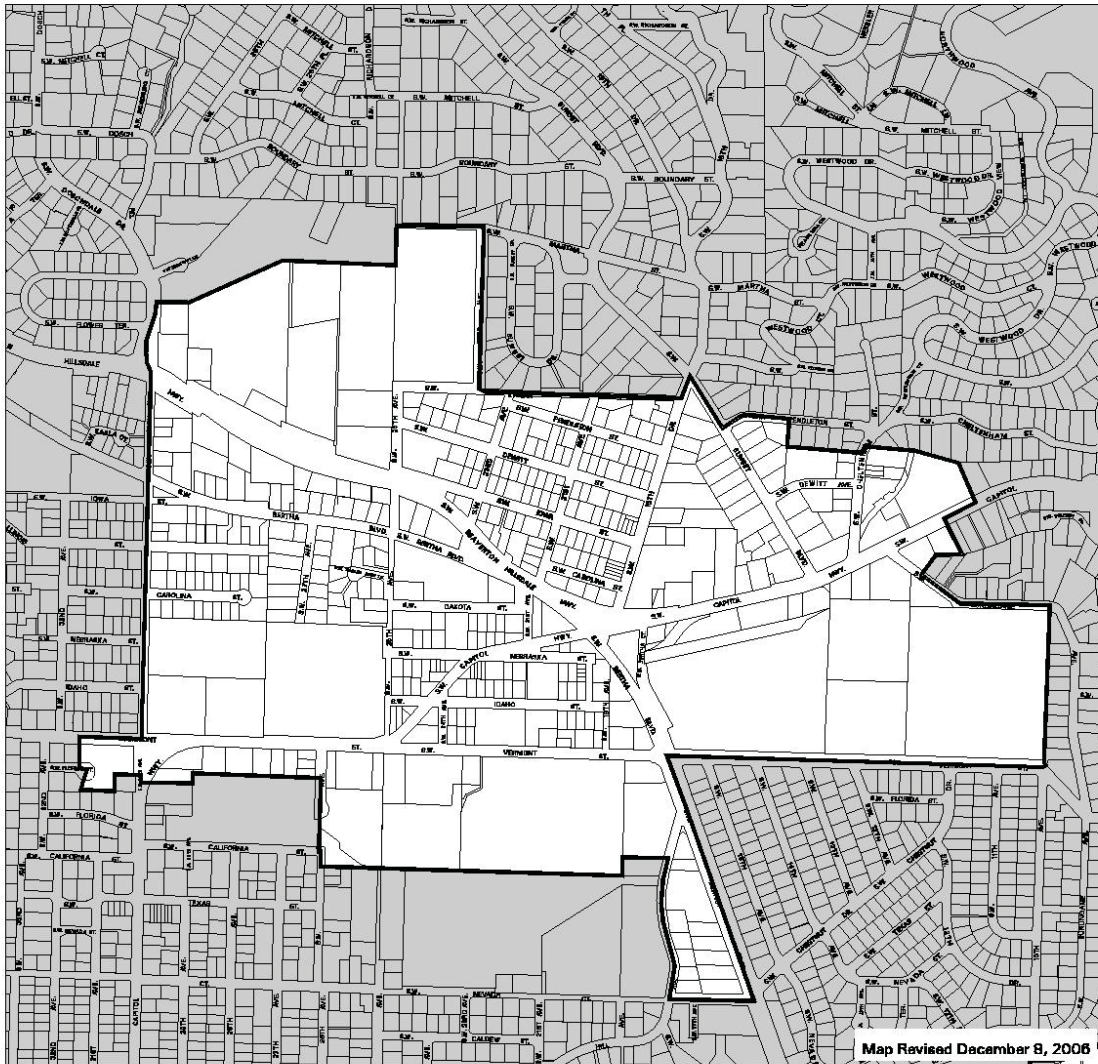
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Chapter 5.01

**DELEGATION OF AUTHORITY TO
OBLIGATE THE CITY**

(Repealed by Ordinance Nos. 174509
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Chapter 5.04

FUNDS

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- 5.04.430 Sewer System Debt Proceeds Fund.
- 5.04.440 Sewer System Rate Stabilization Fund.
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- 5.04.460 Use of Sewage Disposal Fund.
- 5.04.470 Portland Police Fitness Room Trust Fund.
- 5.04.480 Property Management License Fund.
- 5.04.490 Graffiti Nuisance Abatement Trust Fund.
- 5.04.500 Technology Services Fund.
- 5.04.510 Arts Education and Access Fund.

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; passed and effective Sept. 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; passed and effective Sept. 11, 1980.)
- D.** Health Protection Account. (Repealed by Ordinance No. 150375; passed and effective Sept. 11, 1980.)
- E.** Recreation Account. (Repealed by Ordinance No. 150375; passed and effective Sept. 11, 1980.)

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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, 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 No. 172810, effective November 4, 1998.) There is hereby created a City of Portland graffiti nuisance abatement trust fund. Any donations in support of graffiti abatement will be placed into the fund, together with any monies received in connection with voluntary nuisance abatement consent forms. Expenditures from this fund may occur upon the approval of any two of the following: (1) the Mayor; (2) the Commissioner-in-Charge of the Office of Neighborhood Involvement; 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

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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.

Chapter 5.08

**PAYMENT OF SALARIES, WAGES
AND EXPENSES**

Sections:

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

5.08.010 Biweekly Pay Period.

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

5.08.020 Preparation and Certification of Biweekly Time Reports.

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

- A. It shall be the duty of the head of each appropriation unit to cause to be prepared, to approve, and to certify biweekly time reports for employees whose time deviates from standard biweekly hours and standard cost centers or when an employee is not to be paid, and cause the same to be transmitted to Central Payroll.
Biweekly time reports are not necessary for employees who worked their standard hours and whose time gets charged to the standard cost center. A payroll warrant will be automatically written for active employees whose standard time gets

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charged to their standard cost centers. However, each bureau manager shall submit a certification to the Accounting Division to the effect that all employees who will be paid and for whom no time report is submitted, did in fact, render the services to be paid.

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

5.08.030 Computing Daily and Hourly Rates of Pay.

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

5.08.040 When Auditor to Draw Checks.

(Amended by Ordinance Nos. 136887, 160146 and 173369 effective May 12, 1999.) When the biweekly time report shall have been approved by the head of the appropriation unit as being correct and by the Personnel Director that the employees were employed

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according to law, then the Auditor shall prepare the payroll records and draw and deliver checks not later than the second Friday following the end of each pay period or at such time as required by applicable federal or state law in accordance with Chapter 5.08.120 of the City Code in payment of salaries of officers and employees for payroll so certified; provided, that where such Friday is a holiday, checks shall be delivered the day previous.

5.08.050 Allowance for Use of Private Automobile.

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

5.08.060 Safety Glasses.

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

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

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5.08.070 Clothing Allowance.

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

- A.** The clothing allowance shall be at the rates specified in the current contracts with the Portland Fire Fighters Association Local 43 IAFF and the Portland Police Association.
- B.** The clothing allowance shall be payable on or after July 1 of each year from funds budgeted for this purpose. Eligibility for such payment and the amount of the payment for each eligible employee shall be dependent on the assignment of the employee and the duration of such assignment during the previous fiscal year.
- C.** An employee who has served for less than a full year in a position for which a clothing allowance is authorized shall receive an allowance prorated for the number of full calendar months served. For the purpose of this Section, time served shall not include leave without pay, nor time on sick leave and/or disability benefits in excess of a total of 30 days during the fiscal year.
- D.** An eligible employee who separates from the City service shall receive a prorated allowance at the time of separation. The rate of such payment shall be the same as that paid during the fiscal year of separation.

5.08.075 Year Defined.

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

5.08.090 Travel Expenses.

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

5.08.095 Miscellaneous Expenses.

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

5.08.100 Rules For Travel and Miscellaneous Expenses.

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

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

(Added by Ordinance No. 133632; passed and effective Nov. 10, 1971.) Whenever the Council has authorized an off-duty educational program for employees on an individual basis to improve professional skills and has provided for reimbursing the employee for specific expenditures upon his successful completion of a course in accordance with the

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requirements for the program, reimbursement will be made upon requisition to the City Auditor approved by the City Personnel Officer. For employees on a General Fund payroll, the reimbursement shall be charged to the General Fund. Reimbursement for an employee on a special fund payroll shall be charged to that special fund.

5.08.110 Bus Fare for Meter Readers.

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

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

Whenever it becomes necessary to pay for labor or overtime at other than the specified times indicated by this Chapter, time reports shall be certified as soon as may be required and transmitted to the Auditor for payment.

5.08.130 Salaries Chargeable to More Than One Fund.

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

5.08.140 Salary Deductions.

(Replaced by Ordinance No. 172205; amended by 172562, 173326, 176426, 177833, 179023, 179643, 181483, 182887, 184215, 184257, 184399, 185028 and 185536, effective August 31, 2012.)

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

1. Federal Income and Withholding Tax
2. Social Security and Medicare
3. State Income and Withholding Tax

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4. Savings Bonds-City Treasurer
5. Workers' compensation Self-Insurance
6. Public Employees Retirement System
7. PACE Credit Union
8. MULTCO Employees Credit Union
9. IBEW Credit Union
10. ING Financial Advisors, LLC
11. PACE Credit Union-Deferred Compensation
12. ICMA-Deferred Compensation
13. ITT Hartford-Deferred Compensation
14. Nationwide Retirement Solutions
15. Portland Police Commanding Officers Association-PPCOA
16. Portland Metropolitan Employees Union, DCTU, Local 189
17. Painters and Allied Trade Union, Local 10
18. International Brotherhood of Electrical Workers, Local 48
19. Willamette Lodge, IAMAW, Local 63
20. Operating Engineers, Local 701
21. United Association of Plumbing & Pipe Fitting, Local 290
22. Auto Mechanics, Mt. Hood Lodge, Local 105
23. Municipal Employees Union, Local 483
24. Portland Police Association
25. Fire Fighter Association, Local 43

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- 26. City of Portland Professional Employees Association, COPPEA
- 27. City Treasurer Trustee Fund for Benefit of Portland Police Contributions Committee-Police Special Contributions
- 28. Portland Police Beneficiary Association
- 29. Portland Police Historical Society
- 30. Portland Police Athletic Association
- 31. Fire & Police Insurance Association
- 32. Fire & Police Disability and Retirement Fund
- 33. Nationwide Auto Insurance
- 34. Family Cancer Plan Insurance Company
- 35. Kaiser Health Plan
- 36. Standard Insurance
- 37. Portland Building Fitness Center
- 38. Maintenance Bureau Fitness Center
- 39. Parking Patrol's Fitness Center
- 40. Portland Police Fitness Room Trustee Fund
- 41. C-Tran Employee Transit Program
- 42. Portland Police Relocation Loan Program Repayment Fund.
- 43. Z-Man Scholarship Foundation.
- 44. Portland Police Association Cover Foundation.
- 45. Police Activities League of Greater Portland.
- 46. Jeff Morris Fire & Life Safety Foundation.

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- 47. Boys & Girls Clubs of Portland Metropolitan Area.
- 48. Oregon 529 College Savings Plan.
- B. Each entity or agency authorized by Subsection A. to receive money through the use of the payroll deduction system, except those agencies or entities referred to in Subsection C., shall pay to the City a fee of 50 cents for each payroll deduction that is made from an employee's paycheck.
- C. The entities or agencies whose names are preceded by the numbers described herein shall not be required to pay the fee described in Subsection B.: 1., 2., 3., 4., 5., 6., 10., 11., 12., 13., 14., 15., 16., 17., 18., 19., 20., 21., 22., 23., 24., 25., 26., 31., 32., 35., 36., 43., 44., 45., 46., 47. and 48.

5.08.150 State Tax Street Fund.

Whenever salaries chargeable to the State Tax Street Fund are paid on payrolls charged to the General Fund, the Commissioner of Public Works may at the beginning of each month, estimate the amount of service to be charged during the ensuing month and transfer such amount from the State Tax Street Fund to the General Fund by departmental bill. At the end of each month, when the exact amount chargeable to the State Tax Street Fund is determined the amount transferred must be correct by departmental bill.

5.08.160 Delivery of Checks payable to Deceased Persons.

(Amended by Ordinance Nos. 133986 and 173369, effective May 12, 1999.) Delivery of checks payable to any person employed by the City, or payable to any person receiving disability or retirement benefits from the City, shall be made in the following manner upon the death of such person:

- A. Where the person's estate is admitted to probate in any county in Oregon, delivery shall be made to the representative thereof after the Auditor has been furnished a certified copy of letters testamentary or letters of administration;
- B. Where the person's estate is admitted to probate outside this state, delivery shall be made as provided in Subdivision A of this Section, except that the Auditor shall first notify the Department of Revenue of the total amount to be paid. Delivery of checks shall not be made less than 30 days after notice to the department of revenue and 90 days after death;
- C. Where the person's estate is not probated, and the heir or next of kin making claim for checks is a resident of Oregon, delivery shall be made to that heir or next of kin after that individual has furnished the Auditor a hold harmless agreement as provided in Section 5.08.170;

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- D.** Where the person's estate is not probated, and the heir or next of kin making claim for checks is not a resident of Oregon, delivery shall be made to that heir or next of kin after that individual has furnished the Auditor a hold harmless agreement as provided in Section 5.08.170 and if the amounts total more than \$200 a bond, underwritten by a surety authorized to do business in this State, to defend and indemnify the City, its officers, agents and employees against any claim, suit, action or judgment arising out of the delivery or payment of the checks;
- E.** Checks payable to deceased employees, or to persons entitled to disability or retirement benefits prior to their death, shall be drawn in the usual course of business only, and shall be delivered by the Auditor as provided by this Section, without further action of Council;
- F.** The Auditor shall attach to each check issued under this Section an authorization for transfer in the following form:

AUTHORIZATION FOR CHECK TRANSFER

KNOW ALL MEN BY THESE PRESENTS

That (name of applicant) has applied for transfer of Check No. dated 19 . . . , payable to (name of payee), deceased, as (Heir, next of kin, executor or administrator of the estate), that pursuant to Title 5 of the Code of the City of Portland, as amended, I am authorized to deliver said check to (name of applicant) and the Treasurer of the City of Portland is directed to cash the same upon.. . . . endorsement thereof.

PLEASE DO NOT DETACH

.....
Auditor of the City of Portland
By
Deputy

The Auditor shall furnish the Treasurer a copy of all authorizations for transfer he issues, and the Treasurer shall honor all checks described in the authorizations for transfer when endorsed by the applicant named therein.

5.08.170 Hold Harmless Agreements.
(Amended by Ordinance No. 173369, effective May 12, 1999.) Hold harmless agreements required by subdivisions C and D of Section 5.08.160 shall be in the following form:

HOLD HARMLESS AGREEMENT

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WHEREAS there was due and owing by the City of Portland, Oregon, to
.....who died, 19, the sum of
\$ representing
..... and the Auditor of the City of Portland holds said sum in the form of
checks drawn payable to the said deceased; and

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and seal this
..... day of, 19
.....(SEAL)

.....
Address

WITNESS:

.....
.....
Address

Approved as to form:

.....
City Attorney

5.08.180 Effect of Death upon Assignments and Levies.

- A.** The Auditor shall recognize no power of Attorney or assignment of wages, salary, disability or retirement benefits, reimbursement of expenses or contributions, or any other monies owing a person by virtue of past or present employment with the City, after the death of that person, notwithstanding Section 5.12.030.
- B.** If the Auditor receives notice of garnishment (except from the State Tax Commission of Oregon) or an order for payment of money into any federal or

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state court in Oregon, which notice or order applies to wages, salary or other monies due an employee of the City, and the employee is deceased or dies at any time before return is made thereon, the Auditor shall hold all monies pending further order of court and shall immediately notify the City Attorney of the notice or order and of the employee's death. Upon receipt of this notice the City Attorney shall file a supplemental pleading in the case wherein the garnishment or levy was undertaken, to advise the court of the employee's death and to obtain an order of court as to what disposition should be made of the monies held by the Auditor. The procedure authorized herein shall be followed notwithstanding Section 5.12.050.

- C. The Auditor shall make a return upon any notice of levy issued by the United States Treasury Department and any notice of garnishment issued by the State Tax Commission of Oregon, of wages, salary or other monies due an employee of the City, if the employee is living at the time the notice is served. If the employee is deceased at the time the notice is served, the Auditor shall:
1. Make payment as provided in Section 5.08.160, advising the recipient thereof, in writing, of the existence of the tax lien; and
 2. Notify the taxing authority, in writing, of the fact and date of the employee's death, the date and amount of the payment, the name and address of the recipient thereof, and the recipient's relationship to the deceased. The procedure authorized herein shall be followed notwithstanding Section 5.12.050.

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Chapter 5.09

DEFERRED COMPENSATION PLAN

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

Sections:

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

5.09.005 Title.

(Amended by Ordinance Nos. 179417, 182168 and 185726, effective November 14, 2012.)

- A.** The City of Portland, Oregon (City), maintains a deferred compensation plan authorized by Section 457 of the Internal Revenue Code of 1986, as amended ("IRC") that was originally adopted by City Council on December 17, 1981 and became effective January 1, 1982.
- B. Name of Plan.** This Plan shall be known as the City of Portland Governmental 457(b) Plan.

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- C. Effective Date.** The effective date of this Plan, as amended, shall be November 14, 2012.
- D. Investment Providers.** As of August 11, 2005, the investment providers offered by the Plan are:
1. ING Life Insurance and Annuity Company
 2. Advantis Credit Union

5.09.010 Definitions.

(Amended by Ordinance Nos. 179417, 182168, 183900 and 185726, November 14, 2012.) As used in this Chapter, unless the context otherwise requires:

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

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but for the Participant's election to participate in the Plan.

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

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- M. “Participant”** means any Employee who fulfills the eligibility and enrollment requirements of this Chapter.
- N. “Participating Employer”** means the Portland Development Commission (PDC), or any entity that has adopted the City of Portland Governmental 457(b) Plan, and is legally related to the City of Portland. For employees of a “Participating Employer”, wherever this Chapter references the “City” with respect to the employment relationship, services performed and compensation paid, the term “City” shall also mean the “Participating Employer”.
- O. “Participation Agreement”** means an agreement between the City and a Participant, on a form prescribed by the City, that provides for the deferral of Compensation due a Participant to a future date for service currently rendered by the Participant to the City.
- P. “Plan”** means the program established by this Chapter which has as its purposes the deferral of Compensation to Participants and the deferral of income taxation on the Deferred Compensation.
- Q. “Plan Administrator”** means the City Treasurer, or his or her designee, who prepares and provides documents, materials and support services required to administer the Plan.
- R. “Plan Year”** means a calendar year.
- S. “Records”** means the materials and forms maintained in files for each Participant in the Deferred Compensation Plan.
- T. “Roth Account”** means the portion of the Participant Account established and maintained by the Administrator for each Participant with respect to his or her Roth Deferrals including any amounts transferred into the Plan.
- U. “Roth Deferrals”** means Deferred Compensation which is designated irrevocably as a Roth Deferral by the Participant at the time the deferral election is made, and which is included in the Participant’s taxable income at the time the Participant would have received such amount in Compensation. All Roth Deferrals will be made in compliance with Internal Revenue Code Section 402A.
- V. “Settlement and Payment Election Agreement”** means an agreement between the City and a Participant on a form prescribed by the City that allows the Participant to elect and change the manner in which the value of the Participant’s Account is paid.

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W. “Severance from Employment” means the severance of the Participant’s employment with the City. A Participant shall be deemed to have severed his employment with the City when, in accordance with the established practices of the City, the employment relationship is considered to be terminated.

X.

1. “Unforeseeable Emergency” means severe financial hardship to the Participant resulting from

- a.** a sudden and unexpected illness or accident of the Participant or of a dependent (as defined in IRC Section 152a) of the Participant, or a designated beneficiary,
- b.** loss of the Participant's property due to casualty, or
- c.** the need to pay for the funeral expenses of the participant's spouse or dependent (defined in IRC Section 152(a),) or
- d.** other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant.

2. The circumstances that will constitute an Unforeseeable Emergency will depend upon the facts of each case, but, in any case, payment may not be made to the extent that such hardship is or may be relieved;

- a.** Through reimbursement or compensation by insurance or otherwise;
- b.** By liquidation of the Participant's assets to the extent the liquidation of such assets would not itself cause severe financial hardship; or
- c.** By cessation of deferrals under this Chapter.

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

5.09.020 Purpose.

(Amended by Ordinance No. 182168, effective October 3, 2008.) The purpose of this Chapter is to establish a program that has as its purpose the deferral of Compensation to eligible Employees and the deferral of income taxation on the Deferred Compensation. The program established by this Chapter is limited to the terms contained in the Chapter,

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and as such no other plan provisions are to be implied or assumed, even if such provisions would be permissible under the IRC. Except as specifically set forth otherwise, in the event the terms or provisions of any Component Plan, summary or description of this Plan or of any other instrument are interpreted as being in conflict with the provisions of this Plan, the provisions of this Plan shall be controlling.

5.09.030 Administration.

(Amended by Ordinance Nos. 176426, 179417, 182168, 185341 and 185726, effective November 14, 2012.) This Chapter shall be administered by a Deferred Compensation Advisory Committee (the Committee) with the assistance of the Bureau of Financial Services and the Bureau of Human Resources. The Committee shall consist of the Chief Administrative Officer of the Office of Management and Finance, the Director of the Bureau of Financial Services, and the City Treasurer and/or their respective designees. The City Treasurer shall serve as Chairperson. The Committee shall study all matters connected with providing a deferred compensation plan on the best basis possible with relation both to the welfare of the Participants and the City. The Committee shall have authority to devise specifications for deferred compensation plans, advertise for responses and bids, and analyze responses. The Bureau of Human Resources Director, or his or her designee, at the direction of the Committee, is authorized to negotiate and execute all contracts, including contracts with Investment Providers. The terms of any contract with the Plan may authorize the assessment of fees to be charged against Investment Providers or other contractors that may be necessary to fund the administration of the Plan. The Bureau of Human Resources Director, or his or her designee, at the direction of the Committee, is further authorized to prepare and provide any other documents, materials and support services that may be required to administer the Plan. The Committee members may participate in the Plan established herein if otherwise eligible, but shall not be entitled to participate in decisions relating solely to their own participation.

5.09.035 Education.

The Committee shall review, approve and implement the marketing and education of employees about the Plan. All promotional and City sponsored employee marketing and education efforts relating to the Plan may be coordinated with other similar efforts sponsored by the Employee Benefits Division of the Bureau of Human Resources. The Committee shall not offer investment advice to employees or plan Participants.

5.09.040 Participation in the Plan.

(Amended by Ordinance Nos. 179417, 182168, 183900 and 185726, effective November 14, 2012.)

- A. Eligibility. Employees shall be eligible to enroll as Participants in the Plan, as provided in this Section, on the first day of the month following the month in which they will have completed 30 days in a paid status. A Participant who terminates his or her employment with the City and then returns to City

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employment after the expiration of 12 calendar months following said termination date must comply with the eligibility waiting period applicable to such person upon his or her return before being eligible to participate in the Plan again. A Participant's right to participate and to have his or her salary reduced in connection with the Plan shall cease in the event the Participant takes a leave of absence without pay, but any such Participant may continue full participation in the Plan upon returning to pay status with the City. A Participant's right to participate and to have his or her salary reduced in connection with the Plan shall cease while the Participant is receiving distributions in accordance with, and subject to, the restrictions of Sections 5.09.070, 5.09.080, 5.09.090, and 5.09.110.

- B.** Enrollment in the Plan. An eligible Employee may become a Participant and defer Compensation not yet earned by executing a written Participation Agreement, and delivering it to the Bureau of Human Resources, Benefits Division. Compensation will be deferred for any calendar month only if a Participation Agreement providing for such deferral has been entered into by the 15th of the preceding month
- C.** The Participation Agreement shall be on a form provided by the City, which shall include the following:

 - 1. The Participant's name;
 - 2. The dollar amount or percent of Compensation to be deferred;
 - 3. The investment or deposit preference;
 - 4. Other relevant statements necessary and appropriate for carrying out the purposes of this Chapter.
- D.** When an eligible Employee executes a Participation Agreement, an Acknowledgement and a Beneficiary Designation shall also be completed. A Participant may change the Beneficiary Designation at any time by completing a new Beneficiary Designation and delivering it to the Bureau of Human Resources, Benefits Division. A change of Beneficiary Designation shall become effective on the date received by the Bureau of Human Resources, Benefits Division.
- E.** The City, upon written request of an eligible Employee, will reduce each pay period the salary of the eligible Employee by an amount of money designated by that Employee in the Employee's Participation Agreement. The City may pay that amount to the Investment Provider designated in the Employee's Participation Agreement.

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- F.** Once per month, a Participant may modify his or her Participation Agreement as to the amount of Compensation not yet earned to be deferred during each Plan Year. Any modification as to the amount of Compensation to be deferred by a Participant must be made in writing, and received by the Bureau of Human Resources, Benefits Division, by the 15th of the month prior to the month in which said modification is to become effective.
- G.** A Participant may revoke the Participation Agreement at any time with respect to any pay period by written notification, which must be received by the Bureau of Human Resources, Benefits Division, at least two (2) weeks prior to the date upon which the Participant desires the revocation to be effective.
- H.** At the time of severance from employment with the City, a Participant may make a special election of their vacation, comp, holiday and/or sick leave payoff. A Participant must complete a Participation Agreement by the 15th of the month prior to the month in which they sever employment. The election can be made as a dollar or percentage amount. This election will only apply once on the final paycheck issued. The maximum deferral limits shall apply in accordance with Section 5.09.050. If not previously elected during the calendar year, the participant may elect the age 50 catch-up provision pursuant to Subsection 5.09.050 B.
- I.** A Participant who has severed his or her employment or who has revoked the Participation Agreement may again participate in the Plan, provided that he or she is eligible, by executing a new Participation Agreement.
- J.** For purposes of Plan administration, a revocation of a Participation Agreement will be considered a Participation Agreement modification. The most recent Participation Agreement shall be controlling with respect to all accounts, including amounts deferred under prior agreements.
- K.** Automatic Enrollment in the Plan.

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

 - a.** If the City and a labor organization representing a unit of City employees agree in collective bargaining, the Eligible Employees in such bargaining unit will be automatically deemed to have executed a Participation Agreement. With respect to then currently Eligible Employees such deemed executed Participation Agreement will be effective commencing with the payroll period designated in such collective bargaining agreement. If no payroll period is designated in the collective bargaining agreement, the

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Participation Agreement will be effective the first payroll period after the effective date of such collective bargaining agreement.

- b.** New Eligible Employees who are covered by such a collective bargaining agreement will be automatically deemed to have executed a Participation Agreement effective for the first payroll period in which they could complete a Participation Agreement, unless another date is specified in the applicable collective bargaining agreement.
- c.** Notwithstanding the preceding in this Section, the deemed executed Participation Agreement will not be effective prior to the time described in the required notice described in Subsection 5.09.040 K. 2.

- 2.** Advance Notice. An Eligible Employee will be provided the required advance notice of automatic enrollment pursuant to IRC Section 414(w), including the amount of contributions that will be made, the employee's right to elect to not have automatic contributions made, a description of how the contributions will be invested, and when such contributions may be distributed. The notice shall be provided within a reasonable period before each Plan Year or before such other time when the automatic provision will first become applicable to an Eligible Employee.

- a.** Opting Out of Automatic Enrollment. A Participant shall have the right to opt out of automatic enrollment at any time by completing a Participation Agreement or by providing written notice of the election to not have any amount withheld from his or her Compensation.
- b.** Deferral Amount. The amount deferred from an Eligible Employee's Compensation shall be the amount specified in the applicable collective bargaining agreement, provided that the requirements of IRC Section 414(w) are satisfied, including the requirement that the percentage of pay deferred will be uniform for employees with the same years of employment, and the applicable minimum and maximum deferral percentages.

5.09.050 Compensation Deferral.

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

- A.** The amount of Compensation which may be deferred by a Participant shall be subject to the following limits:

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1. The minimum amount deferred shall be \$10 per pay period;
2. The maximum amount of Compensation which may be deferred during a plan year shall be in accordance with the following schedule:

For the Year:	The lesser of:
1982-1997	\$7,500 or 33.33% of Participant's Includable Compensation
1998-2000	\$8,000 or 33.33% of Participant's Includable Compensation
2001	\$8,500 or 33.33% of Participant's Includable Compensation
2002	\$11,000 or 100% of Participant's Includable Compensation
2003	\$12,000 or 100% of Participant's Includable Compensation
2004	\$13,000 or 100% of Participant's Includable Compensation
2005	\$14,000 or 100% of Participant's Includable Compensation
2006	\$15,000 or 100% of Participant's Includable Compensation
2007	\$15,500 or 100% of Participant's Includable Compensation
2008	\$15,500 or 100% of Participant's Includable Compensation
2009	Amount shall be administered to reflect changes in
thereafter:	accordance with IRC Sections 457(e)(15) and 415(d).

5.09.055 Catch-up Provisions

(Amended by Ordinance Nos. 179417 and 182168, effective October 3, 2008.)

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

For the Year:	The lesser of:
2002	\$22,000
2003	\$24,000
2004	\$26,000
2005	\$28,000
2006	\$30,000
2007	\$31,000

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2008	\$31,000 or the sum of the maximum allowed under Subsection 5.09.050 A. 2. for the current taxable year plus so much of the maximum established for purposes of Subsection 5.09.050 A. 2. for prior taxable years as has not previously been deferred under Subsection 5.09.050 A. 2.

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

- B. Age 50 catch-up provision:** All Participants who are eligible to make elective deferrals under the Plan and who have attained age 50 before the close of the calendar year shall be eligible to make catch-up contributions in accordance with Schedule A, and subject to the limitations of IRC Sections 414(v) and 414(v)(6)(c). Additional deferrals under this section of the Plan may be made except during the three (3) years prior to normal retirement age while utilizing the catch-up provision provided for in Subsection 5.09.055 A. of the Plan. Age 50 catch-up contributions will not be taken into account for purposes of determining a participant's underutilized amounts under the three year catch-up provision. The Participant must select the catch-up which results in the higher contribution amount.

Schedule A

For the Year:	Additional deferral amount:
2002	\$1,000
2003	\$2,000
2004	\$3,000
2005	\$4,000
2006	\$5,000
2007	\$5,000
2008	\$5,000

- C. Coordination with other plans.** If a Participant participates in more than one deferred compensation plan authorized under IRC Section 457, the maximum deferral under all such plans shall not exceed the applicable deferral limits described in Section 5.09.050, as adjusted by the Secretary of the Treasury (subject to modification by the catch-up limitations described in Section 5.09.055), which also shall apply to all IRC Section Governmental 457(b) Plans in which the Participant participates. If a Participant participates in a plan

described in IRC Section 403 (b), 401 (k), 408 (k) or 501 C (18), amounts deferred by the Participant to such plan(s) and excluded from the Participant's gross income in any taxable year under such plan(s) shall not reduce the limitation described in Section 5.09.050 of this Section and the catch-up limitation described in Section 5.09.055.

- D. Uniform Service Provision.** This Plan shall be administered in accordance with Section 414(u) of the IRC for employees who return to work after absences from employment due to military service. Accordingly, notwithstanding the provisions of this section limiting the amount of compensation which may be deferred under the Plan, a Participant who is entitled to reemployment pursuant to the terms of the Uniformed Services Employment and Reemployment Act of 1994 (USERRA) may defer an additional amount under the Plan as provided in that Act for the years of his or her service in the uniformed services (as defined in USERRA). Any such deferrals will not be subject to the annual limits on deferrals set forth in this section in the year in which deferred, but shall be subject to the limits for the year to which such deferrals relate. This subsection shall apply retroactively to December 12, 1994.

5.09.056 Excess Referrals.

(Added by Ordinance No. 179417; amended by Ordinance No. 182168, effective October 3, 2008.) A Participant who participates in the Plan and another Governmental 457(b) Plan of another employer shall be responsible for complying with the deferral limits. In the event of an excess amount, the Participant shall notify the Committee so that the excess and the proportionate earnings on the excess as determined by the Administrator in accordance with IRC Section 457 may be distributed as soon as practicable after the Committee determines that the amount is an excess deferral.

5.09.060 Deferred Compensation Records.

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

- A.** The City shall maintain records necessary and appropriate to the efficient administration of this Chapter, and such records shall be maintained by the City until a Participant or his or her designated Beneficiaries have received the payment of such amounts as they are entitled to receive under the terms of the applicable Settlement and Payment Election Agreement.
- B.** All amounts of Compensation deferred pursuant to this Chapter, shall be held in a trust, custodial account or contract described in IRC Section 457(g). Any change in the net value of the assets of a Participant invested under the Plan shall result in a commensurate change in the total amount distributable to the Participant or the Beneficiary of the Participant and shall not result in any increase or decrease in the net worth of the City.

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

5.09.070 Payment Options.

- A.** Subject to the restrictions on the distribution of benefit payments appearing in Sections 5.09.080, 5.09.090, 5.09.100 and 5.09.110, the options available to a Participant or Beneficiary for distributing the value of the Participant's Account are:
- 1.** Lump Sum
 - 2.** Substantially equal monthly, quarterly, semi- annual or annual installments until the Account is exhausted.
 - 3.** Substantially equal monthly, quarterly, semi- annual or annual payments for a designated period.
 - 4.** Periodic payments for the life of the Participant with continuation of the payments or a percentage of the payments for the lifetime of the Participant's spouse.
 - 5.** Payments equal to payments made by the issuer of a retirement annuity policy.
 - 6.** Such other option as the Participant chooses, and as authorized by this Plan.
- B.** A Participant or Beneficiary must select a payment option at least 30 days before the payment of benefits is to commence.

5.09.080 Distribution of Benefits Generally.

(Amended by Ordinance Nos. 177367, 179417, 182168, 185341 and 185726, effective November 14, 2012.)

- A.** With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2002, the Plan will apply the minimum distribution requirements of IRC Section 401(a)(9) in accordance with the regulations under IRC Section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. This amendment shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under IRC Section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.
- B.** Distribution of a Participant's Account to a Participant or a Beneficiary shall be made in accordance with the manner and method of payments selected in the

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Settlement and Payment Election Agreement, which election may be changed by a Participant or Beneficiary, subject to the restrictions of the Plan.

- C.** At the time distribution to a Participant commences, such distribution shall be made in a manner in which the Participant will receive a minimum portion of the amount payable with respect to the Participant during the life expectancy of the Participant (as determined as of the commencement of the distribution). Therefore, distributions to a Participant must be made in accordance with the distribution tables promulgated by the Secretary of the Treasury pursuant to IRC Section 457(d)(2)(B)(i)(I).
- D.** A minimum amount shall be distributed during each calendar year. The required minimum distribution for each calendar year shall be determined by dividing the Account balance (as determined under Section 1.104(a)(9)-1, Q&A F-5 of the proposed Federal income tax regulations or any successor to such regulations) by the lesser of the applicable life expectancy (as determined under Q&A F-1A(d) of Section 1.104(a)(9)-1 of the proposed Federal income tax regulations or any successor to such regulations) or the applicable divisor (as determined under Q&A-4 of Section 1.104(a)(9)-2 of the proposed Federal income tax regulations or any successor to such regulations).
- E.** Notwithstanding the provisions of Subsection D., distribution of a Participant's Account may be made through an annuity contract that is purchased from an insurance company, with funds from the Participant's Account. Any annuity contract so purchased must satisfy the applicable minimum distribution requirements of Section 1.401(a)(9)-1 of the proposed Federal income tax regulations (and any successor regulations) and the applicable minimum distribution incidental benefit requirement of Section 1.401(a)(9)-2 of the Federal income tax regulations (and any successor regulations). In the event such an annuity contract is purchased, the amount of the annuity payments shall be determined under the annuity contract.
- F.** In no event shall the distribution of a Participant's Account commence earlier than:

 - 1.** the calendar year in which the Participant attains his or her Normal Retirement Age as defined in Subsection 5.09.010 L.,
 - 2.** the Participant's Severance from Employment, or
 - 3.** when the Committee approves a distribution pursuant to an Unforeseeable Emergency of a Participant.

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

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

5.09.090 Qualified Domestic Relations Orders (QDRO).

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

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

5.09.100 Determination of Benefits Upon Death

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

- A.** Upon the death of a Participant, Former Participant or Alternate Payee, the Plan Administrator shall direct that the deceased Participant's, Former Participant's or Alternate Payee's Participant Account, be distributed to the Beneficiary in accordance with the provision of this Section 5.09.100.
- B.** The designation of a Beneficiary shall be made on a form satisfactory to the Plan Administrator. A Participant, Former Participant, or Alternate Payee may at any time revoke his designation of a Beneficiary or change his Beneficiary by filing written notice of such revocation or change with the Plan Administrator. In the event no valid designation of Beneficiary exists at the time of the Participant's, Former Participant's, or Alternate Payee's death, the death benefit shall be payable to the Participant's, Former Participant's, or Alternate Payee's estate.

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- C.** The Plan Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the Participant Account of a deceased Participant, Former Participant, Alternate Payee or Beneficiary, as the Plan Administrator may deem appropriate. The Plan Administrator's determination of death and of the right of any person to receive payment shall be conclusive.
- D.** Death benefits payable to a Beneficiary shall be made in a form as selected by the Beneficiary in accordance with the available options. In the event a Beneficiary fails to make an election as to a benefit distribution option, any benefit payable to such Beneficiary shall be distributed in a lump sum payment in accordance with IRC Section 401(a)(9). The terms of any annuity contract purchased and distributed by the Plan to a Beneficiary shall comply with the requirements of the Plan.
- E.** Notwithstanding any provision in the Plan to the contrary, distributions upon the death of a Participant or Former Participant, shall be made in accordance with the following requirements and shall otherwise comply with IRC Section 401(a)(9) and the Regulations thereunder.
- F.** In accordance with the Beneficiary's election, if minimum payments under IRC Section 401(a)(9) have not begun upon the death of a Participant or Former Participant and the designated Beneficiary is not the Participant's surviving spouse, death benefit payments must:

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

 - 1. December 31 of the calendar year immediately following the calendar year in which the Participant or Former Participant dies, or

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2. December 31 of the calendar year in which the Participant or Former Participant would have attained 70 $\frac{1}{2}$.

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

- H. If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's or Former Participant's death, the Participant's or Former Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's or Former Participant's death.
- I. If the Participant or Former Participant dies on or after the date distributions begin and there is a designated Beneficiary, distributions shall be based on the longer of the remaining life expectancy of the Participant or Former Participant or the remaining life expectancy of the Participant's or Former Participant's designated Beneficiary.
- J. Life expectancies calculations will be computed using the factors in the Single Life Table set forth in IRC Section 1.401(a)(9)-9, A-1, as follows:
 1. The Participant's or Former Participant's remaining life expectancy is calculated using the age of the Participant or Former Participant in the year of death, reduced by one for each subsequent year.
 2. If the Participant's or Former Participant's surviving spouse is the Participant's or Former Participant's sole, primary designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's or Former Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
 3. If the Participant's or Former Participant's surviving spouse is not the Participant's or Former Participant's sole, primary designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the

Participant's or Former Participant's death, reduced by one for each subsequent year.

4. If the Participant or Former Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's or Former Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's or Former Participant's death is the quotient obtained by dividing the Participant Account by the Participant's or Former Participant's remaining life expectancy calculated using the age of the Participant or Former Participant in the year of death, reduced by one for each subsequent year.

5.09.110 Distribution Commencing After Death of Participant.

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

5.09.120 Unforeseeable Emergency.

(Amended by Ordinance Nos. 179417 and 182168, effective October 3, 2008.) A Participant may apply on a form supplied by the City Treasurer, or his or her designee, for payment prior to Severance from Employment or Retirement from City employment but such applications may be granted only if the Participant is experiencing an Unforeseeable Emergency which would cause undue hardship if payment were denied. If the City Treasurer, or his or her designee, finds that a Participant is experiencing an Unforeseeable Emergency, he or she may approve an amount reasonably needed to satisfy the unforeseen emergency be made to the Participant. Payment will be made within 90 days of the date of such approval. Participants who request and are granted a hardship withdrawal from their deferred compensation account may not have their salaries reduced under the terms of this Chapter for a period of six (6) months following such hardship withdrawal. If the City Treasurer, or his or her designee, denies the application for payment, said denial shall be in writing. A Participant may appeal the decision to the Committee. An appeal must be in writing and received by the City Treasurer within 30 days of the date of denial. The committee shall issue a written decision within 90 days of receipt of the appeal by the City Treasurer. Any decision of the Committee is final.

5.09.130 Non-Assignability.

(Amended by Ordinance Nos. 177367 and 182168, effective October 3, 2008.) Neither the Participant, nor the Participant's Beneficiary shall have any right to commute, sell, assign, transfer, or otherwise convey the right to receive any payment which may be due the Participant under the plan, which payments and rights thereto are expressly declared to be nonassignable and nontransferable. Nor shall any amounts deferred pursuant to this Chapter be subject to attachment, garnishment, or execution or be transferable by operation of law in the event of bankruptcy or insolvency unless otherwise required by law. The preceding paragraph prohibiting the assignment or alienation of benefits shall

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not apply to Qualified Domestic Relations Orders as set forth in Section 5.09.090 which may be issued pursuant to a court decree of annulment or dissolution of marriage or of separation, or the terms of any court order or court approved property settlement agreement incident to any court decree of annulment or dissolution of marriage or of separation which is determined by the City Treasurer or his or her designee to satisfy the requirements of ORS 243.507. The City Treasurer or his or her designee shall establish written procedures to determine whether the above described decrees or the property settlement agreements incident to such decrees satisfy ORS 243.507 and to administer distributions under such orders.

5.09.140 Amendment and Termination.

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

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

5.09.150 Transfers from other code section 457(b) Plans.

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

5.09.155 Rollovers to the Plan.

(Replaced by Ordinance No. 182168; Amended by Ordinance No. 185726, effective November 14, 2012.)

- A.** Amounts that are considered Eligible Rollover Distributions as defined in IRC Section 402(c)(4) may be rolled over by a Participant, from an Eligible Retirement Plan. The amounts rolled over from an Eligible Retirement Plan other than an IRC Section 457(b) plan maintained by an Employer shall be allocated to the Participant Non-457 Rollover Account. The amounts rolled over from another IRC Section 457(b) plan maintained by an Employer shall be allocated to the Participant 457 Rollover Account. Amounts in the Participant Non-457 Rollover

Account shall be accounted for separately from amounts in the Participant 457 Rollover Account.

- B.** For purposes of this Section, the term “Participant” means the Participant, the Participant’s surviving spouse beneficiary or an Alternate Payee (who is a spouse or former spouse). “Eligible Retirement Plan” means any other IRC Section 457(b) plan maintained by an employer, an IRC Section 403(b) program, a IRC Section 401(a) plan, an individual retirement account as described in IRC Section 408(a), and an individual retirement annuity as described in IRC Section 408(b), and a Roth individual retirement account under IRC Section 408(a). For purposes of this Section, the term “amounts rolled over from an Eligible Retirement Plan” means:
- 1.** amounts rolled to the Plan directly from another Eligible Retirement Plan on behalf of an Eligible Individual; and
 - 2.** Eligible Rollover Distributions as defined in IRC Section 402(c)(4) received by an Eligible Individual from another Eligible Retirement Plan that are rolled over by the Eligible Individual to the Plan within sixty (60) days, following his receipt thereof.
- C.** A Participant may choose to receive a distribution from his 457(b) Rollover Account and Participant Non-457(b) Rollover Account at any time, whether he or she is otherwise entitled to a distribution from the Plan.

5.09.156 Rollovers From the Plan

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

- A.** Notwithstanding any provision of the Plan to the contrary, a Participant who is entitled to a distribution under the Plan shall be permitted to elect to have any Eligible Rollover Distribution (as defined in IRC Section 402(c)(4)) paid directly to an Eligible Retirement Plan (as defined in Subsection 5.09.155 B.) specified by the Participant. The Participant shall, in the time and manner prescribed by the Employer, specify the amount to be rolled over and the Eligible Retirement Plan to receive such rollover. Any portion of a distribution which is not rolled over shall be distributed to the Participant.
- B.** The election described in Subsection A. also applies to the surviving spouse who is the designated Beneficiary of the Participant or a spouse or former spouse who is the Alternate Payee, provided that such spouse, former spouse or Alternate Payee directs the transfer of an Eligible Rollover Distribution (as defined in Subsection 5.09.155 B.) in which such spouse, former spouse or Alternate Payee is a participant. Effective for distributions made on or after May 16, 2008, a non-

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spouse beneficiary is permitted to make a direct rollover of death benefits to an inherited IRA.

5.09.157 Purchase of Service Credits.

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

5.09.160 Unclaimed Assets.

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

5.09.170 Disclaimers.

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

Chapter 5.10

CITY CHARITABLE CAMPAIGN

(Chapter replaced by Ordinance No. 185656,
effective October 26, 2012.)

Sections:

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

5.10.010 Definitions.

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

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received authorization from these member Charitable Organizations to represent them in the annual Charitable Campaign, or any other Charitable Organization so designated by the City Council through a City ordinance.

5.10.020 Charitable Campaign.

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

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

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

5.10.030 Charitable Campaign Advisory Committee.

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

5.10.040 Eligibility for Participation in Charitable Campaign.

A. In addition to a timely completed application to the Committee, each Umbrella Organization seeking eligibility to participate must provide the following information for itself and its member Charitable Organizations:

1. Documentation of Charitable Organization status and valid registration with the State of Oregon.
2. Equal opportunity and nondiscrimination policy pertaining to:
 - a. Delivery of charitable services;
 - b. Employment opportunities, actions and benefits; and,

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- c. Membership on the organization's governing board; relating to race, color, religion, sex, age, disability, familial status, sexual orientation, national origin and other legally protected characteristics or status. The policy must certify that the Umbrella Organization and its member Charitable Organizations have procedures and practices regarding equal opportunity and nondiscrimination that comply with federal, state and local laws including Portland City Code Title 23.
 - 3. Statement of the charitable work performed, describing solicitation activities, operational history, and the geographic region or location where the work is done. The Umbrella Organization and each of its Charitable Organizations must have at least one year of operational history.
 - 4. Copies of the most recent financial report or statement certified by an independent public accountant, including the source and use of charitable contributions and fundraising activities, Form 990 filed with the Internal Revenue Services for the most recent fiscal year, and certification that each entity accounts for funds in accordance with generally accepted accounting principles. Computation of the percentage of total support and revenue spent on fundraising and administrative expenses must not exceed 25 percent of its unrestricted income. Contributions by City employees shall not constitute restricted income and must be used for the Charitable Organization's mission purpose.
 - 5. Adopted budget for the current fiscal year.
 - 6. Current articles of incorporation and by-laws, or other governing instruments.
 - 7. Certification of compliance with provisions of this Code and all applicable laws.
- B.** The CAO or CAO's designee will make the final eligibility determination for each annual Charitable Campaign and will prepare an ordinance for City Council authorizing campaign participants for each year.

5.10.050 Administration of Charitable Campaign.

OMF has administrative responsibility for the Charitable Campaign and will provide administrative support to the Committee. City administrative costs associated with each annual Charitable Campaign will be paid by the participating Umbrella Organizations in proportion to the total contributions received in the Charitable Campaign. OMF will provide each Umbrella Organization with information on the total number of employees

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who pledged contributions and the total dollar amount of pledged contributions. The City will not be liable for any uncollectible pledges. Pledged contributions will be deducted as voluntary payroll deductions of the participating employees. Umbrella Organizations are responsible for allocating funds to the applicable Charitable Organizations identified in employee pledges and providing written acknowledgement for donors to meet the requirements of the Internal Revenue Code. The CAO or CAO's designee is authorized to formulate, approve and issue policies, administrative rules and supplemental regulations related to the management and administration of the Charitable Campaign.

Chapter 5.12

**ASSIGNMENT OR GARNISHMENT OF
SALARIES, WAGES OR CLAIMS**

Sections:

- 5.12.010 Unlawful to Assign Salary or Wages.
- 5.12.020 Auditor Not to Recognize Assignment.
- 5.12.030 Exceptions.
- 5.12.040 Penalty.
- 5.12.050 Garnishments.

5.12.010 Unlawful to Assign Salary or Wages.

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

5.12.020 Auditor Not to Recognize Assignment.

The Auditor of the City is hereby directed not to recognize any assignment or attempted assignment of a salary or wage claim against the City, except as provided in Section 5.12.030.

5.12.030 Exceptions.

The provisions of this Chapter are subject to the following exceptions:

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

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Association of Portland, an Oregon corporation, or to the Portland Police Beneficiary Association, an Oregon corporation, whereby the salary or wages, or any part thereof, of the employee is assigned to either of said corporations. The Auditor and Treasurer are hereby authorized to recognize all of the powers of Attorney.

5.12.040 Penalty.

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

5.12.050 Garnishments.

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

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

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3. Designating the person entitled to receive such sum; and
4. Directing the payment of the balance of money due on such warrant, if any, to the payee thereof.
The Office of Fiscal Administration, Accounting Division, shall then deliver such warrant to the Treasurer and the Treasurer shall deposit such warrant to the account of the City and draw one or more checks against such account in the amounts directed and in favor of the person or persons designated by the endorsement upon such warrant.

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Chapter 5.16

EMERGENCY CHECKS

Sections:

5.16.010 Issued When.

5.16.020 Extraordinary Circumstances Requiring Emergency Checks.

5.16.010 Issued When.

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

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

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

5.16.020 Extraordinary Circumstances Requiring Emergency Checks.

(Amended by Ordinance Nos. 136544, 169321 and 173369, effective May 12, 1999.)
Should an extraordinary condition arise not otherwise provided for by this Chapter, the Commissioner-In-Charge of the department requesting the issuance of an emergency check, or any person in such department so authorized by the Commissioner-In-Charge in writing filed with the City Auditor, shall present a signed requisition, accompanied by a statement in writing giving his/her reasons for so doing, which shall be authorization for issuance of an emergency check. The Commissioner-In-Charge, the Mayor and the City Auditor shall approve emergency checks for extraordinary circumstances provided for in this Section.

Chapter 5.20

BUDGET PROCEDURE

Sections:

- 5.20.010 Budget Procedure.
5.20.020 Reimbursable Expenditures Account.

5.20.010 Budget Procedure.

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

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

5.20.020 Reimbursable Expenditures Account.

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

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- 1.** A transfer of appropriation shall not be made until it has been determined by the Commissioner In Charge of the bureau affected or by the Commissioner of Finance and Administration for other budgets that a deposit has been made to cover the estimated cost of the project or that payment is assured.
- C.** Transfers of appropriation for reimbursable projects may be made without special ordinance upon written authorization by the Commissioner of Finance and Administration and the Commissioner In Charge of the bureau affected. If no bureau is affected, then such transfer may be made upon written authorization of the commissioner of Finance and Administration.
- D.** If a reimbursable project is completed during the same year in which the transfer was made to set up the project and if there is a remaining balance of the appropriation transferred, the unused appropriation may be transferred back to the Reimbursable Expenditures Account without special ordinance on written authorization of the Commissioner of Finance and Administration.

Chapter 5.24

AUDITOR'S RECORDS AND REPORTS

Sections:

- 5.24.010 Permanent Records to be Kept by Auditor.
- 5.24.020 Auditor to Report on Balance in Appropriation.

5.24.010 Permanent Records to be Kept by Auditor.

The Auditor 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 Auditor to Report on Balance in Appropriation.

Each month the Auditor 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**

(New 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 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.

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 City Auditor 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 Office 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 sell 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.

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- I.** “**Open lien**” means a lien that has not been or cannot be financed, and that requires payment in full.
- J.** “**Redemption**” means the right of the property owner or any person with an interest in the property, excluding the purchaser in a foreclosure sale, to repurchase the foreclosed property by payment of the redemption price during the redemption period.
- 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 the sum of the lien principal, interest and penalties, together with all collection costs and sales costs associated with the foreclosure sale.

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 No. 181483, effective January 18, 2008.)

- A.** The Auditor 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 Auditor is also responsible for processing and approving or denying applications for the Catch-up Payment Program and the Hardship Payment Program; administering the foreclosure process; preparing

foreclosure lists; and transmitting the foreclosure lists to the City Council for its review and approval.

- B.** The 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 Treasurer may delegate this authority or such other authority as may be assigned under this Chapter.
- C.** Unless otherwise specifically directed by Council, the OMF Business Operations Division shall manage, maintain, rent or market for sale properties purchased by the City under this Chapter.

5.30.050 Collection Process.

- A.** The Auditor 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 Auditor 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 Auditor 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

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the Hardship Payment Program. Lien payments made during the 30-day period following the assessment date shall not be charged this interest.

2. For a delinquent bonded lien, interest shall be calculated daily based on the amount of the unpaid principal balance and the interest rate set by the installment payment contract.
- D.** As liens become delinquent, the Auditor 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 Auditor 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.

- A.** The Auditor may evaluate individual delinquent open liens to develop recommendations on revising the payment amount of the lien and the payment terms. The Auditor'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. These four offices shall each designate their representative to the Committee.

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- C.** The Committee shall meet from time to time, as necessary, to review and consider the Auditor's recommendations. The Collections Committee shall make a written determination accepting, revising or rejecting the Auditor's recommendations on adjusting the delinquent open lien payment amount and terms. The Collections Committee's written determination shall be based upon the factors listed in Subsection 5.30.060 D. The Auditor 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

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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 Auditor that contains the adjusted delinquent open lien amount and payment terms.
- F. If the property owner rejects the Collection Committee's determination, the owner may appeal the determination on adjusting the delinquent open lien amount and payment terms to the Code Hearings Officer as provided for in Chapter 22.10. 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 No. 179361, effective July 1, 2005.)

- 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 Auditor 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 Auditor'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 Auditor's Office 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 Auditor 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 and 179361, effective July 1, 2005.)

- 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 Auditor 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 Auditor shall review and approve or deny applications for individual payment plans under the Hardship Payment Program.
 4. If the Auditor determines that a property owner is qualified to participate in the Program, the Auditor 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

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recalculated interest rate shall be applied to each individual payment plan on the first billing date following December 31st of each year.

5. The Auditor shall periodically review each individual payment plan to verify the qualifications of the participant.
 6. At the conclusion of an individual payment plan, the Auditor shall bill any property owner who has complied with the individual payment plan, but has not paid the account in full, according to the Auditor's standard billing procedures.
 7. A payment for the specified amount in the Hardship Payment Plan Agreement (HPPA) must be received in the Auditor's Office with the signed HPPA.
- D. If the property owner fails to make a monthly payment before the completion of the plan, the Auditor may place the property on the foreclosure list, unless the Auditor finds there is an additional or continuing emergency. In that event the Auditor may authorize a new plan or reinstate the existing plan.

5.30.090 Negotiation of Bonded Lien Payment Contracts.

If the Auditor declares a bonded lien payment contract void prior to the property being placed on the foreclosure list, the property owner and the Auditor may negotiate new installment payment arrangements. If the Auditor 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 Auditor 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 Auditor shall prepare a form of agreement for negotiated installment payment contracts.

5.30.100 Preparation of Foreclosure List.

- A. The Auditor 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.

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- B.** The Auditor 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 Auditor 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.
- D.** The Auditor 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 Auditor 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.

- 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 Treasurer by the Council Clerk.

5.30.120 Purchase of Property by the City.

Upon Council approval, the City may purchase property on the foreclosure list before, during or after the sale subject to the following conditions:

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- A. Money for purchase has been transferred to the proper City fund for payment of the delinquent lien amount;
- B. In the case of property purchased before the sale, any person having an interest in the property is given an opportunity to pay the lien in full including collection and sales costs, and thereby remove the property from the foreclosure list as provided by Section 5.30.150; and
- C. Any person having an interest in the property may redeem the property as provided by Section 5.30.210.

5.30.130 Recording Notice of Foreclosure Sale.

(Amended by Ordinance No. 178241, effective April 9, 2004.)

- A. The 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 before 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.

As provided below, the 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 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

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collection costs; the type of the delinquent account; and, the name of the 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 Treasurer shall have printed in a daily newspaper of general circulation a notice of foreclosure sale once a week for four successive weeks.
2. The notice shall contain the information required in Subsection 5.30.140 A.2.
3. A copy of the first of the four published newspaper notices shall be sent to the owner and to the occupant by registered or certified mail.

C. Posted Notice.

1. The Treasurer shall have notice of foreclosure sale posted on the property at least once, no less than four weeks before the sale.
2. The posted notice shall contain the information required in Subsection 5.30.140 A.2.

D. Other notice. Notice shall be given to the Internal Revenue Service by registered or certified mail, at least 25 days prior to the sale.

5.30.150 Payment of Lien.

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

5.30.160 Presale and Sale Conditions.

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

5.30.170 Foreclosure Sale.

- A. The Treasurer shall prepare rules governing the conduct of the foreclosure sale. The rules shall be available at least 60 days prior to the foreclosure sale.
- B. Each property shall be sold separately for its respective sales price.

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- C.** Only bids in the amount of the sales price for a property are acceptable. In situations where there are two or more acceptable bids, the successful bidder shall be determined by lot. In the event there is more than one acceptable bid and the successful bidder fails to pay, sale of the property shall again be determined by lot. However, if there is only one remaining acceptable bid, the property will be sold to that bidder.
- D.** 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.

- 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.** Any improvements or maintenance to the property made by a purchaser during the redemption period shall be made under 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 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.

- A.** After a foreclosure sale, the Treasurer shall promptly deliver a certificate of sale to the purchaser. The certificate of sale embodies the right to own the property at the end of the redemption period. The holder of a certificate of sale 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 right of the City to place additional liens on the property and the right of another unit of government to foreclose upon the property. All liability remains with the persons having an interest in the property until the City issues a deed at the end of the redemption period.
- B.** The certificate of sale shall include the following information: a description of the delinquent account for which the property was sold; a description of the property;

a statement of the amount for which it was sold; the redemption interest rate and the amount of the redemption penalty; the name of the purchaser; and, a statement that the property is being sold subject to the right of redemption within one year from the date of sale.

- C.** The Treasurer shall send to the property owner and all persons known to have a recorded interest in the property a notice of the sale by registered or certified mail, within 10 working 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 Auditor.

5.30.200 Entry of Collections and Sales.

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

5.30.210 Redemption.

- A.** Only persons having a recorded interest in the property, or their legal representative, may redeem the property within the redemption period. Purchasers have no redemption rights.
- B.** Property which has been sold at a foreclosure sale is not eligible for installment payments or a payment plan. Property may be redeemed only by payment in full. Redemption shall be subject to the payment to the Treasurer of the redemption price. The only acceptable form of payment shall be United States legal currency or cashier's check.
- C.** The Treasurer shall issue a receipt to the person redeeming the property and shall report the redemption to the Auditor. Redemption discharges the property from the effect of the sale.
- D.** If redemption is made by a lien creditor, the amount paid for redemption shall thereafter be deemed a part of the judgment, decree, mortgage or tax lien and shall bear like interest and may be enforced and collected as a part thereof.

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- E.** Upon receipt of the redemption price, the Treasurer shall issue a check for the sales price amount paid by the holder of the certificate of sale as shown on the lien docket plus any accrued redemption interest. 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.

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

5.30.230 Payment of Taxes.

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

5.30.240 Sale of Property Purchased by City.

- A.** Any property purchased by the City from the foreclosure list may be sold as directed by the Council in the manner provided by Charter, Code or State law. Proceeds from the sale shall be used to reimburse the fund from which the property was purchased, any liens paid or other expenses incurred. Any

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remaining proceeds shall be placed in the assessment collection fund unless otherwise designated by Council.

- B.** In selling property as described in Subsection 5.30.240 A., except in situations where the purchaser agrees to accept a quit claim deed, the Treasurer shall purchase title insurance as a precondition of sale and shall pay the cost of the policy.

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Chapter 5.31

**COLLECTIONS & FORECLOSURE
PROCESS FOR DELINQUENT SEWER
SAFETY NET LIENS**

(New Chapter substituted by
Ordinance No. 165798, Sept. 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:

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.

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- 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.
- 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 No. 181483, effective January 18, 2008.)

- A.** The Auditor 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 Auditor shall also renegotiate loans, reduce 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 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 Treasurer for collection of delinquent assessments.

5.31.025 Collection Process.

- A.** The Auditor shall establish a collections process and shall be authorized to:

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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
 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 Auditor 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 Auditor 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 Auditor may waive delinquent interest, penalties and charges if a delay in receiving payment is caused by an oversight, omission or error by City staff.

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- F.** The Auditor 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 Auditor placing the property on the foreclosure list, the Auditor 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 Auditor has placed the property on the foreclosure list, the Auditor 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, May 11, 1994.) When the Auditor 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 Auditor 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 Auditor 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.

- A.** At the conclusion of the collection process, the Auditor 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 Auditor shall determine whether any properties on the delinquent accounts list are also delinquent in the payment of property taxes. The Auditor shall identify those properties which are likely to be foreclosed upon by the County prior to the City's foreclosure sale .
- C.** The Auditor 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 Treasurer on which properties shall be purchased by the City.

- D.** The Treasurer shall remove from the County foreclosure list and notify the Auditor to add the total amount paid to the County to the lien against the property. The 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.

- A.** The Auditor 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 Auditor within 15 working days from the date the Auditor 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 Auditor regarding whether each step in the preparation of the final foreclosure list,

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as set forth in City Code 5.31.025 B and 5.31.035 B has been applied correctly.

2. Review the list of properties which have been on the final foreclosure list but for which no bids were received and make a recommendation on each property to the Department of Environmental Quality regarding how the property should be handled in order to liquidate the lien; and
3. Transmit to the Auditor 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 Auditor 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.

- A.** The Council shall review the final foreclosure list and reports submitted by the Auditor 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 Auditor and 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 Treasurer by the Council Clerk. After list is submitted to the Treasurer, the only payment option is to bring the account current.

- C.** The 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.
- D.** The 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.

- A.** Individual notice.

 - 1.** The 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 Treasurer. It shall also state that there shall be an additional charge.
 - 3.** The Treasurer shall retain and file the returned mailing receipt.
- B.** Newspaper notice.

 - 1.** The Treasurer shall have printed in a daily newspaper of general circulation the notice of sale once a week for four successive weeks.

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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 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.
 2. The notice shall contain the information required in City Code 5.31.055 A 2.
 3. The 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 No. 167655, May 11, 1994.)

- 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 Auditor 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 the 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.

- A.** The 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.

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

- A.** The 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.
- C.** The 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 Treasurer.

5.31.080 Lien Docket Entry.

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

5.31.085 Redemption.

- 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

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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 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 Treasurer shall issue a receipt to the person redeeming the property and shall report the redemption to the Auditor. Redemption discharges the property from the effect of the sale.
- D.** If redemption is made by a lien creditor, the amount paid for redemption shall thereafter be deemed a part of the judgment, decree, mortgage or tax lien and shall bear like interest and may be enforced and collected as a part thereof.
- E.** Upon deposit of the sum in redemption, the 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.

5.31.090 Issuance of Deed.

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

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- 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 No. 181483, effective January 18, 2008.)

- 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 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**

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

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Chapter 5.33

GOODS AND SERVICES

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

Sections:

5.33.010	Definitions.
5.33.020	City Council as Local Contract Review Board.
5.33.030	Application of Purchasing Code.
5.33.040	Authority of Chief Procurement Officer.
5.33.050	Authority for Golf Concession Contracts.
5.33.055	Authority of Appropriate Unit Managers.
5.33.060	Authority of Directors.
5.33.065	Authority for Stormwater Improvements.
5.33.070	Purchasing Goods, Services and Public Improvements from City Employees.
5.33.075	Affirmative Action.
5.33.080	Environmentally Preferable Procurement.
5.33.090	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.
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5.33.010 Definitions.

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

- 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. 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.
 - 5. Award:** The decision of the City to enter into a Contract with an Offeror.
 - 6. Bid:** A response to an Invitation to Bid.
 - 7. Bid or Proposal Bond/Bid or Proposal Security/Offer Security:** A means of securing execution of an Awarded Contract.
 - 8. Bidder:** An Offeror who submits a Bid in response to the City's Invitation to Bid.
 - 9. Chief Procurement Officer:** The individual in charge of the Procurement Services Division of the Office of Management and Finance.
 - 10. City:** The City of Portland, Oregon or designee.

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11. **Closing:** The date and time announced in the City's Solicitation Document as the deadline for submitting Offers.
12. **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.
13. **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.
14. **Competitive Range:** The number of Proposers the City will conduct discussions or negotiate if the City intends to conduct discussions or negotiations in accordance with Chapter 5.33 or Chapter 5.34.
15. **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.
16. **Contract:** See definition for "Public Contract."
17. **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.
18. **Contract Execution:** Contract Execution occurs when the Contract is signed by any mark, word, or symbol, in ink, by an Authorized Representative of an Offeror and the City.
19. **Contractor:** The Person with whom the City executes a Contract.

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20. **Cost Estimate:** The City's most recent pre-Bid, good faith assessment of anticipated Contract costs, consisting of either the estimate of an architect, engineer or other qualified professional, or confidential cost calculation worksheets, where available, or formal planning or budgetary documents.
21. **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.
22. **Descriptive Literature:** Informational materials concerning available products or services submitted by Offerors in response to the City's Solicitation Document.
23. **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.
24. **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.
25. **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.
26. **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.
27. **Emergency:** Circumstances that:

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- 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.
- 28. **Equal Employment Opportunity (EEO):** A certification program administered by the City, Certification by Contractors is required for in order to obtain most City Contracts as required by PCC Chapter 3.100.
- 29. **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.
- 30. **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.
- 31. **Goods and Services/Goods or Services:** Any combination of any of the items identified in the definitions of “goods” and “services”.
- 32. **Invitation to Bid (ITB):** The Written document that invites offers from prospective contractors pursuant to either ORS 279B.055 or 279C.335.
- 33. **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.
- 34. **Local Contract Review Board:** The Portland City Council, or designee.
- 35. **Nonresident Bidder:** A Bidder who is not a Resident Bidder.
- 36. **Offer:** A Written response to a Solicitation Document.
- 37. **Offeror:** A Person that submits an Offer.
- 38. **Opening:** The date, time and place announced in the Solicitation Document for the public Opening of Written, sealed Offers.

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- 39. **PCC:** The Code of the City of Portland, Oregon.
- 40. **Person:** An individual, corporation, business trust, estate, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity who has the legal capacity to enter into a Contract.
- 41. **Personal Services:** as used in these rules, means services performed under a Professional, Technical or Expert Services contract governed by PCC 5.68 or pursuant to ORS 279A.055.
- 42. **Prequalification:** Depending on the context, either the process followed by the City to determine the qualifications of an Offeror or the process to determine the suitability of particular goods.
- 43. **Price Agreement:** A Contract for the Procurement of Goods or Services at a set price with:
 - a. No guarantee of a minimum or maximum purchase; or
 - b. An initial order or minimum purchase combined with a continuing Contractor obligation to provide Goods or Services, in which the City or other contracting agency does not guarantee a minimum or maximum additional purchase.
- 44. **Procurement:** The act of purchasing, leasing, renting or otherwise acquiring Goods or Services. Procurement includes each function and procedure undertaken or required to be undertaken by the City to enter into a Contract, administer a Contract and obtain the performance of a Contract under the State Public Contracting Code.
- 45. **Procurement Services:** A division of the Bureau of Internal Business Services in the City of Portland.
- 46. **Product Sample:** The exact goods, or a representative portion of the exact goods requested by a Solicitation Document.
- 47. **Proposal:** A Written response to a Request for Proposals.
- 48. **Proposer:** A Person who submits a Proposal in response to the City's Request for Proposals.
- 49. **Public Contract:** A sale or other disposal, or a purchase, lease, rental or other acquisition, by the City of personal property, services, including

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personal services, Public Improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement, but does not include “grants.”

- 50. Public Improvement:** A project for construction, reconstruction or major renovation on real property by or for the City. Public Improvements do not include projects for which no funds of the City are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection or Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement.
- 51. Qualified Rehabilitation Facility (QRF):** A nonprofit community rehabilitation program or a vocational service provider whose purpose is to assist and encourage disabled individuals and which:
- a.** During the fiscal year employs disabled individuals for not less than 75 percent of the hours of direct labor required for the manufacture or provision of its products or services.
 - b.** Shall be either a community rehabilitation program certified through the Oregon Vocational Rehabilitation Division or a vocational service provider certified through the Oregon Mental Health Division of the Department of Human Resources;
 - c.** Meets the definition given in ORS 279.835(4); and
 - d.** Shall be currently certified by the Oregon Department of Administrative Services (ODAS) as a QRF; i.e., is listed as a current certificate holder in the annual QRF Directory, published by ODAS.
- 52. Repair and Maintenance:** Ordinary repairs and maintenance necessary to preserve a public improvement. Typically such repairs and maintenance do not prolong the lifespan of a public improvement nor increase its value beyond what was originally constructed.
- 53. Request for Proposals (RFP):** All documents used for soliciting Proposals. In accordance with these rules, or when permitted by PCC Chapter 5.34.
- 54. Request for Qualifications (RFQ):** A Written document, issued by the City to prospective Contractors, that seeks a description of their

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experience and qualifications to perform certain identified Work that may or may not lead to the issuance of an RFP.

- 55. **Resident Bidder:** A Bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the Bid, has a business address in this state and has stated in the Bid whether the Bidder is a “Resident Bidder” as this is defined.
- 56. **Responsible Offeror, Bidder or Proposer:** A Person who has submitted an Offer, Bid or Proposal and who meets the standards set forth in PCC Section 5.33.500 or 5.34.600, as applicable, and who has not been debarred, disqualified, or who has not failed to prequalify when Prequalification is required by the Solicitation Document.
- 57. **Responsive Offer, Bid or Proposal:** An Offer, Bid or Proposal that substantially complies in all material respects with applicable Solicitation procedures and requirements and the Solicitation Document.
- 58. **Scope:** The range and attributes of the Goods or Services described in the applicable Procurement document.
- 59. **Services:** Services other than “personal” or “PTE” services covered by PCC 5.68.
- 60. **Signature:** Any Written mark, word or symbol that is made or adopted by a Person with the intent to be bound to a Contract.
- 61. **Signed:** As the context requires, the term “signed” means either that a Written document contains a Signature or that the act of making a Signature has occurred.
- 62. **Solicitation:** A request by the City for prospective Contractors to submit Offers.
- 63. **Solicitation Document:** An Invitation to Bid, Request for Proposals or other document issued to invite Offers from prospective Contractors pursuant to ORS Chapter 279B or 279C. All documents referenced by the Solicitation Document are included in, and part of, the Solicitation Document.
- 64. **Specification:** A description of the physical or functional characteristics, or of the nature of a supply, Services or construction item, including any requirement for inspecting, testing or preparing a supply, Services or construction item for delivery and quantities or qualities of materials to be

furnished under a Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed.

- 65. Subcontractor:** A Person, other than the Contractor's employee, hired by the Contractor to perform a portion of the Work required by the Contract.
- 66. Work:** The furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item in a Contract or, in context, the entire Contract and the timely successful completion of all duties and obligations imposed by the Contract.
- 67. Writing:** Letters, characters and symbols inscribed on paper by hand, print type or other method of impression, intended to represent or convey particular ideas or meanings. "Writing" when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters and symbols made in electronic form and intended to represent or convey particular ideas or meanings.
- 68. Written:** Existing in Writing.

5.33.020 City Council as Local Contract Review Board.

(Amended by Ordinance Nos. 184403 and 185065, effective January 1, 2012.)

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

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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 PCC Subsection 5.33.040 C.

5.33.030 Application of Purchasing Code.

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

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

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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 PCC Sections 5.33.100 through 5.33.225;
5. Professional, technical and expert Contracts governed by PCC 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 PCC Section 5.33.040. The City Council may designate a particular Contract as a revenue-generating Contract;
- 10. Contracts for Sale of Advertising in City Publications. The right to advertise in City publications may be sold without Competitive Bidding. The City may utilize this exclusion when it publishes material and wants to recoup part of the cost by selling advertising to be placed in that publication. The revenue generated from the sale of advertising shall be applied to the cost of the publication;

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

5.33.040 Authority of Chief Procurement Officer.

(Amended by Ordinance Nos. 181547, 183445, 184403 and 185065, effective January 1, 2012.)

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

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- b.** Amendments exceeding 25 percent of the original Contract Amount, provided that the amended Contract Amount does not exceed \$500,000 and the director of the bureau in whose behalf of the Contract was issued concurs.
 - c.** Execute amendments to Price Agreements if the yearly estimated cost to the City is \$500,000 or less.
 - d.** Amendments whenever an ordinance approved by the City Council grants additional authority to the Chief Procurement Officer beyond that stated in these rules.
- 7.** Authorize final payment for a Procurement of Goods and Services after confirming that all Work is completed and accepted by the City, as follows:
 - a.** Whenever the final Contract Amount does not exceed 25 percent of the original Contract Amount; or
 - b.** Whenever the final Contract Amount exceeds 25 percent of the original Contract Amount, provided that the final Contract Amount is less than \$500,000 and the Director of the Bureau on whose behalf the Contract was issued concurs.
- 8.** Adopt forms, procedures, and administrative rules for all City purchases of Goods and Services regardless of amount. The City shall use the forms, procedures and administrative rules unless they conflict with the City Code.
- 9.** Establish a procedure providing appropriate financial control over the authorization provided by PCC Sections 5.33.055 and 5.33.060.
- 10.** Revoke or place conditions on the authority of appropriation unit managers, directors and officers to issue limited purchase orders obligating the City for purchase of materials or services not to exceed \$5,000, in the event of violations of these rules.
- 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.

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- 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, PCC Chapter 5.33 and PCC Chapter 5.34.
- C. In addition to the delegation of authority provided in Paragraph A. above, the Chief Procurement Officer is authorized to:
 - 1. Award, execute and amend Intergovernmental Agreements as (IGAs), provided the cost to the City does not exceed \$5,000;
 - 2. Award, execute and amend Revenue Generating Contracts; and
 - 3. Award, execute and amend any other Contracts, Price Agreements and IGAs when authorized by an ordinance adopted by City Council.
- D. Notwithstanding the grant of authority above, the Chief Procurement Officer may forward any contract or agreement to the City Council for approval.

5.33.050 Authority for Golf Concession Contracts.

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

- A. The Director of Portland Parks and Recreation is authorized to execute a Contract for concessions in the parks of the City for the sale of refreshments and notions and for the performance of public service, upon such terms and conditions, and using evaluation criteria as the Director of Portland Parks and Recreation may deem to be in the public interest. Such contracts are not subject to the procurement methods otherwise provided in PCC Chapter 5.33.
- B. When the Chief Procurement Officer advertises for Bids or Proposals, and the Parks Director believes there is no acceptable Bid or Proposal received for a concession, a concession Contract may be granted to any entity upon such terms and conditions, including terms and conditions that are different from those advertised, as the Director of Portland Parks and Recreation deems to be in the best interest of the City. The Director of Portland Parks and Recreation may renew any concession Contract or concession permit upon request of the concessionaire without calling for Bids for a total term not to exceed the five (5) year limitation imposed by City Charter Section 2-105(a)(3).
- C. Concessions at the City's golf courses may be Awarded in the following manner: The Chief Procurement Officer shall advertise for Bids or Proposals for golf concessions Contracts based on evaluation criteria authorized by the Director of

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Portland Parks and Recreation. A selection advisory committee appointed by the Director of Portland Parks and Recreation shall review all Offers. The selection advisory committee shall screen qualifications and Proposals, and shall recommend the most Advantageous Bid or Proposal to the Director of Portland Parks and Recreation. The advisory committee may reserve the right to interview prospective concessionaires after submission of Offers.

- D.** The Director of Portland Parks and Recreation is authorized to execute Contracts for golf concessions for food service operation, merchandise sales, cart rentals, golf instruction and other functions normal to clubhouse operations and for performance of public services, for a period not to exceed five (5) years, at the golf courses owned by the City, upon such terms and conditions as the Director of Portland Parks and Recreation deems to be in the best interest of the City, subject to approval by the City Council.
- E.** Renewal of any golf concession Contract upon request of the concessionaire and upon the recommendation of the Director of Portland Parks and Recreation may be authorized by the City Council without calling for new Bids or Proposals, for a term not to exceed the five year limitation imposed by City Charter Section 2-105(a)(3).

5.33.055 Authority of Appropriation Unit Managers.

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

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

5.33.060 Authority of Directors.

(Amended by Ordinance No. 183445, effective January 6, 2010.) Directors of Bureaus or Offices are authorized to:

- A.** Execute Contracts to the same extent as appropriation unit managers as provided in PCC Section 5.33.055;

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- B.** Execute Contract amendments for Goods and Services Contracts covered by this Chapter:
 - 1.** Up to 25% of the original Contract Amount, regardless of the original Contract Amount;
 - 2.** More than 25% of the original Contract Amount, provided that the amended Contract Amount does not exceed \$500,000 and the Chief Procurement Officer concurs.
- C.** Execute Contracts whenever an ordinance approved by the City Council grants additional authority to a Bureau Director beyond that stated in these rules.
- D.** The authority granted by this section regarding amendments is conditioned on the existence of an original valid Contract between the parties that was executed in conformance with City Code and State law.
- E.** Authorize the awarding of grants not to exceed \$5,000 when the proposed grant is included within the current fiscal year budget. Amendments to grants that increase the grant amount may occur only when the additional amount is included within the current fiscal year budget or as otherwise adopted by the City Council by ordinance

5.33.065 Authority for Stormwater Improvements.

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

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

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

- A.** Purchasing From City Employees. The Chief Procurement Officer shall not make any purchase of Goods and Services from any City employee, or any business with which a City employee is associated, except as follows:
 - 1.** When the purchase is expressly authorized by ordinance; or
 - 2.** During a state of Emergency as provided by PCC 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.

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- B.** “Business with which a City employee is associated” means any business in which the City employee is a director, officer, owner or employee, or any corporation in which the City employee owns or has owned 10 percent or more of any class of stock at any point in the preceding calendar year.

5.33.075 Affirmative Action.

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

- A.** Pursuant to ORS 279A.100, the City may limit competition on Contracts for Goods and Services, or on other Contracts with an estimated cost of \$50,000 or less to carry out affirmative action policies, in accordance with policies and procedures established by the City.
- B.** Pursuant to ORS 279A.105, the City may require a Contractor to Subcontract some part of a Contract to, or to obtain materials to be used in performing the Contract from:
- 1.** A business enterprise that is certified under ORS 200.055 as an emerging small business; or
 - 2.** A business enterprise that is:
 - a.** Certified under ORS 200.055 as an emerging small business; and
 - b.** Is located in or draws its workforce from economically distressed areas, as designated by the Oregon Economic and Community Development Department (OECDD); or
 - c.** Owned or controlled by a disabled veteran, as defined in ORS 408.225.
- C.** A Subcontractor certified under ORS 200.055 as an emerging small business is located in or draws its workforce from economically distressed areas if:
- 1.** Its principal place of business is located in an area designated as economically distressed by the OECDD pursuant to administrative rules adopted by the OECDD; or
 - 2.** The Contractor certifies in Writing to the City that a substantial number of the Subcontractor’s employees or Subcontractors that will manufacture the goods or complete the services under the Contract reside in an area designated as economically distressed by the OECDD pursuant to administrative rules adopted by OECDD. For the purposes of making the

foregoing determination, the City shall determine in each particular instance what proportion of a Contractor's Subcontractor's employees or Subcontractors constitute a substantial number.

3. The City shall include in each Solicitation Document a requirement that Offerors certify in their Offers in a form prescribed by the City, that the Offeror has not and will not discriminate against a Subcontractor in the Awarding of a subcontract because the Subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055.

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

5.33.080 Environmentally Preferable Procurement.

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

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,

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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 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.

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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 could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form.
19. "Retreaded Tire" means any tire that uses an existing casing for the purpose of vulcanizing new tread to such casing that meets all performance and quality standards in the Federal Motor Vehicle Safety Standards determined by the United States Department of Transportation.
20. "Reusable Product" means a product, such as a washable food or beverage container or a refillable ballpoint pen, that can be used several times for an intended use before being discarded.
21. "Secondary Waste Materials" means fragments of products or finished products of a manufacturing process that has converted a virgin resource into a commodity of real economic value. "Secondary waste materials" includes post-consumer waste. "Secondary waste materials" does not include excess virgin resources of the manufacturing process. For paper,

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“secondary waste materials” does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process.

22. "Used Oil" means a petroleum-based oil which through use, storage or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.
23. "Virgin Oil" means oil that has been refined from crude oil and that has not been used or contaminated with impurities.
24. "VOC" (Volatile Organic Compound) means an organic compound characterized by a tendency to readily evaporate into the air, contributing to indoor air pollution and photochemical smog.

B. Environmentally Preferable Procurement General Policy. In developing plans, drawings, work statements, specifications, or other product descriptions, the City shall insure, to the maximum extent economically feasible, the purchase of environmentally preferable products or services that comply with the City's Sustainable City Principles. This includes, but is not limited to, products that are durable, recyclable, reusable, readily biodegradable, energy efficient, made from recycled materials, and nontoxic. Furthermore, the City shall purchase products and services based on long-term environmental and operating costs, and find ways to include environmental and social costs in short-term prices.

C. Recycled Materials and Products Price Preference.

1. In accordance with ORS 279A.125, notwithstanding provisions of law requiring the City to award a contract to the lowest responsible bidder or best proposer or provider of a quotation, and subject to PCC Section 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;

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- 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 PCC Section 5.33.610; and
- e.** Offerors, when required in the Solicitation Document, certify in their submitted Offers the minimum, if not exact, percentage of post-consumer waste and total recovered materials content in the products offered.

D. Purchasing Environmentally Preferable Paper & Related Equipment.

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

E. Purchasing Recycled Oils.

- 1.** Preference for Oil Products with Greater Recycled Content: The City shall require that purchases of lubricating oil and industrial oil be made from the vendor whose oil product contains the greater percentage of recycled oil, unless a specific oil product containing recycled oil is:
 - a.** Not available within a reasonable period of time or in quantities necessary to meet the City's needs;
 - b.** Not able to meet the performance requirements or standard recommended by the equipment or vehicle manufacturer, including any warranty requirements; or
 - c.** Available only at a cost that exceeds the price preference established in PCC Section 5.33.080 C.

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2. In accordance with ORS 279B.240 the City shall ensure that its procedures and specifications for the procurement of lubricating oil and industrial oil do not exclude recycled oils and do not require oils to be manufactured from virgin materials.

F. Purchasing Retreaded Tires.

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

G. Purchasing Energy Efficient Products.

1. As available, the City shall procure products that meet or exceed Energy Star[®] criteria for energy efficiency. This applies to:
 - a. any equipment that uses electricity, natural gas, or fuel oil; and
 - b. products that indirectly impact energy use, such as, but not limited to, windows, doors and skylights.
2. City procurement language for such products described in 5.33.080 G.1 shall request from vendors:
 - a. Evidence that the equipment meets or exceeds the Energy Star[®] criteria for energy efficiency; and
 - b. Savings analyses including: energy (kWh/yr, therms/yr, gallons of gasoline/yr, etc.), operating costs (\$/yr), and the price premium payback (years).
3. Price Differential and Payback Period: While many Energy Star[®] compliant products are currently available for no price premium, should a

price differential exist, the City will apply a simple life cycle cost analysis. Purchases where the price premium payback period is within five years or less shall be encouraged. Where the price premium payback period is longer than five years, Energy Star[®] compliant products may still be used; however, the City shall not be obligated to purchase and use Energy Star[®] compliant products in those circumstances.

H. Purchasing Interior/Exterior Architectural Paint Products.

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

5.33.090 Use of Price Agreements.

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

5.33.100 Overview of Source Selection and Contractor Selection.

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

- A.** The City shall Award a Contract for Goods and Services covered by this Code using any method authorized by State law or City Code. Such different methods are called methods of "source selection." Source selection methods include Cooperative Procurements, Competitive Sealed Bidding, Competitive Sealed Proposals and small, intermediate, sole source, Emergency and Special Procurements.

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- 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 PCC 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 PCC Section 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 PCC Sections 5.33.100 D.1 - 7. or as otherwise adopted by the City Council by ordinance.
- E.** The methods of Contractor selection identified in PCC Section 5.33.100 D. shall conform to the procedures identified in these rules.

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

5.33.105 Feasibility and Cost Analysis.

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

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

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bureau's existing personnel or persons the bureau could hire through a regular or ordinary process would not be suitable;

- e. The procurement is for services to which the provisions of ORS 279B.080 (emergency procurements) apply;
 - f. The procurement is for services, the need for which is so urgent, temporary or occasional that attempting to perform the services with the bureau's own personnel or resources would cause a delay that would frustrate the purpose for obtaining the services; or
 - g. The services the bureau intends to procure will be completed within six months after the date on which the contract for the services is executed.
- C. If it is determined it is not feasible to acquire the services with the bureau's own personnel or resources, a written determination shall be made and kept in the City's procurement file. If it is determined it is feasible to acquire the services with the bureau's own personnel or resources, the bureau shall conduct a cost analysis as set forth in Subsections 5.33.105 D. – F. below.
- D. The bureau shall first estimate the bureau's cost of performing the services, including:
 - 1. Salary or wage and benefit costs for contracting agency employees who are directly involved in performing the services, including employees who inspect, supervise or monitor the performance of the services.
 - 2. Material costs, including costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies.
 - 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.

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- E.** After estimating the bureau's costs, the bureau shall estimate the cost a potential contractor would incur in performing the services. The bureau may estimate a contractor's potential costs by any reasonable means, including, but not limited to, past bids or current information provided by contractors performing the same or similar services. In the absence of information that can be reasonably and simply obtained without the expenditure of undue time and expense, a bureau may employ employing percentage markups for overhead and profit. No matter the method, the bureau's estimate should ensure it captures the following costs:
- 1.** Average or actual salary or wage and benefit costs for contractors and employees who:
 - a.** Work in the industry or business most closely involved in performing the services that the contracting agency intends to procure; and
 - b.** Would be necessary and directly involved in performing the services or who would inspect, supervise or monitor the performance of the services;
 - 2.** Material costs, including costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies; and
 - 3.** Miscellaneous costs related to performing the services, including but not limited to reasonably foreseeable fluctuations in the costs for the items identified in this subsection over the expected duration of the procurement.
 - 4.** Profit Included. Contracting Costs include the Authorized Agency's estimate of Contractor's profit in addition to the estimate of Contractor's 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.

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

5.33.110 Qualified Rehabilitation Facilities.

- A.** As used in PCC 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

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products and services offered by QRFs and determined by the State Procurement Office to be suitable for purchase by the City.

3. “Qualified Rehabilitation Facility” (“QRF”) means an activity center or rehabilitation facility, certified as a community rehabilitation program or as a vocational service provider through the Oregon Department of Human Services, that the State Procurement Office has determined to be qualified to participate in the program created by ORS 279.835 to 279.850.
 4. “QRF Contract” means a Contract entered into under the program created by ORS 279.835 to 279.850.
- B.** Policy: It is the policy of the City to encourage and assist Disabled Individuals to achieve maximum personal independence through useful and productive gainful employment by assuring an expanded and constant market for sheltered workshop and activity center products and services, thereby enhancing their dignity and capacity for self-support and minimizing their dependence on welfare and need for costly institutionalization. An essential element of this policy is to support sheltered employment to the fullest extent provided by law by contracting for needed Goods and services available from QRFs. The City shall identify contracting opportunities within the organization and Award appropriate Contracts to QRFs in accordance with this rule.
- C.** Procurements from QRFs
1. When the City intends to procure a product or service that is listed on the Procurement List, it shall procure that product or service, at the Price determined by the State Procurement Office, from a Qualified Rehabilitation Facility if the product or service is of Specifications 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

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is on the Procurement List, no existing Contract shall be renewed for such a product or service.

5. If a QRF submits a Competitive Bid, Proposal, price quotation or other Offer in a competitive Procurement for a Contract, then regardless of whether the Offer was accepted, that QRF may not, at any time during the initial term of the Contract for which the QRF submitted a Bid, Proposal or Offer, make any claim to the City that the product or service that was the subject of the Offer is on the Procurement List. If, during the Solicitation process, a QRF claims the product or service that is the subject of the Procurement is on the Procurement List, then, if the product or service is determined to have been on the Procurement List at the time the Solicitation Document was issued, the Solicitation process shall be terminated so long as a Contract has not been fully executed at the time the claim is made.

D. Determination of Price/Changes to QRF Contracts

1. When a product or service on the Procurement List is offered by more than one QRF, the City may purchase the required product or service from any QRF without competition between QRFs.
2. The City may use the formal selection procedure similar to that described in PCC 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 PCC Section 5.33.110 D.3.
3. Price.
 - a. Price for products or services where the Price is listed. For products or services on the Procurement List where the Price is listed, the Contract shall provide that the City will pay the Price that is listed.

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- b.** Price for services where the Price is not listed. For services for which no Price is listed on Procurement List, the City shall proceed as follows:
- (1)** The City shall request that the QRF submit its proposed Price to the City based on the volume or Scope of the Work and Specifications provided by the City as prescribed in the proposed Contract between the QRF and the City. For janitorial and security services where a Fair Wage is required to be paid, the Specifications shall state the wage required to be paid.
 - (2)** In submitting its proposed Price to the City, the City shall require the QRF to make full disclosure of known costs. The disclosure must include documentation, on a form prescribed by the State Procurement Office, that the costs proposed will result in a Price that will permit the QRF to recover the amounts prescribed in ORS 279.845(1)(a). The City shall require that an authorized officer of the QRF certify that the costs claimed are, to the best of the officer's knowledge, reasonable and adequate, and that the proposed Price will permit the QRF to recover the amounts prescribed in ORS 279.845(1)(a).
 - (3)** If the QRF and the City agree on the terms and conditions of a proposed Contract and the price for the services to be provided under the proposed Contract, the Department shall present the proposed Contract (including the agreed Price) to the State Procurement Office for review and approval of the Price. If the QRF and the City cannot agree on the price, the parties shall present the issue of price to the State Procurement Office for determination.
 - (4)** The City shall not execute or implement any Contract under the program created by ORS 279.835 to 279.850 until the State Procurement Office has transmitted notice of the Price approved determined by the State Procurement Office to the City and the QRF.
- c.** Re-determinations of Price. The Price established by the State Procurement Office shall apply for the initial term or period of the Contract unless otherwise approved by the State Procurement Office. The State Procurement Office may re-determine a Price at the request of a QRF or City, or at the discretion of the State

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Procurement Office. Until the State Procurement Office approves a new Price, the QRF shall continue to provide, at the established Price, the service or product in accordance with the Scope of Work that was the basis for establishing the existing Price.

- d.** The City shall not pay or agree to pay a QRF any amount other than the Price approved by the State Procurement Office. Any Price established by the State Procurement Office for a product or service shall remain in effect until the State Procurement Office approves a new Price.
- E.** The City shall not make material changes (changes that affect the cost of providing the products or services in more than a negligible manner) to the Specifications of a QRF Contract under ORS 279.835 to 279.850 unless the changes are in Writing and have been submitted to the State Procurement Office for a re-determination of Price. If the City wishes to make a material change to the Specifications from the most recent Solicitation for the product or service, the City shall notify the QRF in Writing of the specific changes in the Scope of Work or other conditions which will be required during the new Contract period. No agreement making a material change in the Specifications shall be executed until State Procurement Office re-determines the Price.

5.33.120 Sole-Source Procurements.

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

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

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- C. Public Notice. The City shall give notice of the determination that the Goods or Services or class of Goods or Services are available from only one source when the Contract is estimated to be greater than \$50,000 by publishing a notice on Procurement Services' website at least seven (7) Days before the Contract is Awarded.

5.33.130 Emergency Procurements.

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

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

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Procurement Contract by the City Council at its next regularly scheduled session or as soon as possible thereafter. That Contract shall be added to the regular agenda of the Commissioner without the need for approval for inclusion on the agenda by other Commissioners.

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

5.33.135 Declaration of State of Emergency or Disaster.

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

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

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- 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 No. 181547, effective January 24, 2008.)

- 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 PCC 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 PCC 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 PCC Section 5.33.200 or 5.33.210.
- D.** A Solicitation and Award process uses source selection methods substantially equivalent to those identified in PCC Section 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

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equivalent to those identified in PCC Section 5.33.200, 5.33.210 or 5.33.220 in accordance with PCC Section 5.33.140.

- F.** Protests. Protests regarding the use of all types of Cooperative Procurements shall be governed by the applicable provisions of PCC Section 5.33.700 *et seq.*
- G.** For purposes of PCC Section 5.33.140 through 5.33.170 the following definitions are applicable:
1. “Administering Contracting Agency” means a governmental body in this state or in another jurisdiction that solicits and establishes the original Contract for Procurement of goods, services or Public Improvements in a Cooperative Procurement.
 2. “Cooperative Procurement” means a Procurement conducted on behalf of more than one governmental body. “Cooperative Procurement” does not include an agreement formed among only governmental bodies under ORS chapter 190 or by a statute, charter provision, ordinance or other authority for establishing agreements between or among governmental bodies or agencies or tribal governing bodies or agencies.
 3. “Cooperative Procurement Group” means a group of governmental bodies joined through an intergovernmental agreement for the purposes of facilitating Cooperative Procurements.
 4. “Interstate Cooperative Procurement” means a permissive Cooperative Procurement in which the Administering Contracting Agency is a governmental body, domestic or foreign, that is authorized under the governmental body’s laws, rules or regulations to enter into Contracts and 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.

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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 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.
- C. Cooperative procurements are subject to the requirements of PCC Section 5.33.105 in regard to service contracts in excess of \$250,000.00.

5.33.150 Joint Cooperative Procurements.

(Amended by Ordinance No. 181547, effective January 24, 2008.)

- 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 PCC Section 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 No. 185065, effective January 1, 2012.)

- 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 PCC Section 5.33.140 B. are met;
 2. The Administering Contracting Agency's Solicitation and Award process for the original Contract is to allow the City to establish contracts or price agreements under the terms, conditions and prices of the original contract;
 3. The Contractor agrees to extend the terms, conditions and prices of the original contract to the Purchasing Contractor Agency; and
 4. No material change is made in the terms, conditions or prices of the contract or price agreement between the Contractor the Purchasing Contracting Agency from the terms, conditions and prices of the original contract between the Contractor and the Administering Contracting Agency.
- C. If the City wishes to enter into a Contract or Price Agreement arising out of a Permissive Cooperative Procurement it must publish notice of its intent to do so if it is estimated that the City will spend in excess of \$250,000, on Goods and Services acquired under the Contract or Price Agreement.
- D. For purposes of determining whether the City must give notice of intent to establish a Contract through a Permissive Cooperative Procurement, as required by ORS 279A.215(2)(a), the estimated amount of procurement will exceed \$250,000 if:

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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 PCC Section 5.33.300 A. The City shall give the notice required by this rule no fewer than seven (7) Days before the deadline for submitting comments regarding its intention to establish a Contract or Price Agreement through a Permissive Cooperative Procurement.
- G.** An Administering Contracting Agency that intends to establish a Contract or Price Agreement arising out of the Permissive Cooperative Procurement it administers may satisfy the notice requirements set forth in ORS 279A.215(2)(a) by including the information required by PCC Section 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 No. 181547, effective January 24, 2008.)

- 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 PCC Section 5.33.140 B. are met;
 - 2.** The Administering Contracting Agency's Solicitation and the Original Contract allows other governmental bodies to establish Contracts or Price Agreements under the terms, conditions and prices of the Original Contract; and
 - 3.** The Administering Contracting Agency permits the Contractor to extend the use of the terms, conditions and prices of the Original Contract to the Purchasing Contracting Agency; and
 - 4.** The City:
 - a.** was listed in the Solicitation of the Administering Contract Agency as a party that may establish Contracts or Price Agreements under the terms, conditions and prices of the Original Contract and the Solicitation was advertised in Oregon, or
 - b.** is a member of a Cooperative Procurement Group and the Group was listed in the Solicitation of the Administering Contracting Agency as a party that may establish Contracts or Price Agreements under the terms, conditions and prices of the Original Contract and the Solicitation was advertised in Oregon; or

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- c. publishes a Notice of intent to establish a Contract or Price Agreement in the manner required by 5.33.170 C below.
- C. Notice of Intent. If the City is required by this rule to publish a notice of intent to establish a Contract or Price Agreement through an Interstate Cooperative Procurement, the notice shall include:
 - 1. A description of the proposed Procurement;
 - 2. An estimated amount of the proposed Procurement;
 - 3. The name of the Administering Contracting Agency; and
 - 4. A time, place and date by which comments must be submitted to the City regarding its intent to establish a Contract or Price Agreement through an Interstate Cooperative Procurement.
- D. The City shall give public notice at least seven (7) Days before the deadline for submission of comments regarding its intent to establish a Contract or Price Agreement through an Interstate Cooperative Procurement.
- E. If the City receives comments within seven (7) Days after publication of its notice, the City shall make a Written determination that establishing a Contract or Price Agreement through an Interstate Cooperative Procurement is in the best interest of the City and provide a copy of the Written determination to any vendor that submitted comments before a Contract or Price Agreement may be established.

5.33.180 Small Procurements.

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

- A. For Procurements of Goods and Services not exceeding \$5,000 the City may Award a Contract as a Small Procurement pursuant to ORS 279B.065 and this rule. The City may choose any method of selecting such Contractors, including, but not limited to, offering the Contract to only one firm or conducting a competition for the Contract.
- B. State law prohibits a Procurement from being artificially divided or fragmented so as to constitute a small Procurement under this section.
- C. Notwithstanding any other provisions of the City Code, small Procurements shall not be amended beyond \$5,000 without prior approval of the Chief Procurement Officer before the additional Goods or Services are provided.

5.33.190 Intermediate Procurements.

- A.** Generally. For Procurements of Goods and Services not exceeding \$150,000, the City may Award a Contract as an Intermediate Procurement pursuant to ORS 279B.070. A Procurement shall not be artificially divided or fragmented so as to constitute an intermediate Procurement under this section.

 - 1.** Oral Price Quotations: For Procurement of Goods and Services not exceeding \$50,000, the City may Award a Contract after seeking three oral price quotations.
 - 2.** Written Price Quotations: For Procurements of Goods or Services anticipated to exceed \$50,000 but not exceeding \$150,000, the City may Award a Contract after seeking three Written price quotations.
- B.** For all intermediate Procurements, the City shall seek at least three informally solicited competitive price quotations or competitive Proposals from prospective Contractors, and shall keep Written records of the sources of the quotations or Proposals received. If three quotations or Proposals are not reasonably available, the City may proceed with the Procurement but only after making a Written record of the effort made to obtain the quotations or Proposals.
- C.** Negotiations: The City may negotiate with an Offeror to clarify its price quotation or Proposal or to effect modifications that will make the price quotation or 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 No. 183445, effective January 6, 2010.)

- 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 PCC Section 5.33.200 B. Public Notice of the Competitive Sealed Bidding Solicitation shall be provided as required by PCC 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 PCC 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 PCC 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;

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- l.** A statement that each Bidder to an ITB must identify whether the Bidder is a “Resident Bidder,” as defined in PCC Section 5.33.010 A.51.;
 - m.** Bidder’s certification of nondiscrimination in obtaining required Subcontractors in accordance with ORS 279A.110(4). (See PCC Section 5.33.075); and
 - n.** How the City will notify Offerors of Addenda and how the City will make Addenda available. See PCC 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;

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- c. If the City intends to Award Contracts to more than one Bidder, the City must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award. The criteria shall require the City to purchase the lowest priced goods, services or personal service available from the multiple Contracts; and
 - d. The City shall set forth objective evaluation criteria in the Solicitation Document in accordance with the requirements of ORS 279B.055(6)(a). Evaluation criteria need not be precise predictors of actual future costs, but to the extent possible, such evaluation factors shall be reasonable estimates based on information the City has available concerning future use.
4. Preference for Goods manufactured from Recycled Materials under PCC 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

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the statement of work or to meet the performance standards established by the resulting Contract; and

- c. The City's rights, which the City may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contractor or applicable law.
- C. Good Cause. For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the City. The City shall document in the Procurement file the basis for the determination of Good Cause for specification otherwise. The City will have Good Cause to specify otherwise under the following circumstances:
 - 1. The purpose to which the Goods or Services will be used does not justify a requirement that the Contractor meet the highest prevalent standards in performing the contract;
 - 2. Imposing express technical, standard, dimensional, or mathematical specifications will better ensure that the Goods or services will be compatible with or will operate efficiently or effectively with components, equipment, parts, Services or information technology including hardware, Services or software with which the Goods or Services will be used, integrated, or coordinated.
 - 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 No. 185065, effective January 1, 2012.)

- A. General. The City may use multi-step Competitive Sealed Bidding pursuant to ORS 279B.055(12).

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- 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 PCC 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 PCC Section 5.33.430 and inform Bidders excluded from the subsequent phases of the right, if any, to protest their exclusion pursuant to PCC Section 5.33.720.
- D.** **Procedures Generally.** In addition to the procedures set forth in PCC 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 PCC Section 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.

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- 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 and 185065, effective January 1, 2012.)

- 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 PCC 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;

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- 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 PCC 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 PCC 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
 - (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;

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- l.** Contractor's certification of nondiscrimination in obtaining required Subcontractors in accordance with PCC 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.
- 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 PCC 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;

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- 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 PCC 5.33.215A.1.b.
- 4. Applicable preferences, including those described in ORS 279A.120.125(2) and PCC Section 5.33.080 and ORS 279A.125;
- 5. All Contractual terms and conditions in the form of Contract provisions the City determines are applicable to the Procurement. The City's determination of contractual terms and conditions that are applicable to the Procurement may take into consideration, as authorized by ORS 279B.060(3), those contractual terms and conditions the City will not include in the Request for Proposal because the City either will reserve them for negotiation, or will request Proposers to offer or suggest those terms or conditions.
- 6. As required by ORS 279B.060(2)(h), the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting contract. Those consequences may include, but are not limited to:
 - a. The City's reduction or withholding of payment under the Contract;
 - b. The City's right to require the contractor to perform, at the contractor's expense, any additional work necessary to perform the statement of work or to meet the performance standards established by the resulting Contract; and
 - c. The City's rights, which the City may assert individually or in combination, to declare a default of the resulting contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contractor or applicable law.
- 7. The City may include the applicable contract terms and conditions in the form of Contract provisions, or legal concepts to be included in the resulting Contract. Further, the City may specify that it will include or use Proposers' terms and conditions that have been pre-negotiated, but the City may only include those terms and conditions in the resulting Contract to the extent those terms and conditions do not materially conflict with the

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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.
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.

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5.33.211 Procedures for Competitive Range, Multi-Tiered and Multi-Step Proposals
(Amended by Ordinance Nos. 183445 and 185065, effective January 1, 2012.)

- 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 PCC 5.33.210 through PCC 5.33.217 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, 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.

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- 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 PCC 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 PCC 5.33.740. An Affected Offeror may protest, for any of the bases set forth in PCC 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 PCC Section 5.33.210 calls for the City to establish a Competitive Range at any stage in the Procurement process, the City may do so as follows:

 - 1.** Determining Competitive Range.

 - a.** The City may establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria in the Request for Proposals, the City may determine and rank the Proposers in the Competitive Range. Notwithstanding the foregoing, however, in instances in which the City determines that a single Proposer has a reasonable chance of being determined the most Advantageous Proposer, the City need not determine or rank Proposers in the Competitive Range. In addition, the City may establish a Competitive Range of all Proposers to enter into discussions to correct deficiencies in Proposals.
 - b.** The City may establish the number of Proposers in the Competitive Range in light of whether the City's evaluation of Proposals

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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 PCC 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(68)(b) or (c)(a)(B) or (C);
 - (3) May adjust the evaluation of a Proposal as a result of a discussion under this section discussions. The conditions, terms, or price of the Proposal may be altered or otherwise changed during the course of the discussions provided the changes are within the Scope of the Request for Proposals.
 - b. At any time during the time allowed for discussions, the City may:
 - (1) Continue discussions with a particular eligible Proposer;
 - (2) Terminate discussions with a particular eligible Proposer and continue discussions with other eligible Proposers; or
 - (3) Conclude discussions with all remaining eligible Proposers and provide to the then-eligible Proposers, notice pursuant

to PCC Section 5.33.215 D. 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 PCC Section 5.33.215 C. until the City has either:

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

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1. Public Notice. Whenever the City uses multi-step sealed Proposals, the City shall give public notice for phase one in accordance with PCC Section 5.33.300. Public notice is not required for phase two. However, the City shall give notice of the subsequent phases to all Proposers and inform any Proposers excluded from the subsequent phases of the right, if any, to protest exclusion pursuant to PCC 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 PCC Section 5.33.215, the multi-step Request for Proposal must state:
 - a. that un-priced technical Proposals are requested;
 - b. that the Solicitation is a multi-step sealed Proposal Procurement, and that, in the second phase, priced Proposals will be accepted only from those Proposers whose un-priced technical Proposals are found qualified in phase one;
 - c. the criteria for the evaluation of un-priced technical Proposals; and
 - d. that the Goods or Services being procured shall be furnished generally in accordance with the Proposer's technical Proposal as found to be finally qualified and shall meet the requirements of the Request for Proposals.
3. Addenda to the Request for Proposals. After receipt of un-priced technical Proposals, Addenda to the Request for Proposal shall be distributed only to Proposers who submitted un-priced technical Proposals.
4. Receipt and Handling of Un-priced Technical Proposals. Un-priced technical Proposals need not be opened publicly.
5. Evaluation of Un-Priced Technical Proposals. The un-priced technical Proposals submitted by Proposers shall be evaluated solely in accordance with the criteria set forth in the Request for Proposals.
6. Discussion of Un-priced Technical Proposals. The City may seek clarification of a technical Proposal of any Proposer who submits a qualified, or potentially qualified, technical Proposal. During the course of such discussions, the City shall not disclose any information derived from one un-priced technical Proposal to any other Proposer.

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

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

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

5.33.217 Multi-Step Sealed Proposals.

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

5.33.220 Special Procurements.

(Amended by Ordinance Nos. 181547, 183445, 184403, 184404 and 185065, effective January 1, 2012.)

- 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 PCC Section 5.33.220 the following definitions are applicable:
 1. “Class Special Procurement” means a contracting procedure that differs from the procedures described in PCC 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 PCC 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.

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3. “Special Procurement” means, unless the context requires otherwise, a class special Procurement, a contract-specific special Procurement or both.
- C. The City Council, acting as the Local Contract Review Board may approve a special procurement if it finds that the use of a special procurement or an alternative procedure prescribed by the Council:
1. Is unlikely to encourage favoritism in the award of public contracts or to substantially diminish competition for public contracts; and
 2. Is reasonably 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 PCC 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

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pursuant to PCC Chapter 5.68 to conduct a competitive process to acquire such contractors. Such contracts include administrators of employee Flexible Spending Account Administration and Medical Claims Third Party Administration. The City will hire a consultant to advise it on firms available to provide the Work and the consultant is authorized to solicit firms pursuant to a Request for Proposal process as well as assist the City in placing advertisements in specific publications likely to reach the attention of such contractors. The City may then negotiate or enter into the Contract that appears most Advantageous to the City without further advertisement or issuance of its own Request for Proposals.

6. Insurance Contracts: Contracts for insurance, including Employee Benefit insurance, may be Awarded directly to an insurer after the City obtains Proposals from an insurance consultant. The consultant shall be selected pursuant to PCC 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

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it and a copy of the DEQ order for the cleanup to the Procurement Services together with a requisition authorizing the Contract.

- c. Procurement Services shall record whether there was time for competition, and, if so, the measures taken to encourage competition, the amount of the price quotations obtained, if any, and the reason for selecting the Contractor to whom Award is made; and
 - d. The timeline for cleanup does not permit the use of intermediate Procurement procedures.
9. Amendments to Contracts and Price Agreements: The City may execute Contract amendments, as follows:
 - a. An original valid Contract exists between the parties;
 - b. Unit prices or “add alternates” were provided in the Solicitation Document that established the cost basis for the additional Work or product or in a lump sum Contract the Contractor has provided an estimate of the additional cost which has been verified by the Bureau seeking the amendment; and
 - c. The Solicitation Document provided for such amendments; or
 - d. Emergency: The original Contract was let pursuant to a declaration of Emergency, in accordance with PCC 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.

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- b.** Process and Criteria. The City may renegotiate various items of the Contract, including but not limited to: price, term, delivery and shipping, order size, item substitutions, warranties, discounts, on-line ordering systems, price adjustments, product availability, product quality, and reporting requirements. The City must meet the following conditions in its Renegotiations with incumbent Contractors:
- (1)** Favorable Result. The City must determine that, with all things considered, the renegotiated Contract is at least as favorable to the City as the Original Contract and document this in the Procurement File. For example, the City and the Contractor may adjust terms and conditions within the Original Contract to meet different needs;
 - (2)** Within the Scope. The Supplies and Services provided under the renegotiated Contract must be reasonably related to the Original Contract's Solicitation. For example, the City may accept functionally equivalent substitutes for any Supplies and Services in the Original Contract's Solicitation.
 - (3)** Optional Term or Condition. If a Contractor offered to the City during the original Solicitation a term or condition that was rejected at that time, the City may not renegotiate for a lower price based on this rejected term or condition as a mandatory term or condition in the renegotiated Contract. If, however, a Contractor offers a lower price pursuant to a rejected term or condition without additional consideration from the City and as only an option to the City, then the City may accept the option of a lower price under the rejected term or condition. For example, if the City initially 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

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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 PCC Section 5.33.350.
12. Software and Hardware Maintenance, Licenses and Upgrades. The City may directly enter into a Contract or renew existing Contracts for information technology hardware or software maintenance, licenses and upgrades without Competitive Solicitation where the maintenance, upgrades and licenses are either available from only one source or, if available from more than one provider, are obtained from the City's current provider in order to utilize the pre-existing knowledge of the vendor regarding the specifics of the City's hardware or software system. The City shall document in the Procurement File the facts that justify either that maintenance, license(s) and upgrades were available from only one source or, if from more than one source, from the current vendor.
13. Equipment Maintenance, Repair and Overhaul. The City may enter into a Contract for equipment maintenance, repair and/or overhaul without competitive bidding and without obtaining competitive quotations if the extent of repair services, parts, maintenance or overhaul is unknown and cost cannot be determined without preliminary dismantling or testing.
14. Price-regulated goods and services, utilities and utility related services. The City may directly purchase, without a competitive solicitation process, utility services, repair, equipment and/or maintenance work, 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.

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- 16.** Membership Dues. The City may directly purchase, without a competitive solicitation process, dues or memberships in professional or community organizations for the benefit of the City.
- 17.** US Postal Service. The City may directly purchase without a competitive solicitation process, permits and postage meters, pre-stamped postcards, establish on-going postage accounts, etc. from the US Postal Service.
- 18.** Services related to Legal Advice. The City may directly purchase, without a competitive solicitation process, services related to the provision of legal advice to the City:

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

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

- A.** Notice and Solicitation Fee. The City shall furnish public notice of every Solicitation Document in accordance with PCC Section 5.33.300 B. The City may give additional notice using any method it determines appropriate to foster and promote competition, including:
- 1.** Mailing notice of the availability of Solicitation Document to Persons that have expressed an interest in the City's Solicitations; or
 - 2.** Placing Notice on the Oregon Department of Administrative Services' Electronic Procurement System known as "ORPIN" (Oregon Procurement Information Network) or a successor Electronic system; or
 - 3.** Place Notice on the City's Internet Web site.
- B.** Advertising. The City shall advertise every notice of a Solicitation Document as follows:
- 1.** The City shall publish the advertisement for Offers in accordance with the requirements of ORS 297.055(4)(a) and (b); or
 - 2.** Because the City finds that it would be cost effective to Electronically post notice of Bids and Proposals, the City may publish the advertisement for Offers by Electronic Advertisement in accordance with the requirements established by PCC Section 5.33.340.
 - 3.** Content. All advertisements for Offers shall set forth:

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- 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 PCC Section 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 PCC Section 5.33.300 B. and Closing be less than seven (7) Days as set forth in PCC Section 5.33.200. The City shall document the specific reasons for the shorter public notice period in the Procurement file;
 - d.** The date that Persons must file applications for Prequalification if Prequalification is a requirement and the class or classes of Goods or Services for which Persons must be prequalified;
 - e.** The office where Contract terms, conditions and Specifications may be reviewed;
 - f.** The name and title of the person designated for the receipt of Bids and the person designated by the City as the contact person for the Procurement, if different;
 - g.** The scheduled Opening; and
 - h.** Any other information the City deems appropriate.
- C.** Posting Advertisement for Offers. The City shall post a copy of each advertisement for Offers at Procurement Services. An Offeror may obtain a copy of the advertisement for Offers upon request.
- D.** The City may charge a fee or require a deposit for the Solicitation Document.
- E.** The City shall provide potential Offerors notice of any Addendum to a Solicitation Document in accordance with PCC Section 5.33.430.

5.33.310 Specifications and Brand Names.

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

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

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

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5.33.320 Bids or Proposals are Offers.

- 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 PCC 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 PCC Section 5.33.215 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 PCC Section 5.33.215, the Proposal includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the City in Writing.

5.33.330 Facsimile Bids and Proposals.

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

- A.** City Authorization. The Chief Procurement Officer may authorize Offerors to submit Facsimile Offers. If the City determines that a Bid or Proposal Security is or will be required, the City should not authorize Facsimile Offers unless the City has another method for receipt of such security. Prior to authorization, the City must determine whether the City’s equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time and establish administrative procedures and controls:
 - 1.** For receiving, identifying, recording, and safeguarding Facsimile Offers, and
 - 2.** To ensure timely delivery of Offers to the location of Opening; and
 - 3.** To preserve the “sealed” requirement of competitive Procurement.

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

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5.33.340 Electronic Procurement.

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

- 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. The date and time after which Persons may no longer submit

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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 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 PCC 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.

- A.** Instructions. An Offeror shall submit and Sign its Offer in accordance with the Solicitation Document. Unless otherwise instructed, or unless Electronic Offers are permitted, signatures shall be in ink. An Offeror shall initial and submit any correction or erasure to its Offer prior to the Opening in accordance with the requirements for submitting an Offer under the Solicitation Document.
- B.** Forms. An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.
- C.** Documents. An Offeror shall provide the City with all documents and Descriptive Literature required under the Solicitation Document. If the Solicitation Document instructs Offerors not to include documents or literature, such as warranty provisions, the City is entitled to disregard those documents in determining whether the Offer is responsive to the City's request.
- D.** Electronic Submissions. If the Solicitation Document permitted Electronic Offers under PCC 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 No. 183445, effective January 6, 2010.)

- 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

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

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

5.33.420 Pre-Offer Conferences.

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

- 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 PCC Section 5.33.300.

5.33.430 Addenda to Solicitation Document

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

- 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 PCC 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.

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2. Notwithstanding PCC Section 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 PCC Sections 5.33.205 and 5.33.210 through 5.33.217 must be issued no fewer than five (5) Days before the beginning of that tier or step of competition, unless the City determines that a shorter period is sufficient to allow Offerors to prepare for that tier or step of competition. The City shall document the factors it considered in making that determination, which may include, without limitation, the Scope of the changes to the Solicitation Document, the location of the remaining eligible Proposers, or whether shortening the period between issuing an Addendum and the beginning of the next tier or step of competition favors or disfavors any particular Proposer or Proposers.

D. Request for Change or Protest. Unless a different deadline is set forth in the Addendum, an Offeror must submit a Written request for change or protest to the Addendum, as provided in PCC 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 PCC Section 5.33.200 or 5.33.210.

5.33.440 Request for Clarification or Change.

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

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 PCC Section 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

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with the request, in whole or in part, the City shall either issue an Addendum reflecting the change or cancel the Solicitation.

- C.** Extension of Closing date. If any request for change is timely received in accordance with these rules the Closing may be extended by the Chief Procurement Officer if it is determined that an extension is necessary to allow consideration of the request or issuance of any Addendum to the Solicitation Document.
- D.** Identification of request for change. Envelopes containing requests for change or protests of the Solicitation Document, Specifications or Contract provisions shall be marked with the following information:

 - 1.** Solicitation Specification or Contract Provision Request for Change; and
 - 2.** Solicitation Document Number or Other Identification.
- E.** A Proposer may request a change to add alternate terms and conditions for negotiation if the Solicitation Document permits negotiation. In this circumstance, the request for change procedure shall be governed by the Solicitation Document and PCC Section 5.33.215 C.
- 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 No. 183445, effective January 6, 2010.)

- 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

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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 PCC Section 5.33.480 and shall be returned unopened. If a late Offer is opened inadvertently, the procedure provided by PCC 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 No. 183445, effective January 6, 2010.)

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

purported withdrawal if in the judgment of the City, sufficient identification is not provided.

3. The City may release an unopened Offer withdrawn under PCC Section 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 No. 183445, effective January 6, 2010.)

- 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 PCC 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

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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 PCC Section 5.33.650.

5.33.480 Late Offers, Late Withdrawals and Late Modifications.

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

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

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

5.33.490 Mistakes.

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

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

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

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

 - 1.** Available the appropriate financial, material, equipment, facility and personnel resources and expertise, necessary to indicate the capability of the prospective Offeror to meet all Contractual responsibilities;
 - 2.** Has completed previous contracts of a similar nature with a satisfactory record of performance. A "satisfactory record of performance" means that to the extent the costs associated with and time available to perform a previous contract were within the Offer's control, the Offeror stayed within the time and budget allotted for the Procurement and otherwise performed the contract in a satisfactory manner. The City should carefully scrutinize an Offeror's records of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the City should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The City may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The City shall document the record of performance of a prospective Offeror if the City finds the prospective Offeror non-Responsible under this paragraph;
 - 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

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integrity of any Person having influence or control over the Offeror (such as key employees of the Offeror has the authority to significantly influence the Offeror's performance of the Contractor or a parent company, predecessor or successor Person.) The standards for Debarment under ORS 279B.130 may be used to determine an Offeror's integrity. The City may find an Offeror non-Responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The City shall document the record of integrity of a prospective Offeror if the City finds the prospective Offeror non-Responsible under this paragraph;

4. Qualified legally to Contract with the City. Procurement Services may determine that such an Offeror is not legally qualified if:
 - a. The Offeror does not have a business license 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 Bureau of Licenses within seven (7) Days of the receipt of a Bid or Proposal, unless the City waives that requirement and decides to pursue collection through retention of Contract funds, or through other means.
 5. Supplied all necessary information in connection with the inquiry concerning responsibility. If a prospective Offeror fails to promptly supply information requested by the City concerning responsibility, the City shall base the determination of responsibility upon any available information or may find the prospective Offeror non-Responsible;
 6. Not been debarred by the City under ORS 279B.130, PCC Section 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 No. 183445, effective January 6, 2010.)

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

- A.** The City may Prequalify prospective Offerors as follows:

 - 1.** The Chief Procurement Officer shall determine the types of forms, the method of submitting applications and the information required to be a prequalified Offeror for Goods or Services.
 - 2.** Prospective Offerors shall submit the application on the form required by the Chief Procurement Officer.
 - 3.** Upon receipt of the application, the City shall investigate the prospective Offeror as necessary to determine whether the Prequalification should be granted.
 - 4.** If an early Prequalification decision is requested, the City shall make that decision in less than 30 Days, if practicable.

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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 PCC Section 5.33.500 the prospective Offeror failed to meet.
- B. If the City determines that a prequalified Offeror is no longer qualified the Chief Procurement Officer may revoke or revise the Prequalification upon reasonable notice, except that a revocation or revision is invalid as to any Contract for which an advertisement for Bids or Proposals has already been issued.
- C. Notwithstanding the prohibition against revocation of Prequalification generally in ORS 279B.120(3), the City may determine that a prequalified Offeror is not Responsible for any given Contract prior to Contract Award.
- D. The City may pre-negotiate some of all Contract terms and conditions including prospective Proposer Contract forms such as license agreements, maintenance and support agreements, or similar documents for use in future Procurements. Such pre-negotiation of Contract terms and conditions (including prospective Proposer forms) may be part of the prequalification process of a Proposer in Subsection A. or the pre-negotiation may be a separate process and not part of a prequalification process. Unless required as part of the prequalification process, the failure of the City and the prospective Proposer to reach agreement on pre-negotiated Contract terms and conditions does not prohibit the prospective Proposer from responding to Procurements. The City may agree to different pre-negotiated Contract terms and conditions with different prospective Proposers. When the City has pre-negotiated different terms and conditions with Proposers or when permitted, Proposers offer different terms and conditions, the City may consider the terms and conditions in the Proposal evaluation process.

5.33.530 Debarment of Prospective Offerors.

(Amended by Ordinance No. 181547, effective January 24, 2008.)

- A. The City may Debar prospective Offerors pursuant to ORS 279B.130 and this rule.
- B. The City may debar a prospective Offeror from consideration for City Contracts for a period up to three (3) years if:
 1. The Offeror has been convicted of a criminal offense as an incident in obtaining or attempting to obtain a public or private Contract or Subcontract or in the performance of such Contractor or Subcontract;

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2. The Offeror has been convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the Offeror's responsibility as a Contractor;
 3. The Offeror has been convicted under state or federal antitrust statutes;
 4. The Offeror has committed a violation of a Contract provision that is regarded by the City or the Construction Contractors Board to be so serious to justify disqualification. A violation may include, but is not limited to, a failure to perform the terms of a Contract or an unsatisfactory performance in accordance with the terms of the Contract. However, a failure to perform or an unsatisfactory performance caused by acts beyond the control of the Contractor may not be considered to be a basis for debarment; or
 5. The Offeror does not carry workers' compensation or unemployment insurance as required by Oregon Law.
- C. The City may debar a prospective Offeror as follows:
1. Issue a Written decision that states the reasons for the action taken and informs the Offeror of the appeal rights under ORS 279B.435 and PCC Section 5.33.760; and
 2. Mail or immediately furnish a copy of the decision to the debarred Offeror.
- D. Notwithstanding the limitation on the term for Debarment in ORS 279B.130(1)(b) and this rule, the City may determine that a previously Debarred Bidder or Proposer is not Responsible for a given Contract prior to Contract Award.
- E. Imputed Knowledge. The City may attribute improper conduct of a Person or its affiliate having a Contract with a prospective Offeror to the prospective Offeror for purposes of debarment where the impropriety occurred in connection with the Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.
- F. Limited participation. The City may allow a Debarred Person to participate in solicitations and Contracts on limited basis during the Debarment period upon Written determination that participation is Advantageous to the City. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

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5.33.540 DBE Disqualification.

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

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

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

5.33.610 Offer Evaluation and Award.

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

- 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.

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- E.** Multiple Awards - Bids. If a Solicitation permits the Award of multiple Contracts, the City shall specify the criteria it shall use to choose from the multiple Contracts when purchasing Goods and Services. The criteria shall require the City to purchase the lowest priced goods or services available from the multiple Contracts. Multiple Awards shall not be made if a single Award will meet the City's needs without sacrifice of economy or service. A multiple Award may be made if Award to two or more Offerors of similar products is necessary for adequate availability, delivery, and service or product compatibility. Awards may not be made for the purpose of dividing the Solicitation, or to allow for user preference unrelated to utility or economy. A notice to potential Offeror that multiple Contracts may be Awarded for any Solicitation shall not preclude the Award of a single Contract for such Solicitation.
- F.** Multiple Awards – Proposals. If a Solicitation permits the Award of multiple Contracts, the City shall specify the criteria it shall use to choose from the multiple Contracts when purchasing Goods and Services. The criteria shall require the City to procure the goods or services that are most Advantageous to the City available from the multiple Contracts. Multiple Awards shall not be made if a single Award will meet the City's needs without sacrifice of economy or service. A multiple Award may be made if Award to two or more Offerors of similar Goods or Services is necessary for adequate availability, delivery, and service or product compatibility. Multiple Awards may not be made for the purpose of dividing the Solicitation, or to allow for user preference unrelated to obtaining the most Advantageous Contract. A notice to potential Offeror that multiple Contracts may be Awarded for any Solicitation shall not preclude the Award of a single Contract for such Solicitation.
- G.** Partial Awards. If after evaluation of competitive Offers, the City finds that a qualified Offer has been received for only parts of the requirements of the Solicitation:
- 1.** A Contract may be Awarded for the parts of the Solicitation for which qualified Offers have been received.
 - 2.** All Offers may be rejected and a new Invitation to Bid or Request for Proposals on the same or revised terms, conditions and Specifications may be issued.
- H.** City Evaluation. The City shall evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The City shall not evaluate an Offer using any other requirement or criterion.
- I.** Evaluation of Bids. The City shall evaluate Bids as set forth in ORS 279B.055(6)(a).

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1. In evaluating Bids, the City shall apply the Contract preferences set forth in PCC Sections 5.33.625 through 5.33.635.
 2. Low, Tied Offers. Low, tied Offers shall be resolved pursuant to PCC Section 5.33.625.
- J.** Evaluation of Proposals. The City shall evaluate Proposals as set forth in 279B.060(6) and PCC Section 5.33.210 and in the event of low, tied Proposals, in accordance with PCC 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 PCC Section 5.33.635.

5.33.620 Negotiation With Offerors Prohibited.

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

5.33.625 Contract Preferences.

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

- 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

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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 PCC 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 PCC 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 PCC Section 5.33.220 are identical in price, fitness, availability and quality if, after completing the Contracting procedure approved by the City if the City determines, in Writing, that two or more Proposals are equally Advantageous to the City.
 - 4.** Offers received in response to an intermediate Procurement conducted pursuant to ORS 279B.070 are identical if the Offers equally best serve the interests of the City in accordance with ORS 279B.070(4).
- C.** Determining if Goods or Services are Manufactured or Produced in Oregon. In applying PCC Section 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 No. 181547, effective January 24, 2008.)

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

5.33.635 Contract Preferences: Recycled Materials.

- 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 PCC Section 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

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

- 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;
 - e. is late;
 - f. is not in substantial compliance with the Solicitation Documents;
 - g. is not in substantial compliance with all prescribed public Solicitation procedures;
 - h. contains a deviation that, if the Offer was accepted, would give the Offeror a substantial advantage or benefit not shared by other Offerors; or
 - i. has failed to comply with the programs adopted pursuant to PCC Section 5.33.900.
4. The City shall reject an Offer upon the City's finding that the Offeror:

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- a.** Has not been prequalified under ORS 279B.120 and the City required mandatory Prequalification;
 - b.** Has been debarred as set forth in ORS 279B.130;
 - c.** Has not met the requirements of ORS 279A.105 regarding subcontracting to 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 PCC Section 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 PCC Section 5.33.075 B.3.

5.33.645 Rejection of All Offers.

- A.** Rejection. The City may reject all Offers for good cause upon the City's Written finding it is in the public interest to do so. The City shall notify all Offerors of the rejection of all Offers, along with the good cause justification and finding.
- B.** Criteria. The City may reject all Offers upon a Written finding that:
 - 1.** The content of or an error in the Solicitation Document, or the Solicitation process unnecessarily restricted competition for the Contract;
 - 2.** The price, quality or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;
 - 3.** Misconduct, error, or ambiguous, conflicting or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;

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4. Causes other than legitimate market forces threaten the integrity of the competitive Solicitation process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;
5. The City cancels the Solicitation in accordance with PCC 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.

- A. Applicability: This section applies to Awards of a Contract, except for small Procurements pursuant to PCC Section 5.33.180, intermediate Procurements pursuant to PCC Section 5.33.190, sole source Procurements pursuant to PCC. 5.33.120, Emergency Procurements pursuant to PCC Section 5.33.130 or a Special Procurement pursuant to PCC Section 5.33.220.
- B. Notice: The City shall provide Written notice of Intent to Award a Contract to all Offerors. If the Solicitation was posted by Electronic means, however, the City may post the Intent to Award Electronically in the same manner as the Solicitation. The Notice shall be posted at least seven (7) Days before the Award of a Contract, unless the City determines that circumstances require prompt execution of the Contract. The City shall document the specific reasons for the shorter notice period in the Solicitation file.
- C. The City's Award shall not be final until the latest of the following three (3) dates:
 1. Seven (7) Days after the date of notice of intent to Award, unless the Solicitation Document provided a different period for protest of Contract Award. For purposes of this section, the Day on which the Notice is posted from which the seven Days shall begin to run shall not be included, but the last Day of the period shall be included;
 2. The City provides a Written response to all timely-filed protests that denies the protest and affirms the Award; or
 3. Upon the conclusion of any appeal pursuant to PCC Section 5.33.740.

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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.

- 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 PCC Section 5.33.215, 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.

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

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information submitted to a public body in confidence, as described in ORS 192.502.

- E.** Copies from Solicitation Files. Subject to PCC 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 and 184403, effective February 2, 2011.)

- 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 PCC Section 5.33.700 B.2. and the reasons for that failure;
 - 3.** If the protest was timely filed and provides the information required by PCC Section 5.33.700 B.2., the City shall issue a decision in Writing and provide that decision to the Affected Person within a reasonable period of time unless a Written determination is made by the City that circumstances exist that require a shorter time limit.

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4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.
- D.** Optional City Response: In addition to the requirements of 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 No. 183445, effective January 6, 2010.)

- 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

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under this rule or such different time period as may be provided in the Notice of Intent to make a Sole Source purchase.

2. Contents:

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

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

- 1.** The City shall inform the Affected Person in Writing if the protest was not timely filed;
- 2.** The City shall inform the Affected Person if it failed to meet the requirements of PCC Section 5.33.710 B.2. and the reasons for that failure;
- 3.** If the protest was timely filed and provides the information required by PCC Section 5.33.710 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 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;

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3. Refer the protest and any response to the Board of Appeals for decision;
 4. Refer the protest and any response to the City Council for decision; or
 5. Take any other action that is in the best interest of the City while giving full consideration to the merits of the protest.
- E.** Judicial Review. An Affected Person may not seek judicial review of the 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 No. 183445, effective January 6, 2010.)

- A.** Interested Offerors may file a Written protest of the Specifications, Contract terms and conditions, pursuant to PCC 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 PCC Section 5.33.740 if they meet the requirements of PCC Section 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.
- D.** Method of Protest:
1. Time: If the Solicitation document permits or requires protests prior to the City's issuance of a Notice of Intent to Award, an Affected Person must

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submit a Written protest specifying its basis within seven (7) Days after the Affected Person was excluded from participating further in the Procurement.

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 PCC Section 5.33.720 D.2. and the reasons for that failure;
3. If the protest was timely filed and provides the information required by PCC Section 5.33.720 D.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.

F. Optional City Response: In addition to the requirements of 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 and 184403, effective February 2, 2011.)

- A.** An Affected Person may protest the Procurement process or the Solicitation Document for Offers solicited pursuant to Competitive Sealed Bidding pursuant to PCC Section 5.33.200, Competitive Sealed Proposals pursuant to PCC Section 5.33.210, a Special Procurement, or a Class Special Procurement pursuant to PCC 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;

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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.

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 PCC Section 5.33.730 B.2. and the reasons for that failure;
- 3.** If the protest was timely filed and provides the information required by PCC Section 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 PCC Section 5.33.730 C. above, the Chief Procurement Officer may do any of the following:

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

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

5.33.740 Protests and Judicial Review of Contract Award.

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

- 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.

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- 1.** Time: A Written protest of the Chief Procurement Officer's Award shall be provided to the Chief Procurement Officer within seven (7) Days after the Award of a Contract, or issuance of the Notice of Intent to Award the Contract, whichever occurs first. The Chief Procurement Officer shall not consider a protest submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the Solicitation Document or Notice of Intent to Award.
 - 2.** Contents: The protest must include the following information:
 - a.** Sufficient information to identify the Award that is the subject of the protest;
 - b.** A detailed statement of all the legal and factual grounds for the protest as described in PCC Section 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 PCC Section 5.33.740 B.2. and the reasons for that failure;
 - 3.** If the protest was timely filed and provides the information required by PCC Section 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 PCC Section 5.33.740 C. above, the Chief Procurement Officer may do any of the following:

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1. Agree with the protest and issue a revised Notice of Intent to Award or take any other corrective action that may be necessary to ensure that the Contract is Awarded to the appropriate Offeror;
 2. Issue a Written response to the protest and provide that decision to the Affected Person;
 3. Refer the protest and any response to the Board of Appeals for decision;
 4. Refer the protest and any response to the City Council for decision; or
 5. Take any other action that is in the best interest of the City while giving full consideration to the merits of the protest.
- E. Judicial Review. An Affected Person may not seek judicial review of the Intent to Award a Contract unless it has complied fully with the protest requirements of this section. Judicial review is not available if the City elects not to make an Award.

5.33.750 Protests of Other Violations.

(Amended by Ordinance Nos. 181547 and 183445, effective January 6, 2010.) 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 no later than ten (10) Days after the date of the execution of the Contract. The Chief Procurement Officer shall not consider a protest submitted after the timeline established for submitting such protest under this rule and shall not consider a protest under this section if a right to protest is elsewhere provided by this Code.
2. Contents: The protest must include the following information:
 - a. Sufficient information to identify the Procurement or Solicitation that is the subject of the protest;
 - b. A detailed statement of the alleged violation and all the legal and factual grounds for the protest;
 - c. Evidence or supporting documentation that supports the grounds on which the protest is based;
 - d. A description of the resulting harm to the Affected Person; and
 - e. The relief requested.

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

1. The City shall inform the Affected Person in Writing if the protest was not timely filed;
2. The City shall inform the Affected Person if it failed to meet the requirements of PCC Section 5.33.750 B.2. and the reasons for that failure;
3. If the protest was timely filed and provides the information required by PCC Section 5.33.750 B.2. above, the City shall issue a decision in

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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 5.33.750 C., the Chief Procurement Officer may do any of the following:

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

E. Judicial Review. An Affected Person may not seek judicial review of the City's decision unless it has complied with the Protest requirements of this section and exercised all administrative appeal rights.

5.33.760 Review of Prequalification and Debarment Decisions.

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

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

5.33.770 Purchasing Board of Appeals.

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

- 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 Purchasing Board of Appeals for the purposes described above.
- C.** Jurisdiction of Board. The Purchasing 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 Purchasing Board of Appeals shall consist of three members. A quorum shall consist of three members.
 - 2.** The members of the Board shall be:
 - a.** A representative from the public purchasing sector;
 - b.** The City Engineer or designee;
 - c.** A member of the general public with affiliation to the purchasing industry.
 - 3.** The public members shall be appointed by the Mayor, subject to confirmation by City Council and shall serve for a period of up to two years, which may be extended by the Chief Procurement Officer.
 - 4.** A member of the board shall serve as chairperson.
- E.** Compensation. All members of the Board shall serve without pay, except that they may receive their regular salaries during time spent on Board matters.
- F.** Vacancies. A vacancy on the Board shall be filled as soon as possible in accordance with the procedures described above.

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- G.** Procedure and Rules. The Chief Procurement Officer shall establish administrative rules of procedure for the Board and the Board shall follow that procedure for all matters heard by the Board.
- H.** Staff. Procurement Services shall provide staff and appropriate assistance for the Board.

5.33.780 Powers of the Board.

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

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

5.33.790 Appeal to Board.

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

- 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 Purchasing 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 Fair Contracting and Employment Programs.

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.

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5.33.920 Records Maintenance; Right to Audit Records.

- A.** Contractors and Subcontractors shall maintain all fiscal records relating to a Contract executed with the City in accordance with generally accepted accounting principles. In addition, Contractors and Subcontractors shall maintain any other records necessary to clearly document:
- 1.** Performance. Performance includes, but is not limited to, compliance with plans and Specifications, compliance with fair Contracting and employment programs, compliance with Oregon law on payment of wages and accelerated payment provisions, and any and all requirements imposed on the Contractor or Subcontractor under the Contract or subcontract;
 - 2.** Any claims arising from or relating to their performance under a Contract;
 - 3.** Any cost and pricing data; and,
 - 4.** Payment to suppliers and Subcontractors.
- B.** Such records shall be maintained for a period of six years from the date of final completion of the Contract or until the conclusion of any audit, controversy or litigation arising out of or related to a Contract, whichever is longer, unless a shorter period of time is authorized in Writing by the City.
- C.** Contractors and Subcontractors shall make all their records available to the City within the boundaries of the City of Portland, Oregon, at reasonable times and places regardless of whether litigation has been filed on any claims. If the records are not made available within the boundaries of the City, the Contractor or Subcontractor shall pay all costs for City employees, and any necessary consultants hired by the City, including travel, per diem costs, salary, and any other expenses incurred by City in sending its employees or consultants to examine, audit, inspect, and copy those records. If the Contractor elects to have such records outside these boundaries, the costs paid by the Contractor to the City for inspection, auditing, examining and copying those records are not recoverable costs in any legal proceeding.
- D.** The City and its Authorized Representatives shall be entitled to inspect, examine, copy and audit the books and records of any Contractor or Subcontractor upon request by the City for any reason, including any documents that may be placed in escrow according to any Contract requirements. The records that may be inspected and copied include financial documents of the Contractor, including tax returns and financial statements. The City will keep such documents confidential to the extent permitted by Oregon law, subject to PCC Section 5.33.920 E. below.

- E.** Contractors and Subcontractors agree to disclose the records requested by the City and agree to their admission as evidence in any proceeding between the parties, including, but not limited to a court proceeding, arbitration, mediation or other alternative dispute resolution process.
- F.** In the event that the records disclose that the City is owed money or establishes that any portion of any claim made against the City is not warranted, the Contractor or Subcontractor shall pay all costs incurred by the City in conducting the audit and inspection. Such costs may be withheld from any sum due or that becomes due to the Contractor by the City.
- G.** Failure of the Contractor or Subcontractor to keep or disclose records as required may result in disqualification as a Bidder or Proposer for future City Contracts or may result in a finding that the Contractor or Subcontractor is not a Responsible Bidder or Proposer.

5.33.930 Right to Inspect Plant or Place of Business.

- A.** Time for Inspection. The City may, at reasonable times, inspect the part of the plant or place of business of a Contractor or any Subcontractor or supplier which is related to the performance of any Contract Awarded.
- B.** Access to Plant or Place of Business. As a condition of Bidding or proposing, Bidders and Proposers agree that representatives of the City may enter a Contractor's or Subcontractor's or supplier's plant, place of business, work site or construction site during normal business hours for the following purposes:
 - 1.** To inspect and/or test supplies or services for acceptance by the City pursuant to the terms of the Bid or Proposal;
 - 2.** To investigate in connection with a Bidder's or Proposer's Bid or Proposal, a minority business or EEO certification, or Bidder or Proposer qualification.
 - 3.** To inspect for compliance with City programs required by the Solicitation Document.
 - 4.** To inspect for Contract compliance.
- C.** Contractual Provisions. Contracts may provide that the City may inspect supplies and services at the Contractor's or Subcontractor's or supplier's office or facility and perform tests to determine whether they conform to the Solicitation Document, or, after Award, to the Contract requirements, and are qualified. Such

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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.

- 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.

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- 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.

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- 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 compensation the Contractor would have been entitled to receive for the

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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 PCC 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.

Chapter 5.34

**PUBLIC IMPROVEMENTS
AND CONSTRUCTION SERVICES**

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

Sections:

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

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5.34.610	Offer Evaluation and Award; Determination of Responsibility.
5.34.620	Negotiation With Bidders Prohibited.
5.34.625	Contract Preference; Resident Bidders.
5.34.630	Reciprocal Preferences.
5.34.640	Negotiation When Bids Exceed Cost Estimate.
5.34.645	Rejection of Offers.
5.34.650	Notice of Intent to Award.
5.34.660	Cancellation, Delay or Suspension of Solicitation.
5.34.670	Disposition of Offers if Solicitation Canceled.
5.34.675	Documentation of Award.
5.34.680	Time for City Acceptance; Extension.
5.34.685	Availability of Award Decisions.
5.34.690	Performance and Payment Security; Waiver.
5.34.695	Notification to State of Nonresident Contractor.
5.34.700	Protests and Judicial Review of Individual and Class Exemptions.
5.34.710	Protests and Judicial Review of Multi-Tiered Solicitations.
5.34.720	Protests and Judicial Review of Solicitation Documents and the Solicitation Processes other than Multi-Tier Processes.
5.34.725	Administrative Reconsideration as a Result of Rejection for Failure to Meet DBE Requirements.
5.34.730	Protest of Contractor Selection, Contract Award.
5.34.740	Protests of Other Violations.
5.34.750	Review of Prequalification and Disqualification Decisions.
5.34.760	Purchasing Board of Appeals.
5.34.770	Powers of the Board.
5.34.780	Appeal to Board.
5.34.800	Purpose.
5.34.810	Definitions for Alternative Contracting Methods.
5.34.820	Use of Alternative Contracting Methods.
5.34.830	Findings, Notice and Hearing.
5.34.840	Competitive Proposals; General Procedures.
5.34.845	Requests for Qualifications (RFQ)
5.34.850	Requests for Proposals (RFP).
5.34.860	RFP Pricing Mechanisms.
5.34.870	Design-Build Contracts.
5.34.880	Energy Savings Performance Contracts (ESPC).
5.34.890	Construction Manager/General Contractor (CM/GC).
5.34.900	Required Contract Clauses.
5.34.910	Waiver of Delay Damages Against Public Policy.
5.34.915	BOLI Public Works Bond.
5.34.920	Retainage.
5.34.930	Fair Contracting and Employment Programs.
5.34.940	Public Works Contracts.
5.34.950	City Payment for Unpaid Labor or Supplies.

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- 5.34.960 Records Maintenance; Right to Audit Records.
- 5.34.970 Right to Inspect Plant or Place of Business.
- 5.34.980 Contract Cancellation, Contractor Termination Procedures.

5.34.010 Definitions.

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

5.34.020 Application and Authority.

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

- 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 PCC Chapter 5.33 and ORS 279B.080.
- B. Contracts for minor alteration, ordinary repair or maintenance of public improvements, as well as other Contracts for construction services that are not defined as a public improvement under Section 5.33.010 shall be Awarded and executed pursuant to Chapter 5.33 and ORS 279B and not this Chapter. However, some portions of ORS 279C and this chapter may still be applicable to the resulting Contracts.
- C. Authority and Ethics

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

5.34.040 Affirmative Action.

(Amended by Ordinance Nos. 184403 and 185065, effective January 1, 2012.)

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

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

5.34.060 Contracts for Construction Other than Public Improvements

(Amended by Ordinance No. 181547, effective January 24, 2008.) 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 PCC 5.34.

5.34.100 Overview of Source Selection and Contractor Selection.

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;

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

5.34.110 Emergency Contracts; Bidding and Bonding Exemptions.

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

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

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

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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.

- 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 PCC Chapter 5.34.
- B.** A Solicitation and Award process uses source selection methods substantially equivalent to those identified in ORS 279C and PCC 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

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Proposals in the case of Competitive Proposals when permitted by an exemption established by the City Council;

2. Does not permit the application of any geographic preference that is more favorable to Bidders or Proposers who reside in the jurisdiction or locality favored by the preference than the preferences provided in ORS 279A.120(2); and
 3. Uses reasonably clear and precise Specifications that promote suitability for the purposes intended and that reasonably encourage competition.
- C. The City shall determine, in Writing, whether the Solicitation and Award process for an Original Contract arising out of a Cooperative Procurement for a Public improvement is substantially equivalent to those identified in ORS 279C and PCC Chapter 5.34.
- D. Protests. Protests regarding the use of all types of cooperative Procurements shall be governed by the applicable provisions of PCC 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 No. 181547, effective January 24, 2008.) The City shall solicit Bids for Public Improvement Contracts by Invitation to Bid ("ITB"), except:

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- A.** Contracts made with Qualified Nonprofit Agencies providing employment opportunities for disabled individuals, in which case the rules stated in PCC 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 PCC 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 PCC Section 5.34.160;
- E.** Public improvement contracts Awarded as Emergency Contracts;
- F.** Energy Savings performance contracts entered into in accordance with PCC 5.34;
- G.** Contracts where federal law overrides this chapter;
- H.** Contracts governed by ORS 279A.100 and PCC Section 5.34.040 regarding affirmative action;
- 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 PCC 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 and 183445, effective January 6, 2010.)

- 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.

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1. Written requests shall include the Bureau of Labor and Industries (BOLI) provisions regarding the prevailing wage, if the estimated cost exceeds \$50,000.
 2. If the estimated cost is less than \$50,000, but all price quotations equal or exceed \$50,000, then the Solicitation shall be cancelled and a new request for Written price quotations, containing the BOLI provisions regarding prevailing wage shall be included.
- C. Requests for quotations for public improvements estimated to be \$50,000 or less can be made orally, provided the City seeks at least three competitive quotations, and keeps a Written record of the sources and amounts of the quotations received. If three quotations are not reasonably available the City shall make a Written record of the effort made to obtain those quotations.
- D. The City shall Award the Contract to the prospective Contractor whose Price Quotation will best serve the interests of the City, taking into account the announced selection criteria. If Award is not made to the Offeror offering the lowest price, the City shall make a Written record of the basis for Award.
- E. Intermediate level Public Improvement Contracts obtained by competitive quotations may be increased above the original amount of Award by change order or amendment within the limitations pursuant to PCC Section 5.34.020 C.3.

5.34.300 Solicitation Documents; Required Provisions; Assignment or Transfer.

(Amended by Ordinance No. 181547, effective January 24, 2008.)

- A. The Solicitation Document for a public improvement Contract shall include the following:
1. Identification of the Public Improvement project, including the character of the Work, and applicable plans, Specifications and other Contract documents;
 2. Notice of any pre-Offer conference as follows:
 - a. The time, date and location of any pre-Offer conference;
 - b. Whether attendance at the conference will be mandatory or voluntary; and
 - c. That statements made by the City's representatives at the conference are not binding upon the City unless confirmed by Written Addendum;

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3. The deadline for submitting mandatory Prequalification applications and the class or classes of Work for which Offerors must be Prequalified if Prequalification is a requirement;
4. The name and title of the authorized City representative designated for receipt of Offers and contact representative (if different);
5. Instructions and information concerning the form and submission of Offers, including the address of the 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 PCC Section 5.34.330 regarding Facsimile Bids or Proposals and PCC Section 5.34.340 regarding Electronic Procurement);
6. The time, date and place of Opening;
7. The time and date of Closing after which the City will not accept Offers, which time shall be not less than five (5) Days after the date of the last publication of the advertisement, and may, in the sole discretion of the City, direct or permit the submission and receipt of bids by electronic means. If the City is issuing an ITB that may result in a Public Improvement Contract with a value in excess of \$100,000, the City shall designate a time of Closing consistent with the first-tier Subcontractor disclosure requirements of ORS 279C.370(1)(b) and PCC Section 5.34.493. For timing issues relating to Addenda, see PCC 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 PCC Section 5.33.020 A.51.;
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";

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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 PCC Section 5.34.040;
 14. How the City will notify Offerors of Addenda and how the City will make Addenda available (See PCC Section 5.34.430); and
 15. When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in PCC Section 5.34.493.
 16. A statement that the Offeror must obtain EEO certification and have a valid City business license, if required.
- B.** The Solicitation Document shall also contain the following information about the evaluation process:
1. A statement that the City may reject any Offer not in compliance with all prescribed Public Contracting procedures and requirements, and may reject for good cause all Offers upon the City's finding that it is in the public interest to do so;
 2. The anticipated Solicitation schedule, deadlines, protest process and evaluation process, if any;
 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

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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 PCC Section 5.34.850;
- C.** The City shall include all Contract terms and conditions, including warranties, insurance and bonding requirements, that the City considers appropriate for the Public Improvement project.
- D.** The City must include all applicable Contract provisions required by Oregon law as follows:
 - 1.** Prompt payment to all Persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279C.505(1)); and all provisions regarding accelerated or twice-monthly payment if required by the City's Standard Construction Specifications;
 - 2.** Demonstrate that an employee drug testing program is in place (ORS 279C.505(2));
 - 3.** If the Contract calls for demolition Work described in ORS 279C.510(1), a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;
 - 4.** If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2));
 - 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;

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9. Environmental and natural resources regulations (ORS 279C.525);
 10. Payment for medical care and attention to employees (ORS 279C.530(1));
 11. A Contract provision substantially as follows: "All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements." (ORS 279C.530(2));
 12. Maximum hours, holidays and overtime (ORS 279C.540);
 13. Time limitation on claims for overtime (ORS 279C.545);
 14. Prevailing wage rates (ORS 279C.800 to 279C.870);
 15. Fee paid to BOLI (ORS 279C.830);
 16. BOLI Public Works Bond (ORS 279C.830(3));
 17. Retainage (ORS 279C.550 to 279C.570);
 18. Prompt payment policy, progress payments, rate of interest (ORS 279C.570);
 19. Contractor's relations with Subcontractors (ORS 279C.580);
 20. Notice of claim (ORS 279C.605);
 21. Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385; and
 22. Contractor's certification that all Subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board. or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the Subcontractors commence Work under the Contract.
- E.** Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the Contract, either in whole or in part, without the City's prior Written consent, which must be approved as to form by the City Attorney's Office. Unless approved in Writing

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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 and 183445, effective January 6, 2010.)

- A.** The City shall furnish “Notice” as set forth PCC Sections 5.34.310 A.1. through 3. to a number of Persons sufficient for the purpose of fostering and promoting competition. The Notice shall indicate where, when, how and for how long the Solicitation Document may be obtained and generally describe the Public Improvement project or Work. The Notice may contain any other appropriate information. The City may charge a fee or require a deposit for the Solicitation Document. The City may furnish Notice using any method determined to foster and promote competition, including:

 - 1.** Mailing Notice of the availability of Solicitation Documents to Persons that have expressed an interest in the City’s Procurements;
 - 2.** Placing Notice on the Oregon Department of Administrative Services’ Electronic Procurement System known as “ORPIN”(Oregon Procurement Information Network) or a successor electronic System; or
 - 3.** Placing Notice on the City’s Internet Web site.
- B.** Pursuant to ORS 279C.360 and this rule, the City shall advertise every Solicitation for competitive bids or competitive proposals for a Public Improvement Contract, unless the City Council has exempted the Solicitation from the advertisement requirement as part of a competitive bidding exemption under ORS 279C.335 and PCC Section 5.34.820.

 - 1.** Unless the City publishes by Electronic Advertisement as permitted by PCC Section 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.

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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 PCC Section 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;
 - (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;

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- (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 and 184403, effective February 2, 2011.)

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

3. There is only one manufacturer or seller of the product of the quality, performance or functionality required; or
 4. Efficient utilization of existing equipment, or supplies requires the acquisition of compatible equipment or supplies
- E. The City's use of a brand name specification is subject to protest and review only as provided in PCC 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.
 3. Facsimile Offers must be Signed by the Offeror.

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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 No. 183445, effective January 6, 2010.)

- A. General. The City may advertise Public Improvement Contracts Electronically if the Chief Procurement Officer finds that Electronic Advertisements are likely to be cost effective. However, 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.
- B. The City may post a notice of Intent to Award a Contract Electronically at least seven (7) Days before the Award of a Public Contract.

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

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

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

5.34.410 Bid or Proposal Security.

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

- A. **Security Amount.** If The City requires Bid or Proposal Security, it shall be not more than 10% of the Offeror's Bid or Proposal. The City shall not use Bid or Proposal Security to discourage competition. The City shall clearly state any Bid or Proposal Security requirements in its Solicitation Document. The Offeror shall forfeit Bid or Proposal Security after Award if the Offeror fails to execute the Contract and promptly return it with any required Performance Bond, Payment Bond and any required proof of insurance. See ORS 279C.365(45) and ORS 279C.385. See also, PCC 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 \$100,000. The Chief Procurement Officer nonetheless may require Bid security from any Offeror, or for any project, even if the City Council has exempted a class of Solicitations from Bid security if the Chief Procurement Officer believes it necessary to secure payment and performance. The Chief Procurement Officer may require Proposal Security in RFPs. See ORS 279C.400(5).
- C. **Form of Bid or Proposal Security.** The City may accept only the following forms of Bid or Proposal Security:

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1. A surety bond, signed by the surety's authorized Attorney in Fact, from a company authorized to do business in the State of Oregon and that is duly listed in the United States Treasury list as published in the Federal Register, or which is otherwise approved by the City Attorney. The surety company's seal shall be affixed to the bond and a Power of Attorney for the Attorney in Fact shall be submitted. The City Attorney has the authority to waive the requirement of the corporate seal: or
 2. A signed irrevocable letter of credit issued by an insured institution as defined in ORS 706.008(12); or
 3. A Cashier's check, or Offeror's certified check.
- D. Return of Security.** The City shall return or release the Bid or Proposal Security of all unsuccessful Offerors after a Contract has been fully executed and all required Bonds have been provided, or after all Offers have been rejected. The City may return the Bid or Proposal Security of unsuccessful Offerors prior to Award if the return does not prejudice Contract Award and the Security of at least the Bidders with the three lowest Bids, or the Proposers with the three highest scoring Proposals, is retained pending execution of a Contract.

5.34.420 Pre-Offer Conferences.

- 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 PCC Section 5.34.300.

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5.34.430 Addenda to Solicitation Documents.

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

- A.** Issuance; Receipt. A Solicitation Document may be changed only by a Written Addendum. An Offeror shall provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the City otherwise specifies in the Addenda or Solicitation Document. If an Offeror submits an Offer and the Solicitation Document states that the Offeror is bound by all Addenda published in accordance with these rules, then the Offeror shall be bound by all Addenda so issued.
- B.** Notice and Distribution. The City shall notify prospective Offerors of Addenda consistent with the standards of Notice set forth in PCC 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, PCC 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 PCC 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 PCC Section 5.34.850.

5.34.440 Request for Clarification or Change.

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

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- A.** Time for submission of request for change. Unless otherwise provided in the Solicitation Document, an Offeror shall deliver any request for change to the Solicitation Document, Specifications or Contract provisions to the City in Writing within seven (7) Days prior to Bid or Proposal Closing. Requests for change in regard to Addenda shall be submitted in accordance within the time permitted by PCC Section 5.34.430 D.
- B.** Any request for change shall include a detailed statement of the legal and factual reasons for the request for change; any proposed changes to Specifications or Contract provisions; and a description of any prejudice to the Offeror; and a statement of the form of relief requested. No request for change of the content of the Solicitation Document, Specifications or Contract provisions shall be considered after the deadline established for submitting such request. The City shall notify the Offeror if the City entirely rejects the request. If the City agrees with the request, in whole or in part, the City shall either issue an Addendum reflecting the change or cancel the Solicitation.
- C.** Extension of Closing date. If any request for change is timely received in accordance with these rules the Closing may be extended by the Chief Procurement Officer if it is determined that an extension is necessary to allow consideration of the request or issuance of any Addendum to the Solicitation Document.
- D.** Identification of request for change. Envelopes containing requests for change of the Solicitation Document, Specifications or Contract provisions shall be marked with the following information:

 - 1.** Solicitation Specification or Contract Provision Request for Change or Clarification; and
 - 2.** Solicitation Document Number or Other Identification.
- E.** A Proposer may request a change to add alternate terms and conditions for negotiation if the Solicitation Document permits negotiation. In this circumstance, request for change procedure shall be governed by the Solicitation Document and PCC Section 5.34.840 E. and PCC Section 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.

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5.34.450 Offer Submissions.

(Amended by Ordinance No. 181547, effective January 24, 2008.)

- A.** Offer and Acceptance. A Bid, Proposal or Price Quotation is an Offer to enter into a Contract. The Offer is a “Firm Offer,” i.e., the Offer shall be held open by the Offeror for the City’s acceptance for not less than 30 Days from closing unless otherwise specified in the Solicitation Document. After the 30 Days the Offer shall lapse unless extended. The extension may occur after the expiration of the 30-Day period.
- B.** The Offer may be extended beyond 30 Days if the Offeror and the City so agree. If agreement is reached the time period for extension shall be reduced to Writing and the Offer will remain valid, irrevocable and binding on the Offeror for the agreed-upon extension period.
- C.** The City’s Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.
- D.** Responsive Offer. The City may Award a Contract only to a Responsible Offeror with a Responsive Offer.
- E.** A competitive Proposal is a “Firm Offer” for the period specified as provided in section A above, but the City may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document with the Proposer. Where negotiation is permitted by the rules or the Solicitation Document, Proposers are bound to an obligation to negotiate in good faith and only on those terms and the rules or the Solicitation Document has reserved for negotiation.
- F.** The City may Award a Contract only to a Responsible Offeror with a Responsive Offer.
- G.** Contingent Offers. Except to the extent that a Proposer is authorized to propose certain terms and conditions pursuant to PCC 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 PCC Section 5.34.850, the Offeror's Offer

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includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the City in Writing.

- I.** Instructions. An Offeror shall submit and Sign its Offer in accordance with the Solicitation Document. Bids requiring a Written and non-electronic signature shall be signed in ink by an Authorized Representative of the Offeror. An Offeror shall initial and submit any correction or erasure to its Offer prior to the Opening in accordance with the requirements for submitting an Offer under the Solicitation Document.
- J.** Forms. An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.
- K.** Documents. An Offeror shall provide the City with all documents and Descriptive Literature required under the Solicitation Document.
- L.** Facsimile or Electronic Submissions If the City permits Facsimile or Electronic Offers in the Solicitation Document, the Offeror may submit Facsimile or Electronic Offers in accordance with the Solicitation Document. The City shall not consider Facsimile or Electronic Offers unless authorized by the Solicitation Document.
- M.** Product Samples and Descriptive Literature. The City may require Product Samples or Descriptive Literature if it is necessary or desirable to evaluate the quality, features or characteristics of the offered items. The City will dispose of Product Samples, or return or make available for return Product Samples to the Offeror in accordance with the Solicitation Document.
- N.** Identification of Offers.
 - 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.

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5.34.460 Pre-Closing Modification or Withdrawal of Offers.

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

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late Offers, withdrawals or modifications, except as permitted by PCC 5.34.490 (Mistakes) or PCC.5.33.610 (Offer Evaluation and Award).

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

5.34.490 Mistakes.

- A.** General. To protect the integrity of the competitive Solicitation process and to assure fair treatment of Offerors, the City should carefully consider whether to permit a waiver, correction or withdrawal of an Offer for certain mistakes.
- B.** Treatment of Mistakes. Errors in judgment do not permit an Offeror to correct or withdraw an Offer. Mistakes that constitute a minor informality may be waived or corrected. Mistakes that constitute clerical errors may be corrected or withdrawn in the City's discretion pursuant to this rule.
- C.** City notification. If the City believes the Offer contains a mistake the City shall notify the Offeror, note the apparent mistake and request that the Offeror verify the Offer in writing, or by electronic transmission within one business day after notification.
- D.** Failure of Offeror to Respond. If the Offeror fails to respond within one business day after notification of the apparent mistake, the City shall consider the Offer as submitted unless the amount of the Offer is so far out of line with the amounts of other bids received, or with the amount estimated by the City, or there are other indications of error so clear, as to reasonably justify the conclusion or that

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acceptance of the Offer would be unfair to the Offeror or to other bona fide Offerors, in which case the City shall be entitled to reject the Offer. The City may extend the time for response for good cause shown.

- E.** **Verification.** If the Offeror verifies its Offer, the City must consider the Offer as originally submitted. However, in fairness to other Offerors, verification does not preclude the City from rejecting the Offer if it is clear that a mistake has been made and the City determines the intended Offer is not evident.
- F.** **Minor Informality.** If the Offeror verifies its Offer, and the City sees no reason for rejection, the City may waive or permit the Offeror to correct a mistake that constitutes a minor informality. A minor informality is a matter of form, rather than substance, that is evident on the face of the Offer and which can be corrected or waived without prejudice to the public or other Offerors. Examples of a minor informality include a failure to:
- 1.** Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;
 - 2.** Sign the Offer in the designated block, provided, however, that a Signature appears elsewhere in the Offer that evidences the Offeror's intent to be bound; or
 - 3.** Acknowledge receipt of an Addendum to the Solicitation Document, provided it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms.
- G.** **Clerical Mistakes.** If the Offeror does not verify its Offer, but contends a clerical mistake caused a different Offer than intended to be submitted, or verifies the Offer but contends a clerical mistake should be corrected within a portion of the Offer, the City may in its discretion permit correction if the conditions of this section are met.
- 1.** Only clerical mistakes can be corrected. A clerical mistake is not a mistake of judgment. Examples of clerical mistakes include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, misplacement of a decimal point, and instances in which the intended correct price is evident by simple arithmetic calculations.
 - 2.** If correction of the Offer would result in displacement of one or more lower Offers submitted by other Offerors, the correction is permitted if, and only if, both the existence of the mistake and the Offer actually intended are ascertainable from the Solicitation Document and the Offer itself.

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

5.34.493 First-Tier Subcontractors; Disclosure and Substitution.

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

- A. Required Disclosure. Within two working hours after the Bid Closing on an ITB for a Public Improvement having a Contract Price estimated by the City to exceed \$100,000, all Bidders shall submit to the City a disclosure form as described by ORS 279C.370(2), identifying any first-tier Subcontractors that will be furnishing labor or labor and materials on the Contract, if Awarded, whose subcontract value would be equal to or greater than:
 1. Five percent of the total Contract Price, but at least \$15,000; or
 2. \$350,000, regardless of the percentage of the total Contract Price.
- B. Bid Closing, Disclosure Deadline and Bid Opening. For each ITB to which this rule applies, the City shall:
 1. Set the Bid Closing on a Tuesday, Wednesday or Thursday, and at a time between 2 p.m. and 5 p.m., except that these Bid Closing restrictions do not apply to an ITB for maintenance or construction of highways, bridges or other transportation facilities, and provided that the two-hour disclosure deadline described by this rule would not then fall on a legal holiday;
 2. Open Bids publicly immediately after the Bid Closing; and

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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% 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.

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.

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- 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 and 183445, effective January 6, 2010.)

- A.** Contracts shall be Awarded only to Responsible Offerors. Pursuant to ORS 279C.375, the City shall consider whether the Offeror has:
 - 1.** Available the appropriate financial, material, equipment, facility and personnel resources and expertise, necessary to indicate the capability of the prospective Offeror to meet all contractual responsibilities;
 - 2.** Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. The City should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the City should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The City may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract

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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 Bureau of Licenses within seven (7) Days of the receipt of a Bid or Proposal, unless the City waives that requirement and decides to pursue collection through retention of Contract funds, or through other means.
 5. Supplied all necessary information in connection with the inquiry concerning responsibility. If a prospective Offeror fails to promptly supply information requested by the City concerning responsibility, the City shall base the determination of responsibility upon any available information or may find the prospective Offeror non-Responsible;
 6. Not been disqualified by the City pursuant to ORS 279C.440 and PCC 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.

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5.34.510 Prequalification of Offerors.

(Amended by Ordinance Nos. 183445, 184403 and 185065, effective January 1, 2012.)

- A.** Prequalification Application Forms. Application forms may be obtained from the Chief Procurement Officer. Information required on the application form shall be supplied fully and completely, unless patently inapplicable, and the Person in whose name the application is submitted, or the Authorized Representative of the corporation or association submitting the application, shall verify the information before a notary. Any prospective Bidder shall supply further information or detail as the City may require to clarify a Prequalification application. All Prequalification applications shall be filed with or sent to the Chief Procurement Officer unless a Solicitation Document for a specific project otherwise provides.
- B.** Prequalification. Prequalification applications submitted without designation for a specific project shall be considered as general Prequalification applications and processed pursuant to ORS 279C.430. The City may require Prequalification of Bidders for specific projects on application forms prescribed by the City. The City shall indicate in the Solicitation Document if it will require Prequalification. Prequalification means the City conditions a Bidder's submission of a Bid upon the Bidder's Prequalification. The City shall not consider a Bid from a Bidder that is not Prequalified if the City required Prequalification.
- C.** General Prequalification Limits. All public improvement projects and painting projects estimated to cost more than \$100,000 require Prequalification. The Chief Procurement Officer has discretion to require Prequalification for projects under \$100,000 as provided in PCC Section 5.34.510 D.
- D.** Special Prequalification. A separate special Prequalification may be required for a specific project when the City determines that the project is of a size, Scope or complexity that special Prequalification is required or such other circumstances exist, that in the opinion of the City, a special Prequalification would be of assistance in the selection of qualified contractors.
- E.** Prequalification Presumed. If a Bidder is currently Prequalified by either the Oregon Department of Transportation or the Oregon Department of Administrative Services to perform Contracts, the Bidder shall be rebuttably presumed qualified to perform similar 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. 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.

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- F.** Time for Filing Prequalification Applications. Prequalification applications shall be received by the Chief Procurement Officer at least nine (9) business Days prior to the date of Bid Opening unless specifically stated otherwise in the Solicitation Document. Prequalification applications received less than nine (9) business Days prior to the Bid Opening may be processed or rejected in the City's sole discretion. If the application is not approved, notice shall be given by the City as provided by PCC Section 5.34.510 H. at least three (3) business Days prior to the Bid Opening date.
- G.** Standards for Prequalification. A Bidder may prequalify by demonstrating to the City's satisfaction that it is a Responsible Bidder. The Bidder shall demonstrate that it is a Responsible Bidder or Proposer based on the criteria set forth in Section 5.34.500.
- H.** 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. The Chief Procurement Officer may limit the types of Work, materials or services on which Bids shall be accepted from the applicant, may restrict the size or cost of project Bids to be received by the City from the applicant, or may impose any other restrictions which the Chief Procurement Officer 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.
- I.** Notice. If 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, and inform the Bidder of the right to a hearing before the Chief Procurement Officer, who shall exercise the powers of the City Council for this purpose. The Chief

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Procurement Officer has discretion, however, to refer this matter to the Board of Appeals.

- J.** 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.
- K.** 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 No. 183445, effective January 6, 2010.)

- 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;

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- b.** Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the Person's responsibility as a Contractor;
 - c.** Conviction under state or federal antitrust statutes; or
 - d.** Violation of a Contract provision that is regarded by the City to be so serious as to justify Conduct Disqualification. A violation under PCC Section 5.34.530 A.1.d. may include but is not limited to material failure to perform the terms of a Contract or an unsatisfactory performance in accordance with the terms of the Contract. However, a Person's failure to perform or unsatisfactory performance caused by acts beyond the Person's control is not a basis for Disqualification.
- 2.** Standards for DBE Disqualification. As provided in ORS 200.065, 200.075 or 279A.110, the City may disqualify a Person's right to submit an Offer or to participate in a Contract (e.g., as Subcontractors) as follows:
 - a.** For a DBE Disqualification under ORS 200.065, the City may disqualify a Person upon finding that:
 - (1)** The Person fraudulently obtained or retained or attempted to obtain or retain or aided another Person to fraudulently obtain or retain or attempt to obtain or retain certification as a disadvantaged, minority, women or emerging small business enterprise; or
 - (2)** The Person knowingly made a false claim that any Person is qualified for certification or is certified under ORS 200.055 for the purpose of gaining a Contract or subcontract or other benefit; or
 - (3)** The Person has been disqualified by another public contracting agency pursuant to ORS 200.065.
 - b.** For a DBE Disqualification under ORS 200.075, the City may disqualify a Person upon finding that:
 - (1)** The Person has entered into an agreement representing that a disadvantaged, minority, women, or emerging small business enterprise, certified pursuant to ORS 200.055

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("Certified Enterprise"), will perform or supply materials under a Public Improvement Contract without the knowledge and consent of the Certified Enterprise; or

(2) The Person exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any Certified Enterprise; or

(3) The Person uses a Certified Enterprise to perform Work under a Public Improvement Contract to meet an established Certified Enterprise goal, and such enterprise does not perform a commercially useful function, as defined by ORS 200.075(3), in performing its obligations under the Contract.

c. If a Person is Disqualified for a DBE Disqualification under ORS 200.075, the City shall not permit such Person to participate in the City's Contracts.

d. For a DBE Disqualification under ORS 279A.110, the City may disqualify a Person if the City finds that the Person discriminated against minority, women or emerging small business enterprises in Awarding a subcontract under a Contract with that City.

B. Notice of Intent to Disqualify. The City shall notify the Person in Writing of a proposed Disqualification personally or by registered or certified mail, return receipt requested. This notice shall:

1. State that the City intends to disqualify the Person;
2. Set forth the reasons for the Disqualification;
3. Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the Chief Procurement Officer does not receive the Person's Written request for a hearing within the time stated, the Person shall have waived its right to a hearing;
4. Include a statement of the authority and jurisdiction under which the hearing will be held;
5. Include a reference to the particular sections of the statutes and rules involved;

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

5.34.600 Bid or Proposal Evaluation Criteria.

- A.** General. A Public Improvement Contract, if Awarded, shall be Awarded to the Responsible Bidder submitting the lowest Responsive Bid, or to the Responsible Proposer submitting the best Responsive Proposal.
- B.** Bid Evaluation Criteria. Invitations to Bid may solicit lump-sum Offers, unit-price Offers or a combination of the two.
1. Lump Sum. If the ITB requires a lump-sum Bid, without additive or deductive alternates, or if the City elects not to Award additive or 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

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or deductive alternates selected by the City, for the purpose of comparing Bids. The City shall specify within the Solicitation Document the estimated quantity of the Procurement to be used for determination of the low Bidder. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the Bidder, the unit price shall govern.

- C. Proposal Evaluation Criteria. If the City Council has exempted a Public Improvement from the Competitive Bidding requirements of ORS 279C.335(1), and has directed the use of an Alternative Contracting Method under ORS 279C.335(3), evaluation criteria shall be set forth in the Solicitation Documents.

5.34.610 Offer Evaluation and Award; Determination of Responsibility. (Amended by Ordinance Nos. 181547 and 183445, effective January 6, 2010.)

- A. General. If Awarded, the City shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer or Proposers submitting the best, Responsive Proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract. See ORS 279C.375(2)(a), or is ineligible for Award as a Nonresident (as defined in ORS 279A.120), education service district. The City may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.
- B. Determination of Responsibility. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the City must have information that indicates that the Offeror meets the standards of responsibility set forth in ORS 279.375C(3)(b). To be a Responsible Offeror, the City must determine that the Offeror:
 - 1. Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to demonstrate the capability of the Offeror to meet all contractual responsibilities;
 - 2. Has a satisfactory record of Contract performance. The City should carefully scrutinize an Offeror's record of Contract performance if the Offeror is or recently has been materially deficient in Contract performance. In reviewing the Offeror's performance, the City should determine whether the Offeror's deficient performance was expressly excused under the terms of Contract, or whether the Offeror took appropriate corrective action. The City may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of Contract performance. The City shall make its basis for

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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 PCC Section 5.34.540 may be used to determine an Offeror's integrity. The City shall make its basis for determining that an Offeror is not Responsible under this paragraph part of the Solicitation file;
 4. Is qualified legally to Contract with the City, including having a current City business license and EEO certification. The Procurement Services may determine that such a Person is not legally qualified if:
 - a. The Person does not have a business license with the City; or
 - b. The Person failed to make payments required by Title 7 of the City Code and has failed to make appropriate payment arrangements with the Bureau of Licenses 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.

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

- A.** Bids. Except as permitted by ORS 279C.340 and PCC 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 PCC Section 5.34.850.

5.34.625 Contract Preferences; Resident Bidders.

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

 - 1.** The City shall Award the Contract to the Offeror among those submitting identical Offers that is offering Goods or Services that have been manufactured or produced in Oregon.
 - 2.** If two or more Offerors submit identical Offers, and both offer Goods or Services manufactured or produced in Oregon, the City shall Award the Contract by drawing lots among the identical Offers offering Goods or Services that have been manufactured or produced in Oregon. The Offerors that submitted the identical Offers subject to the drawing of lots shall be given notice and an opportunity to be present when the lots are drawn.
 - 3.** If the City receives identical Offers, and none of the identical Offers offer Goods or Services manufactured or produced in Oregon, then the City shall Award the Contract by drawing lots among the identical Offers. The Offerors that submitted the identical Offers subject to the drawing of lots shall be given notice and an opportunity to be present when the lots are drawn.
- 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 PCC 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.

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2. Proposals received in response to a Request for Proposals issued under ORS 279C.400 and PCC 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 PCC Section 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.

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

5.34.640 Negotiation When Bids Exceed Cost Estimate.

- 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 PCC 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 PCC Section 5.34.850, but excluding any material requirements previously announced in the Solicitation process that would likely affect the field of competition.
 - 3.** **"Project"** means a Public Improvement.
 - 4.** **"Value Engineering"** means the identification of alternative methods, materials or systems which provide for comparable function at reduced initial or life-time cost. It includes proposed changes to the plans, Specifications, or other Contract requirements which may be made, consistent with industry practice, under the original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the Public Improvement. Cost savings include those resulting from Life Cycle Costing, which may either increase or decrease absolute costs over varying time periods.
- C.** Rejection of Bids. In determining whether all Responsive Bids from Responsible Bidders exceed the Cost Estimate, only those Bids that have been formally rejected, or Bids from Bidders who have been formally disqualified by the City, shall be excluded from consideration.
- D.** Scope of Negotiations. Contracting Agencies shall not proceed with Contract Award if the Scope of the Project is significantly changed from the original Bid.

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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 No. 185065, effective January 1, 2012.)

- 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:
 - 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);

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- c.** Attempts to prevent public disclosure of matters in contravention of the terms and conditions of Solicitation Document or in contravention of applicable law;
 - d.** Offers Work that fails to meet the Specifications of the Solicitation Document;
 - e.** Is late;
 - f.** Is not in substantial compliance with the Solicitation Documents;
 - g.** Is not in substantial compliance with all prescribed public Solicitation procedures.
 - h.** Omits, or is unclear as to, the price; or the price cannot be determined in the Solicitation Documents;
 - i.** Requires a delivery date different from that required by the Solicitation Document;
 - j.** The Offeror failed to substantially comply with any Good Faith Efforts Specifications;
- 3.** The City shall reject an Offer upon the City's finding that the Offeror:
 - a.** Has not been Prequalified under ORS 279C.430 and the City required mandatory Prequalification;
 - b.** Has been Disqualified;
 - c.** Has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries and the Contract is for a Public Work;
 - d.** Is listed as not qualified by the Construction Contractors Board or the Landscape Contractors Board, when required;
 - e.** Has not met the requirements of ORS 279A.105 if required by the Solicitation Document;
 - f.** Has not submitted properly executed Bid or Proposal Security as required by the Solicitation Document;

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5. The City cancels the Solicitation in accordance with PCC Section 5.34.660; or
6. Any other circumstance indicating that Awarding the Contract would not be in the public interest.

5.34.650 Notice of Intent to Award.

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

- 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 PCC Section 5.34.650 A.2. For purposes of this paragraph, the Day on which the Notice is posted from

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which the seven Days or other time period shall begin to run shall not be included, but the last Day of the period shall be included;

2. The City provides a Written response to all timely-filed protests that denies the protest and affirms the Award; or
3. Upon the conclusion of any administrative appeal pursuant to PCC Section 5.34.740 if the Chief Procurement Officer decides to permit an appeal.

5.34.660 Cancellation, delay or suspension of Solicitation.

- 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 PCC 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.

- 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 PCC 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.

- 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 PCC Section 5.34.680 A.

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5.34.685 Availability of Award Decisions.

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

5.34.690 Performance and Payment Security; Waiver.

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

- A. Public Improvement Contracts.** Unless the required performance bond is waived under ORS 279C.380(1)(a), excused in cases of Emergency under ORS 279C.380(4), or unless the City Council, acting as the Local Contract Review Board, exempts a Contract or classes of Contracts from the required performance bond and payment bond pursuant to ORS 279C.390, the Contractor shall execute and deliver to the City a performance bond and a separate payment bond each in a sum equal to the Contract Price for all Public Improvement Contracts. This requirement applies only to Public Improvement Contracts with a value, estimated by the City, of more than \$100,000. 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, PCC 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 No. 183445, effective January 6, 2010.)

- 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:

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- 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 PCC Section 5.34.700 B.2. and the reasons for that failure;
 - 3.** If the protest was timely filed and provides the information required by PCC Section 5.34.700 B.2., the City shall issue a decision in Writing and provide that decision to the Affected Person within seven (7) business days unless a Written determination is made by the City that circumstances exist that require a shorter time limit.
 - 4.** If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.
- D.** Optional City Response: In addition to the requirements of Subsection 5.34.700 C., the Chief Procurement Officer may do any of the following:
 - 1.** Agree with the protest and take any corrective action necessary;
 - 2.** Issue a Written response to the protest and provide that decision to the Affected Person;
 - 3.** Refer the protest and any response to the Board of Appeals for decision;
 - 4.** Refer the protest and any response to the City Council for decision; or

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

E. Judicial Review.

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

5.34.710 Protests and Judicial Review of Multi-Tiered Solicitations.

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

- A. An Affected Person may protest their exclusion from multi-tiered Solicitations. Protest of Contract terms and conditions, however, shall be made pursuant to PCC 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 PCC Section 5.34.710 C., pursuant to PCC Section 5.34.730 [protests of 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.

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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, unless the Solicitation Document specifies a shorter period of time.
 2. Contents: The protest must include the following information:
 - a. Sufficient information to identify the errors that led to the Affected Person's exclusion from the Competitive Range or from subsequent stages of a Procurement;
 - b. A detailed statement of all the legal and factual grounds for the protest;
 - c. Evidence or supporting documentation that supports the grounds on which the protest is based;
 - d. A description of the resulting harm to the Affected Person; and
 - e. The relief requested.
- E. Required City Response. The City shall take the following actions, as appropriate:
 1. The City shall inform the Affected Person in Writing if the protest was not timely filed;
 2. The City shall inform the Affected Person if it failed to meet the requirements of PCC Section 5.34.710 D.2., and the reasons for that failure;
 3. If the protest was timely filed and provides the information required by PCC Section 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 PCC Section 5.34.710 E., the City may take any or all of the following actions:

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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 No. 183445, effective January 6, 2010.)

- 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 PCC Section 5.34.700 and not this rule. The exclusive process of protesting a multi-tiered Solicitation process is pursuant to PCC 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

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within seven (7) Days after a Solicitation Document is advertised unless the Solicitation Document requires a shorter period of time. The Chief Procurement Officer shall not consider a protest submitted after the timeline established for submitting such protest under this rule.

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

C. Required City Response.

1. The City shall inform the Affected Person in Writing if the protest was not timely filed;
2. The City shall inform the Affected Person if it failed to meet the requirements of PCC Section 5.34.720 B.2. and the reasons for that failure;
3. If the protest was timely filed and provides the information required by PCC Section 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.

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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 PCC Section 5.34.720 C., the Chief Procurement Officer may take any or all of the following:
1. Agree with the protest and make any necessary corrections to the Solicitation Document or Procurement process;
 2. Issue a Written response to the protest and provide that decision to the Affected Person.
 3. Refer the protest and any response to the Board of Appeals;
 4. Refer the protest and any response to the City Council for decision; or
 5. Any other action that is in the best interest of the City while giving full consideration to the merits of the protest.
- E.** Judicial Review. An Affected Person may not seek judicial review of the City's final decision regarding its protest of the contents of a Solicitation Document or the Solicitation process unless it fully has complied with the Protest requirements of this rule and has exhausted all avenues of appeal provided by the Chief Procurement Officer.

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

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

- A.** This Code provision applies only to City Solicitation Documents concerning Federal-Aid Certified projects that contain Supplemental Contract provisions implementing the requirements of the United States Department of Transportation and Part 26, Title 49 of the Code of Federal Regulations concerning Disadvantaged Business Enterprises (DBEs).
- 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.

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- 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 and 184403, effective February 2, 2011.)

- 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 PCC Section 5.34.730 B.2., and the reasons for that failure;
- 3.** If the protest was timely filed and provides the information required by PCC Section 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.

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4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.
- D.** Optional City Response: In addition to the requirements of PCC Section 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 and 184403, effective February 2, 2011.) Protests of any violation of ORS Chapter 279C, for which no administrative remedy is otherwise provided by this Code, are subject to this rule:

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

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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 PCC Chapter 5.34.

B. Method of Protest.

1. Time: The Chief Procurement Officer shall not consider a protest submitted after the timeline established for submitting such protest under this rule and shall not consider a protest under this section if a right to protest is elsewhere provided by this Code.
2. Contents: The protest must include the following information:
 - a. Sufficient information to identify the Solicitation that is the subject of the protest;
 - b. A detailed statement of the alleged violation and all the legal and factual grounds for the protest.
 - c. Evidence or supporting documentation that supports the grounds on which the protest is based;
 - d. A description of the resulting harm to the Affected Person; and
 - e. The relief requested

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

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

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4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.
- D.** Optional City Response: In addition to the requirements of PCC Section 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 No. 183445, effective January 6, 2010.)

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

5.34.760 Purchasing Board of Appeals.

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

- 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 Purchasing Board of Appeals for the purposes described above.
- C.** Jurisdiction of Board. The Purchasing 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 Purchasing Board of Appeals shall consist of three members. A quorum shall consist of three members.
 - 2.** The members of the Board shall be:
 - a.** A representative from the public purchasing sector;
 - b.** The City Engineer or designee;
 - c.** A member of the general public with affiliation to the purchasing industry.
 - 3.** The public members shall be appointed by the Mayor, subject to confirmation by City Council and shall serve for a period of up to two years, which may be extended by the Chief Procurement Officer.
 - 4.** A member of the board shall serve as chairperson.
- E.** Compensation. All members of the Board shall serve without pay, except that they may receive their regular salaries during time spent on Board matters.
- F.** Vacancies. A vacancy on the Board shall be filled as soon as possible in accordance with the procedures described above.
- G.** Procedure and Rules. The Chief Procurement Officer shall establish administrative rules of procedure for the Board and the Board shall follow that procedure for all matters heard by the Board.

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

- 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 Purchasing Board of Appeals shall be stated as grounds for appeal.
- C.** Time of Hearing. The Chief Procurement Officer shall schedule the time and place for the Board to meet giving consideration to the schedule of the Board.

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

5.34.800 Purpose.

(Amended by Ordinance No. 183445, effective January 6, 2010.) PCC 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, PCC Section 5.34.880 implements the requirements of ORS 279C.335 pertaining to the adoption of model rules appropriate for use by the City govern the procedures for entering into ESPCs.

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5.34.810 Definitions for Alternative Contracting Methods.

The following definitions shall apply to PCC Section 5.34.800 through PCC Section 5.34.890, unless the context requires otherwise:

- A. Alternative Contracting Methods.** Innovative Procurement techniques for obtaining Public Improvement Contracts, utilizing processes other than the traditional method of design-Bid-build with Award based solely on price (in which a final design is issued with formal Bid documents, construction Work is obtained by sealed Bid Awarded to the lowest Responsive, Responsible Bidder, and the project is built in accordance with those documents). In industry practice, such methods commonly include variations of Design-Build contracting, CM/GC forms of contracting and ESPCs, which are specifically addressed in PCC Section 5.34.880, as well as other developing techniques such as general "performance contracting" and "cost plus time" contracting, for which procedural requirements are identified under PCC Section 5.34.800 through PCC Section 5.34.890.
- B. Construction Manager/General Contractor (or "CM/GC").** A form of Procurement that results in a Public Improvement Contract for a Construction Manager/General Contractor to undertake project team involvement with design development; constructability reviews; value engineering, scheduling, estimating and subcontracting services; establish a Guaranteed Maximum Price to complete the Contract Work; act as General Contractor; coordinate and manage the building process; provide general Contractor expertise; and act as a member of the project team along with the City, architect/engineers and other consultants. CM/GC also refers to a Contractor under this form of Contract.
- C. Design-Build.** A form of Procurement that results in a Public Improvement Contract in which the construction Contractor also provides or obtains specified design services, participates on the project team with the City, and manages both design and construction. In this form of Contract, a single Person provides the City with all of the Personal Services and Work necessary to both design and construct the project.
- D. Energy Conservation Measures (or "ECMs") (also known as "energy efficiency measures").** As used in ESPC Procurement, any equipment, fixture or furnishing to be added or used in an existing building, structure or building/structure system, and any repair, alteration or improvement to an existing building, structure or building/structure system that is designed to reduce energy consumption and related costs, including those costs related to electrical energy, thermal energy, water consumption, waste disposal, and future contract-labor costs and materials costs associated with maintenance of the building or structure. Maintenance services are not Energy Conservation Measures, for purposes of PCC Section 5.34.880.

- E. Energy Savings Guarantee.** The energy savings and performance guarantee provided by the ESCO under an ESPC Procurement, which guarantees to the City that certain energy savings and performance will be achieved for the project covered by the RFP, through the installation and implementation of the agreed-upon ECMs for the project. The Energy Savings Guarantee shall include, but shall not be limited to, the specific energy savings and performance levels and amounts that will be guaranteed, provisions related to the financial remedies available to the City in the event the guaranteed savings and performance are not achieved, the specific conditions under which the ESCO will guarantee energy savings and performance (including the specific responsibilities of the City after final completion of the design and construction phase), and the term of the energy savings and performance guarantee.
- F. Energy Savings Performance Contract (or "ESPC").** A Public Improvement Contract between The City and a Qualified Energy Service Company for the identification, evaluation, recommendation, design and construction of Energy Conservation Measures, including a Design-Build Contract, that guarantee energy savings or performance.
- G. Guaranteed Maximum Price (or "GMP").** The total maximum price provided to the City by the Contractor, and accepted by the City, that includes all reimbursable costs of and fees for completion of the Contract Work, as defined by the Public Improvement Contract, except for material changes in the Scope of Work. It may also include particularly identified contingency amounts.
- H. Measurement and Verification (or "M & V").** As used in ESPC Procurement, the examination of installed ECMs using the International Performance Measurement and Verification Protocol ("IPMVP"), or any other comparable protocol or process, to monitor and verify the operation of energy-using systems pre-installation and post-installation.
- I. Project Development Plan.** A secondary phase of Personal Services and Work performed by an ESCO in an ESPC Procurement when the ESCO performs more extensive design of the agreed-upon ECMs for the project, provides the detailed provisions of the ESCO's Energy Savings Guarantee that the fully installed and commissioned ECMs will achieve a particular energy savings level for the building or structure, and prepares an overall report or plan summarizing the ESCO's Work during this secondary phase of the Work and otherwise explaining how the agreed-upon ECMs will be implemented during the design and construction phase of the Work; The term "Project Development Plan" can also refer to the report or plan provided by the ESCO at the conclusion of this phase of the Work.

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

5.34.820 Use of Alternative Contracting Methods.

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

- A. Competitive Bidding Exemptions.** ORS Chapter 279C requires a competitive bidding process for Public Improvement Contracts unless a statutory exception applies, a class of Contracts has been exempted or an individual Contract has been exempted in accordance with ORS 279C.335 and PCC Section 5.34.830. Use of Alternative Contracting Methods may be directed by the City's Chief Procurement Officer as an exception to the prescribed Public Contracting practices in Oregon, and their use must be justified in accordance with City Code.
- B. Energy Savings Performance Contracts.** Unlike other Alternative Contracting Methods covered by PCC 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 PCC Section 5.34.880 related to the Solicitation, negotiation and contracting for ESPC Work. If those procedures are not followed, an ESPC procurement may still be exempted from competitive bidding requirements by following the general exemption procedures within ORS 279C.335.
- C. Post-Project Evaluation.** ORS 279C.355 requires that the City prepare a formal post-project evaluation of Public Improvement projects in excess of \$100,000 for which the competitive bidding process was not used. The purpose of this

evaluation is to determine whether it was actually in the City's best interest to use an Alternative Contracting Method. The evaluation must be delivered to the City's Chief Procurement Officer , on behalf of the City Council within 30 Days of the date the City "accepts" the Public Improvement project, which event is typically defined in the Contract. The Chief Procurement Officer shall forward such reports to the City Council in a timely manner. In the absence of a definition of "acceptance", the later of the date of final payment or the date of final completion of the Work will govern. ORS 279C.355 describes the timing and content of this evaluation, with three required elements:

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

5.34.830 Findings, Notice and Hearing.

(Amended by Ordinance No. 181547, effective January 24, 2008.)

- A.** The City Council may by ordinance exempt a Contract from the requirements of an ITB process if it makes the following findings:
1. It is unlikely that the exemption will encourage favoritism in the Awarding of Public Improvement Contracts or substantially diminish competition for public improvement Contracts as further described in PCC Section 5.34.830 F.; and
 2. The exemption will likely result in substantial costs savings to the City. The "substantial cost savings" criterion at ORS 279C.335(2)(b) requires consideration of the type, cost, amount of the Contract, number of Entities available to Bid, and "such other factors as may be deemed appropriate" as further described in PCC Section 5.34.830 E.; or
 3. If the Public Improvement relate to the operation, maintenance or construction of highways, bridges and other transportation facilities, that the exemption will result in substantial cost savings to the City or to the public.
 4. As an alternative to the findings regarding substantial cost savings, the City may make a finding that identifies the project as a pilot project for which the City intends to determine whether the use of the alternate

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contracting process actually results in substantial cost savings to the City, or, if it is for a public improvement described in PCC Section 5.34.830 A.3. above, to the public, provided the City has not previously used the proposed alternate contracting method.

- B.** The City council may consider the type, cost and amount of the Contract the number of Persons available to bid and other such factors as may be deemed appropriate in declaring the exemption.
- C.** Findings supporting a competitive bidding exemption must describe with specificity the Alternative Contracting Method to be used in lieu of competitive bidding, including, but not limited to, whether a one step (Request for Proposals) or two step (beginning with Requests for Qualifications) solicitation process will be utilized. The Findings may also describe anticipated characteristics or features of the resulting Public Improvement Contract. However, the purpose of an exemption from competitive bidding is limited to a determination of the Procurement method. Any unnecessary or incidental descriptions of the specific details of the anticipated Contract within the supporting Findings are not binding upon the City. The parameters of the Public Improvement Contract are those characteristics or specifics that are announced in the Solicitation Document. The representations in and the accuracy of the findings, including any general description of the resulting public improvement contract, are the bases for approving the findings and granting the exception. The findings may describe the anticipated features of the resulting public improvement contract, but the final parameters of the contract are those characteristics or specifics announced in the solicitation document.
- D.** The City Council shall require and approve additional findings in the following areas in order to declare the exemption:
 - 1. Operational, budget and financial data;
 - 2. Public benefits;
 - 3. Value Engineering;
 - 4. Specialized expertise required;
 - 5. Public safety;
 - 6. Market conditions;
 - 7. Technical complexity; and

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8. Funding sources.
- E.** The City shall hold a public hearing before final adoption of the findings and a declaration of the exemption. Notification of the public hearing shall be published in at least one trade newspaper of general statewide circulation a minimum of 14 Days before the hearing;
1. The Notice shall state that the public hearing is for the purpose of taking comments on the City's draft findings for an exemption from the Competitive Bidding requirement of using an ITB. At the time of the notice, copies of the draft findings shall be made available to the public.
 2. At the hearing, the City shall offer an opportunity for any interested persons to appear and present comment;
 3. Notice of the hearing may be published simultaneously with the City's Solicitation of contractors for the alternative public contracting method when the City is required to act promptly due to circumstances beyond the City's control that do not constitute an Emergency as long as responses to the Solicitation are due at least five (5) Days after the meeting and approval of the findings;
- F.** Addressing Cost Savings. Accordingly, when the Contract or class of Contracts under consideration for an exemption contemplates the use of Alternative Contracting Methods, the "substantial cost savings" requirement may be addressed by a combination of:
1. Specified Findings that address the factors and other information specifically identified by statute; and
 2. Additional Findings that address industry practices, surveys, trends, past experiences, evaluations of completed projects required by ORS 279C.355 and related information regarding the expected benefits and drawbacks of particular Alternative Contracting Methods. To the extent practicable, such Findings should relate back to the specific characteristics of the project or projects at issue in the exemption request.
- G.** Favoritism and Competition. The criteria at ORS 279C.335(2)(a) that it is "unlikely" that the exemption will "encourage favoritism" or "substantially diminish competition" may be addressed in contemplating the use of Alternative Contracting Methods by specifying the manner in which an RFP process will be utilized, that the Procurement will be formally advertised, competition will be encouraged, and Award made based upon identified selection criteria.

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- H.** Class Exemptions. In making the findings supporting a class exemption the City shall clearly identify the class with respect to its defining characteristics. Those characteristics shall include some combination of Project descriptions or locations, time periods, Contract values or method of Procurement or other factors that distinguish the limited and related class of Projects from the City's overall construction program. Classes shall not be defined solely by funding sources, such as a particular bond fund, or by method of Procurement, but must be defined by characteristics that reasonably relate to the exemption criteria set forth in ORS 279C.335(2). The following classes of Contracts are hereby exempt from the Competitive low Bidding requirements of this Chapter:
- 1.** Contract Amendments. Contract amendments, pursuant to the authority granted by PCC Section 5.34.020 C., and provided that the original Contract was executed in accordance with this chapter;
 - 2.** Tenant improvements. Tenant Improvements on City owned property are exempt from the requirements of Competitive low Bidding, but may be subject to other provisions of this Chapter or ORS 279C. Tenant improvements are exempt when:
 - a.** The improvements are paid for in part, or in whole, by the tenant;
 - b.** The improvements are primarily for the tenant's benefit; and
 - c.** The tenant hires the Contractor to perform the Work, whether or not a competitive process is used by the tenant.
 - 3.** Deficiency Corrections/Contractor on site. The City may hire a private Contractor to perform Work if:
 - a.** The City finds that a Contractor hired by a private developer or Person is at or near the site where City Work needs to be performed and the cost proposed by the private Contractor is reasonable and the cost of the Work will be less than \$25,000; or
 - b.** The City finds that a Contractor hired by the City is at or near the site where City Work needs to be performed; and
 - (1)** The new Work is not within the Scope the original Contract and was not anticipated at the time that the original Contract was Awarded; and

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- (2) If the original Contract was less than \$25,000 the new work does not cause the total payment to the Contractor to exceed \$25,000; or
- (3) If the original Contract was more than \$25,000, the new Work does increase the total amount paid to the Contractor by more than \$50,000.

5.34.840 Competitive Proposals; General Procedures.

- A. General Application: The City may utilize the RFP outlined in PCC Sections 5.34.840 C. through E. below for Public Improvement Contracts, allowing flexibility in both Proposal evaluation and Contract negotiation, only in accordance with ORS 279C.400 to 279C.410 and PCC Sections 5.34.800 to 5.34.890, unless other applicable statutes control the City's use of competitive Proposals for Public Improvement Contracts. Nothing in this rule shall limit the use of evaluation factors or other matters expressly permitted by those additional rules or authorized by ordinance.
- B. ESPCs: For ESPCs, the RFP outlined in PCC Sections 5.34.840 C. through E. below shall be utilized if the City desires the Procurement process to be exempt from the competitive bidding requirements of ORS 279C.335. The RFP process for the Alternative Contracting Methods identified in PCC Sections 5.34.800 to 5.34.890 includes the following steps:
 - C. Proposal Evaluation. Factors in addition to price may be considered in the selection process, but only as set forth in the RFP. Evaluation factors need not be precise predictors of future costs and performance, but to the extent possible such evaluation factors shall:
 - 1. Be reasonable estimates based on information available to the City;
 - 2. Treat all Proposals equitably; and
 - 3. Recognize that public policy requires that Public Improvements be constructed at the least overall cost to the City. See ORS 279C.305.
- D. Evaluation Factors.
 - 1. In basic negotiated construction contracting, where the only reason for an RFP is to consider factors other than price, those factors may consist of firm and personnel experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capacity, past performance, safety records, project

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understanding, proposed methods of construction, proposed milestone dates, references, service, the status of its Equal Employment Opportunity (EEO) certification, its efforts to diversify its workforce in order to reach all of the City's citizens and other related matters that affect cost or quality.

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

guarantee policies and procedures, the ESCO's project cost guarantee policies and procedures, the ESCO's pricing methodologies, the price that the ESCO will charge for the Technical Energy Audit phase of the Work and the ESCO's fee structure for all phases of the ESPC.

- E.** Contract Negotiations. Contract terms may be negotiated to the extent allowed by the RFP and PCC 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 PCC Section 5.34.850. Terms that may be negotiated consist of details of Contract performance, methods of construction, timing, assignment of risk in specified areas, fee, and other matters that affect cost or quality. In ESPC contracting, terms that may be negotiated also include the Scope of preliminary design of ECMs to be evaluated by the parties during the Technical Energy Audit phase of the Work, the Scope of Personal Services and Work to be performed by the ESCO during the Project Development Plan phase of the Work, the detailed provisions of the Energy Savings Guarantee to be provided by the ESCO and Scope of Work, methodologies and compensation terms and conditions during the design and construction phase and M & V phase of the Work, consistent with the requirements of PCC Section 5.34.880 below.

5.34.845 Requests for Qualifications (RFQ)

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

5.34.850 Requests for Proposals (RFP).

(Amended by Ordinance Nos. 184403 and 185065, effective January 1, 2012.)

- A.** Generally. The use of competitive Proposals must be specifically authorized for a Public Improvement Contract under the Competitive Bidding requirement of ORS 279C.335 (1), PCC Section 5.34.150 and PCC Sections 5.34.800 to 5.34.890. Also see ORS 279C.400 to 279C.410 for statutory requirements regarding competitive Proposals, and PCC Section 5.34.840 regarding competitive Proposal procedures.

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- B.** Solicitation Documents. In addition to the Solicitation Document requirements of PCC 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 PCC 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 PCC 5.34.850D.1.b.
 - 4.** When the City intends to Award Contracts to more than one Proposer, the City must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award. The City shall also include the criteria it will use to determine how the City will endeavor to achieve optimal value, utility and substantial fairness when selecting a particular Contractor to provide Personal Services or Work from those Contractors Awarded Contracts.
- C.** Evaluation of Proposals.

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- 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 PCC Sections 5.34.850 E.2. and 5.34.850 F. does not apply to this limited negotiation.
 - 2.** Discussions; Negotiations. If the City permitted discussions or negotiations in the Request for Proposals, the City shall evaluate Proposals and establish the Competitive Range, and may then conduct discussions and negotiations in accordance with this rule.
 - a.** If the Solicitation Document provided that discussions or negotiations may occur at City's discretion, the City may forego discussions and negotiations and evaluate all Proposals in accordance with this rule.
 - b.** If the City proceeds with discussions or negotiations, the City shall establish a negotiation team tailored for the acquisition. The City's team may include legal, technical and negotiating personnel.
 - 3.** Cancellation. Nothing in this rule shall restrict or prohibit the City from canceling the Solicitation at any time.
- D.** Competitive Range; Protest; Award.
- 1.** Determining Competitive Range.

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- a.** If the City does not cancel the Solicitation, after the Opening the City will evaluate all Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the City will determine and rank the Proposers in the Competitive Range.
 - b.** The City may increase the number of Proposers in the Competitive Range if the City's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial Competitive Range are closely Competitive, or have a reasonable chance of being determined the best Proposer after the City's evaluation of revised Proposals submitted in accordance with the process described in this rule.
- 2.** **Protesting Competitive Range.** The City shall provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Proposer that is not within the Competitive Range may protest the City's evaluation and determination of the Competitive Range in accordance with PCC 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 PCC Section 5.34.740.
 - (2)** After the protest period provided in accordance with PCC Section 5.34.740 expires, or after the City has provided a final response to any protest, whichever date is later, the City shall commence final Contract negotiations with the highest-ranked Proposer in the Competitive Range; or
 - b.** Engage in Negotiations with all Proposers in the Competitive Range, as provided in PCC Section 5.34.850 F. below; or
 - c.** Engage in discussions with Proposers in the Competitive Range, as provided in PCC Section 5.34.850 E. below, accept revised Proposals from them, and, following such discussions and receipt

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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 :
 - (1)** Shall treat all Proposers fairly and shall not favor any Proposer over another;
 - (2)** Shall not discuss other Proposers' Proposals;

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- (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 PCC Section 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 PCC Section 5.34.740. After the protest period provided in accordance with that rule expires, or after the City has provided a final response to any protest, whichever date is later, the City shall commence final Contract negotiations.

F. Negotiations.

- 1.** Initiating Negotiations. The City may determine to commence negotiations with the highest-ranked Proposer in the Competitive Range following the:
 - a.** Initial determination of the Competitive Range; or
 - b.** Conclusion of discussions with all Proposers in the Competitive Range and evaluation of revised Proposals.
- 2.** Conducting Negotiations, Scope. The City may negotiate:
 - a.** The statement of Work;
 - b.** The Contract Price as it is affected by negotiating the statement of Work; and
 - c.** Any other terms and conditions reasonably related to those expressly authorized for negotiation in the Request for Proposals. Accordingly, Proposers shall not submit, and City shall not accept, for negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the Request for Proposals.
- 3.** Continuing Negotiations. If the City terminates discussions or negotiations with a Proposer, the City may then commence negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in this rule until the City has either:
 - a.** Determined to Award the Contract to the Proposer with whom it is currently discussing or negotiating; or
 - b.** Completed one round of discussions or negotiations with all Proposers in the Competitive Range, unless the City provided for more than one round of discussions or negotiations in the Request for Proposals, in which case the Contracting Agency may proceed with any authorized further rounds of discussions or negotiations.
- 4.** Terminating Discussions or Negotiations. At any time during discussions or negotiations conducted in accordance with this Rule, the City may terminate discussions or negotiations with the Proposer with whom it is currently conducting discussions or negotiations if the City reasonably believes that;

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

5.34.860 RFP Pricing Mechanisms.

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

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

5.34.870 Design-Build Contracts.

- A.** General. The Design-Build form of contracting, as defined in PCC Section 5.34.810 C, has technical complexities that are not readily apparent. In order to

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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 PCC Sections 5.34.800 to 5.34.890 of these rules. See particularly PCC Section 5.34.820 on "Use of Alternative Contracting Methods" and PCC Section 5.34.880 pertaining to ESPCs.
- C.** Selection. Design-Build selection criteria may include those factors set forth above in PCC Sections 5.34.840 B.1., 2. and 3.
- D.** QBS Inapplicable. Because the value of construction services predominates the Design-Build form of contracting, the qualifications based selection (QBS) process is not applicable.
- E.** Licensing. If a Design-Build Contractor is not an Oregon licensed design professional, the City shall require that the Design-Build Contractor disclose in its Written Offer that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See

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ORS 671.030(2)(g) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction Work.

- F.** Performance Security. ORS 279C.380(1)(a) provides that for Design-Build Contracts the surety's obligation on performance bonds, or the Bidder's obligation on cashier's or certified checks accepted in lieu thereof, includes the preparation and completion of design and related Personal Services specified in the Contract. This additional obligation, beyond performance of construction services, extends only to the provision of professional services and related design revisions, corrective Work and associated costs prior to final completion of the Contract (or for such longer time as may be defined in the Contract). The obligation is not intended to be a substitute for professional liability insurance, and does not include errors and omissions or latent defects coverage.
- G.** Contract Requirements. The City shall conform its Design-Build contracting practices to the following requirements:
- 1.** Design Services. The level or type of design services required must be clearly defined within the Procurement documents and Contract, along with a description of the level or type of design services previously performed for the project. The Personal Services and Work to be performed shall be clearly delineated as either design Specifications or performance standards, and performance measurements must be identified.
 - 2.** Professional Liability. The Contract shall clearly identify the liability of design professionals with respect to the Design-Build Contractor and the City, as well as requirements for professional liability insurance.
 - 3.** Risk Allocation. The Contract shall clearly identify the extent to which the City requires an express indemnification from the Design-Build Contractor for any failure to perform, including professional errors and omissions, design warranties, construction operations and faulty Work claims.
 - 4.** Warranties. The Contract shall clearly identify any express warranties made to the City regarding characteristics or capabilities of the completed project (regardless of whether errors occur as the result of improper design, construction, or both), including any warranty that a design will be produced that meets the stated project performance and budget guidelines.

5. Incentives. The Contract shall clearly identify any economic incentives and disincentives, the specific criteria that apply and their relationship to other financial elements of the Contract.
6. Honoraria. If allowed by the RFP, honoraria or stipends may be provided for early design submittals from qualified finalists during the Solicitation process on the basis that the City is benefited from such deliverables.

5.34.880 Energy Savings Performance Contracts (ESPC).

- A. Generally. PCC Sections 5.34.800 to 5.34.890 include a limited, efficient method for the City to enter into ESPCs outside the competitive bidding requirements of ORS 279C.335 for existing buildings or structures, but not for new construction. If the City chooses not to utilize these rules, the City may still enter into an ESPC by complying with the competitive bidding exemption process set forth in ORS 279C.335, or by otherwise complying with the Procurement requirements applicable to any City not subject to all the requirements of ORS 279C.335.
- B. ESPC Contracting Method. The ESPC form of contracting, as defined in PCC Section 5.34.810 F., has unique technical complexities associated with the determination of what ECMs are feasible for the City, as well as the additional technical complexities associated with a Design-Build Contract. The City shall only utilize the ESPC contracting method with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to utilize the ESPC contracting process, the City must be able to reasonably anticipate one or more of the following types of benefits:
 1. Obtaining, through an ESCO, the following types of integrated Personal Services and Work: facility profiling, energy baseline studies, ECMs, Technical Energy Audits, project development planning, engineering design, plan preparation, cost estimating, Life Cycle Costing, construction administration, project management, construction, quality control, operations and maintenance staff training, commissioning services, M & V services and required documentation as a fully integrated function with a single point of responsibility;
 2. Obtaining, through an ESCO, an Energy Savings Guarantee;
 3. Integrating the Technical Energy Audit phase and the Project Development Plan phase into the design and construction phase of Work on the project;

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4. Reducing the risk of design flaws, misunderstandings and conflicts inherent in the construction process, through the integration of ESPC Personal Services and Work;
 5. Obtaining innovative design solutions through the collaboration of the members of the ESCO integrated ESPC services team;
 6. Integrating cost-effective ECMs into an existing building or structure, so that the ECMs pay for themselves through savings realized over the useful life of the ECMs;
 7. Preliminary design, development, implementation and an Energy Savings Guarantee of ECMs into an existing building or structure through an ESPC, as a distinct part of a major remodel of that building or structure that is being performed under a separate remodeling Contract; and
 8. Satisfying local energy efficiency design criteria or requirements.
- C.** Authority. Bureaus wanting to pursue an exemption from the Competitive Bidding requirements of ORS 279C.335 (and, if applicable, ORS 351.086), shall utilize the ESPC form of contracting only in accordance with the requirements of PCC Section 5.34.800 through PCC Section 5.34.890.
- D.** No Findings. The City is only required to comply with the ESPC contracting procedures set forth in PCC Section 5.34.800 through PCC Section 5.34.890 in order for the ESPC to be exempt from the competitive bidding processes of ORS 279C.335. No Findings are required for an ESPC to be exempt from the competitive bidding process for Public Improvement Contracts pursuant to ORS 279C.335, unless the City is subject to the requirements of ORS 279C.335 and chooses not to comply with the ESPC contracting procedures set for in these rules.
- E.** Selection. ESPC selection criteria may include those factors set forth above in PCC Sections 5.34.840 B.1., 2., 3., and 4. Since the Energy Savings Guarantee is such a fundamental component in the ESPC contracting process, Proposers must disclose in their Proposals the identity of any Person providing (directly or indirectly) any Energy Savings Guarantee that may be offered by the successful ESCO during the course of the performance of the ESPC, along with any financial statements and related information pertaining to any such Person.
- F.** QBS Inapplicable. Because the value of construction Work predominates in the ESPC method of contracting, the qualifications based selection (QBS) process mandated by ORS 279C.110 is not applicable.

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- G.** **Licensing.** If the ESCO is not an Oregon licensed design professional, the City shall require that the ESCO disclose in the ESPC that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(5) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction Work.
- H.** **Performance Security.** At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the ESCO must provide a performance bond and payment bond, each for 100% of the full Contract Price, including the construction Work and design and related Personal Services specified in the ESPC Design-Build Contract, pursuant to ORS 279C.380(1)(a). For ESPC Design-Build Contracts, these "design and related professional services" include conventional design services, commissioning services, training services for the City's operations and maintenance staff, and any similar Personal Services or Work provided by the ESCO under the ESPC Design-Build Contract prior to final completion of construction. M & V services, and any Personal Services and Work associated with the ESCO's Energy Savings Guarantee are not included in these ORS 279C.380(1)(a) "design and related professional services." Nevertheless, The City may require that the ESCO provide performance security for M & V services and any Personal Services and Work associated with the ESCO's Energy Savings Guarantee, if the City so provides in the RFP.
- I.** **Contracting Requirements.** Contracting Agencies shall conform their ESPC contracting practices to the following requirements:
- 1.** **General ESPC Contracting Practices.** An ESPC involves a multi-phase project, which includes the following contractual elements:
- a.** A contractual structure which includes general Contract terms describing the relationship of the parties, the various phases of the Work, the contractual terms governing the Technical Energy Audit for the project, the contractual terms governing the Project Development Plan for the project, the contractual terms governing the final design and construction of the project, the contractual terms governing the performance of the M & V services for the project, and the detailed provisions of the ESCO's Energy Savings Guarantee for the project.
- b.** The various phases of the ESCO's Work will include the following:
- (1)** The Technical Energy Audit phase of the Work;

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- (2) The Project Development Plan phase of the Work;
 - (3) A third phase of the Work that constitutes a Design-Build Contract, during which the ESCO completes any plans and Specifications required to implement the ECMs that have been agreed to by the parties to the ESPC, and the ESCO performs all construction, commissioning, construction administration and related Personal Services or Work to actually construct the project; and
 - (4) A final phase of the Work, whereby the ESCO, independently or in cooperation with an independent consultant hired by the City, performs M & V services to ensure that the Energy Savings Guarantee identified by the ESCO in the earlier phases of the Work and agreed to by the parties has actually been achieved.
- 2. Design-Build Contracting Requirements in ESPCs. At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the City shall conform its Design-Build contracting practices to the Design-Build contracting requirements set forth in PCC Section 5.34.870 G. above.
- 3. Pricing Alternatives. The City may utilize one of the following pricing alternatives in an ESPC:
 - a. A fixed price for each phase of the Personal Services and Work to be provided by the ESCO;
 - b. A cost reimbursement pricing mechanism, with a maximum not-to-exceed price or a GMP; or
 - c. A combination of a fixed fee for certain components of the Personal Services to be performed, a cost reimbursement pricing mechanism for the construction Work to be performed with a GMP, a single or annual fixed fee for M & V services to be performed for an identified time period after final completion of the construction Work, and a single or annual Energy Savings Guarantee fixed fee payable for an identified time period after final completion of the construction Work that is conditioned on certain energy savings being achieved at the facility by the ECMs that have been implemented by the ESCO during the project (in the event an annual M & V services fee and annual Energy Savings

Guarantee fee is utilized by the parties, the parties may provide in the Design-Build Contract that, at the sole option of the City, the ESCO's M & V services may be terminated prior to the completion of the M & V/Energy Savings Guarantee period and the City's future obligation to pay the M & V services fee and Energy Savings Guarantee fee will likewise be terminated, under terms agreed to by the parties).

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

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

(Amended by Ordinance No. 181547, effective January 24, 2008.)

- A. **General.** The CM/GC form of contracting, as defined in PCC Section 5.34.810 B., is a technically complex project delivery system. Unlike the Design-Build form of contracting, the CM/GC form of contracting does not contemplate a "single point of responsibility" under which the Contractor is responsible for successful completion of all Work related to a performance Specification. The CM/GC has defined Contract obligations, including responsibilities as part of the project team along with the City and design professional, although in CM/GC there is a separate Contract between the City and design professional. In order to utilize the CM/GC method, the City must be able to reasonably anticipate the following types of benefits:

1. Time Savings. The Public Improvement has significant schedule ramifications, such that concurrent design and construction are necessary in order to meet critical deadlines and shorten the overall duration of construction. The City may consider operational and financial data that show significant savings or increased opportunities for generating revenue as a result of early completion, as well as less disruption to public facilities as a result of shortened construction periods;
2. Cost Savings. Early Contractor input during the design process is expected to contribute to significant cost savings. The City may consider value 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,

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market uncertainty due to material and labor fluctuations or scarcities, and the need for specialized construction expertise due to technical challenges; and

3. **Technical Complexity.** The Public Improvement presents significant technical complexities that are best addressed by a collaborative or team effort between the City, design professionals and Contractor, in which the Contractor will assist in addressing specific project challenges through pre-construction services. The City may consider the need for Contractor input on issues such as operations of the facility during construction, tenant occupancy, public safety, delivery of an early budget or GMP, financing, historic preservation, difficult remodeling projects and projects requiring complex phasing or highly coordinated scheduling.
- B. Authority.** The City shall use the CM/GC form of contracting only in accordance with the requirements of these rules. See particularly, PCC Section 5.34.820 on "Use of Alternative Contracting Methods".
- C. Selection.** CM/GC selection criteria may include those factors set forth above in PCC Section 5.34.840 B.2.
- D. Basis for Payment.** The CM/GC process adds specified Construction Manager Personal Services to traditional General Contractor Work, requiring full Contract performance within a negotiated Guaranteed Maximum Price (GMP). The basis for payment is reimbursable direct costs as defined under the Contract, plus a fee constituting full payment for Work and Personal Services rendered, which together shall not exceed the GMP. See GMP definition at PCC Section 5.34.810 G. and Pricing Mechanisms in PCC Section 5.34.860.
- E. Contract Requirements.** Contracting Agencies shall conform their CM/GC contracting practices to the following requirements:
1. **Setting the GMP.** The GMP shall be set at an identified time consistent with industry practice, after supporting information reasonably considered necessary to its use has been developed, and the supporting information shall define with particularity both what is included and excluded from the GMP. A set of drawings and Specifications shall be produced establishing the GMP Scope.
 2. **Adjustments to the GMP.** The Contract shall clearly identify the standards or factors under which changes or additional Work will be considered outside of the Work Scope that warrants an increase in the GMP, as well as criteria for decreasing the GMP. The GMP shall not be increased

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without a concomitant increase to the Scope defined at the establishment of the GMP or most recent GMP amendment.

3. Cost Savings. The Contract shall clearly identify the disposition of any cost savings resulting from completion of the Work below the GMP; that is, under what circumstances, if any, the CM/GC might share in those cost savings, or whether they accrue only to the City's benefit. (Note that unless there is a clearly articulated reason for sharing such cost savings, they should accrue to the City.)
4. Cost Reimbursement. The Contract shall clearly identify what items or categories of items are eligible for cost reimbursement within the GMP, including any category of "General Conditions" (a general grouping of direct costs that are not separately invoiced, subcontracted or included within either overhead or fee), and may also incorporate a mutually-agreeable cost-reimbursement standard.
5. Audit. Cost reimbursements shall be made subject to final audit adjustment, and the Contract shall establish an audit process to ensure that Contract costs are allowable, properly allocated and reasonable.
6. Fee. Compensation for the CM/GC's Personal Services and Work shall be paid on the basis of a fee that is inclusive of profit, overhead and all other indirect or non-reimbursable costs. Costs determined to be included within the fee should be expressly defined wherever possible. The fee, first expressed as a proposed percentage of all reimbursable costs, shall be identified during and become an element of the selection process. It shall subsequently be expressed as a fixed amount when the GMP is established.
7. Incentives. The Contract shall clearly identify any economic incentives, the specific criteria that apply and their relationship to other financial elements of the Contract (including the GMP).
8. Controlled Insurance Programs. For projects anticipated to exceed \$75 Million, the Contract shall clearly identify whether an Owner Controlled or Contractor Controlled Insurance Program is anticipated or allowable. If so, the Contract shall clearly identify:
 - a. anticipated cost savings from reduced premiums, claims reductions and other factors;
 - b. the allocation of cost savings; and

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

enforcement mechanisms available, and the respective responsibilities of the CM/GC and City.

5.34.900 Required Contract Clauses.

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 PCC 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 and 183445, effective January 6, 2010.)

- 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.

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- B.** Form of Retainage. Unless the City finds in writing that accepting a bond or instrument described in 1. and 2. of this Subsection poses an extraordinary risk that is not typically associated with the bond or instrument, the City, in lieu of withholding moneys from payment, shall accept from the Contractor:
- 1.** Bonds, securities, or other instruments that are deposited and accepted as provided in Subsection 5.34.920 D.1. of this rule; or
 - 2.** A surety bond deposited as provided in Subsection 5.34.920 D. of this rule.
- C.** Deposit in Interest-bearing accounts. Upon request of the Contractor, the City shall deposit cash retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, for the benefit of the City. Earnings on such account shall accrue to the Contractor. The City may determine the account into which the retainage is placed.
- D.** Alternatives to Cash Retainage. In lieu of cash retainage to be held by the City, the Contractor may select one of the following options:
- 1.** Deposit of bonds, securities and other instruments:
 - a.** The Contractor may deposit bonds, securities or other instruments with the City as set forth in PCC 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 PCC 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;

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- (3) Obligations of any corporation wholly owned by the federal government;
 - (4) Indebtedness of the Federal National Mortgage Association;
 - (5) General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon; or
 - (6) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.
 - c. The value of bonds and securities deposited by the Contractor shall be calculated as follows:
 - (1) As to bonds or securities for which the “Bid” and “asked” prices are published on a regular basis in the Wall Street Journal or in the New York Times, the value shall be the average of the “Bid” and “asked” prices for the bonds or securities so published on (or most recently prior to) the date value is determined;
 - (2) As to bonds or securities for which the “Bid” and “asked” prices are not published in the Wall Street Journal or the New York Times, the value shall be either: the average “Bid” price for the bond or security, on the date value is determined, as established by any two nationally recognized government securities dealers (selected by the City in its sole discretion) making a market in such investments; or, the “Bid” price published by a nationally recognized pricing service;
 - (3) As to certificates of deposit and bankers acceptances, the value shall be the face amount thereof, plus accrued interest.
 - d. At the time the City determines that all requirements for the protection of the City’s interest have been fulfilled, all bonds and securities deposited as above provided shall be released to the Contractor.
- 2. Execution of Escrow Agreement. The Chief Procurement Officer is authorized to execute any escrow agreement necessary to safeguard

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deposit of securities with the City subject to approval as to form by the City Attorney.

3. Deposit in Interest-Bearing Accounts. Upon Written request of the Contractor, the City shall deposit any amounts withheld as retainage in an interest-bearing account in a bank, savings bank, trust company or savings association for the benefit of the City. Earnings on such account shall accrue to the Contractor but the interest shall remain in the account until the City authorizes its release. The account shall be established through the City Treasurer.

E. Recovery of Costs. If the City incurs additional costs as a result of the exercise of any of the options for retainage, the City may recover such costs from the Contractor by reduction of the final payment. As Work on the Contract progresses, the City shall, upon request, inform the Contractor of all accrued costs.

F. Additional Retainage When Certified Payroll Statements not Filed. Pursuant to ORS 279C.845(7), if a Contractor is required to file certified payroll statements and fails to do so, the City shall retain 25 percent of any amount earned by the Contractor on a Public Works Contract until the Contractor has filed such statements with the City. The City shall pay the Contractor the amount retained under this provision within 14 days after the Contractor files the certified statements, regardless of whether a subcontractor has filed such statements.

5.34.930 Fair Contracting and Employment Programs.

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

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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.

- A.** Contractors and Subcontractors shall maintain all fiscal records relating to a Contract executed with the City in accordance with generally accepted accounting principles. In addition, Contractors and Subcontractors shall maintain any other records necessary to clearly document:
- 1.** Their performance. Performance includes, but is not limited to, compliance with plans and Specifications, compliance with fair contracting and employment programs, compliance with Oregon law on payment of wages and accelerated payment provisions, and any and all requirements imposed on the Contractor or Subcontractor under the Contract or subcontract;
 - 2.** Any claims arising from or relating to their performance under a Public Contract;
 - 3.** Any cost and pricing data; and,
 - 4.** Payment to suppliers and Subcontractors.
- B.** Such records shall be maintained for a period of six years from the date of final completion of the Contract or until the conclusion of any audit, controversy or litigation arising out of or related to a Contract, whichever is longer, unless a shorter period of time is authorized in Writing by the City.
- C.** Contractors and Subcontractors shall make all their records available to the City within the boundaries of the City of Portland, Oregon, at reasonable times and places regardless of whether litigation has been filed on any claims. If the records are not made available within the boundaries of the City, the Contractor or Subcontractor shall pay all costs for City employees, and any necessary consultants hired by the City, including travel, per diem costs, salary, and any other expenses incurred by City in sending its employees or consultants to examine, audit, inspect, and copy those records. If the Contractor elects to have such records outside these boundaries, the costs paid by the Contractor to the City for inspection, auditing, examining and copying those records are not recoverable costs in any legal proceeding.
- 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

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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 PCC Section 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 PCC Section 5.34.610 B.

5.34.970 Right to Inspect Plant or Place of Business.

- A.** Time for Inspection. The City may, at reasonable times, inspect the part of the plant or place of business of a Contractor or any Subcontractor or supplier which is related to the performance of any Contract Awarded.
- B.** Access to Plant or Place of Business. As a condition of submitting an Offer, Offerors agree that representatives of the City may enter a Contractor's or Subcontractor's or supplier's plant, place of business, work site or construction site during normal business hours for the following purposes:
 - 1.** To inspect and/or test supplies or services for acceptance by the City pursuant to the terms of the Bid or Proposal;
 - 2.** To investigate in connection with an Offer's Offer, a minority business or EEO certification, or Offeror qualification.
 - 3.** To inspect for compliance with City programs required by the Solicitation Document.
 - 4.** To inspect for Contract compliance.
- 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

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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.

- 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.

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- 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.

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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 PCC Sections 5.34.980 F.1.a. to g. Upon such termination, the City may immediately take possession of the premises and of all materials, tools and appliances thereon as well as all other materials, whether on the premises or not, on which the Contractor has received partial payment. The City may finish the Work by whatever method it may deem expedient;
 - a. If the Contractor should repeatedly refuse or fail to supply an adequate number of skilled workers or proper materials to carry on the Work as required by the Contract documents, or otherwise fail to pursue the Work in a timely manner; or
 - b. If the Contractor should repeatedly fail to make prompt payment to Subcontractors or for material or labor; or
 - c. If permitted by law, if the Contractor should voluntarily or involuntarily seek protection under the United States Bankruptcy Code and its Debtor in Possession or Trustee for the estate fails to assume the Contract within a reasonable time, or as provided by the Bankruptcy Court; or
 - d. If the Contractor should make a general assignment for the benefit of the Contractor's creditors; or
 - e. If a receiver should be appointed on account of the Contractor's insolvency; or
 - f. If the Contractor is otherwise in material breach of any part of the Contract; or
 - g. If the Contractor should disregard laws, rules, or the instructions of the City or its Authorized Representative.
2. Required Response to Declaration of Default. If a default is declared and the Contractor's performance terminated, the Contractor or the surety shall provide the City with immediate and peaceful possession of all of the 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 in PCC Section 5.34.980. If a Contract contains a cancellation or termination clause, that clause rather than PCC 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.
- 5.36.115 Designation of "Persons In Charge."

5.36.001 Surplus Property Policy.

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

5.36.010 Disposition of Surplus Property.

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

A. Definition:

1. "Surplus Property" means: tangible personal property owned by the City, including equipment and materials, which is no longer needed by the City Bureau or Office that owns it. Examples include inventoried and non-inventoried office furniture, specialized equipment, and items that are obsolete or overstocked.

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- B.** City Capital Asset Disposal Documentation: The bureau initiating the transfer, donation, sale, or disposal of surplus property that has been inventoried as a capital asset, shall comply with City Accounting Administrative Rules regarding disposal of capital assets, which establish minimum standards for the disposal of capital assets and subsequent reporting in the financial records.
- C.** City Assets Procured with the Proceeds of Tax-Exempt Bonds: The bureau initiating the transfer, donation, sale, or disposal of surplus property that was procured with the proceeds of tax-exempt bonds should contact the City's debt management office prior to disposal of the property to determine what, if any, limitations exist on the disposal of such property and the use of any revenue derived from such disposal.
- D.** Usable Surplus Property: Whenever a Commissioner-In-Charge, or designee, determines that surplus property exists, the property may be disposed of in one of the following ways:
- 1.** Inter-Bureau Transfer or Sale - Surplus property may be transferred or sold to another City bureau upon written request from the director of the bureau that has a use for it.
 - 2.** Negotiated Direct Sale - Surplus property with an individual or aggregate current market value under \$5,000 may be sold as follows:
 - a.** The bureau obtains three written or verbal price quotations prior to final sale;
 - b.** The bureau negotiating the sale keeps written records of the price quotations, the amounts, and if necessary, the reason why three quotations could not be obtained;
 - c.** The bureau sells the surplus property to the highest bidder meeting all conditions of the sale; and
 - d.** The bureau applies the proceeds of the sale to its property disposition expenses in the following order: storage, transportation, publication fees and other costs of safekeeping and sale, and then to the City fund owning the property at the time of sale unless otherwise directed by the City Council.
 - 3.** Public Sale - The City Council may authorize the sale of surplus property through an external auction service. If the City does not have a contract with an external auction service, the bureau may conduct a public auction subject to the following conditions:

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- a.** The bureau shall give notice of such public auction at least once within ten days prior to the date of the auction in a newspaper of general circulation published in the City; such notice shall give the time and place of the auction;
 - b.** The bureau shall sell the surplus property to the highest bidder meeting all conditions of the sale; and
 - c.** The bureau applies the proceeds of the sale to its property disposition expenses in the following order: storage, transportation, publication fees and other costs of safekeeping and sale, and then to the City fund owning the property at the time of sale unless otherwise directed by the City Council.
- 4.** Public Sale through State - Surplus property may be sold pursuant to an established intergovernmental agreement with the State of Oregon Surplus Property Program. When surplus property is sent to the State Surplus Program for sale on behalf of the City, a minimum sale price shall first be established when appropriate. Any revenue received from the sale of surplus property through the State Surplus Program shall be credited to the bureau that owned the surplus property.
- 5.** Donation - Surplus property may be donated to the State of Oregon Surplus Property Program, other public agencies, or to charitable organizations certified under the Internal Revenue Code Section 501(c)(3) as follows:
 - a.** Donations with an individual or aggregate current market value of \$5,000 or less must be approved by the Commissioner-In-Charge, or designee, of the bureau that owns the property.
 - b.** Donations with an individual or aggregate current market value of more than \$5,000 must be approved by the City Council, by ordinance.
 - c.** The City shall provide the recipient of donated property with appropriate documentation transferring ownership of the property to the recipient. The recipient shall agree to hold harmless, defend and indemnify the City of Portland, its officers, agents and employees from any claims, demands, actions and suits (including attorney fees) arising from its use or receipt of the surplus property.

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

 - (1)** A description of the surplus property donated; and,
 - (2)** The name of the recipient of the surplus property; and,
 - (3)** The originating bureau; and,
 - (4)** The estimated market value of the surplus property at the time of donation.
- E.** Unusable Surplus Property: A Commissioner-In-Charge, or designee, may dispose of surplus property if it is determined that the surplus property is unusable, inoperable or not reasonably repairable, hazardous, or is of insufficient value to warrant a transfer, sale, or donation as prescribed in this Section. In addition to disposing of unusable property in accordance with existing federal, state, or local disposal regulations, every effort shall be made to recycle or otherwise dispose of property in an environmentally sound manner.
- F.** Exempt Property. The following surplus property, whether usable or unusable, shall not be transferred, donated, sold, or otherwise disposed of without Council approval or as otherwise provided by City code, policy, or procedure.

 - 1.** Vehicles or Vehicle Equipment.
 - 2.** Corporately-Owned Communications Equipment.
 - 3.** Contraband.
 - 4.** Firearms.
 - 5.** Intangibles.
 - 6.** Hazardous items.
 - 7.** Items of historical value.
 - 8.** Any other item deemed appropriate for exemption from this Section by the Commissioner-In-Charge of the bureau that controls the property.

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- G.** Vehicles and Vehicle Equipment: The Manager of OMF Business Operations Division is authorized to dispose of vehicles and related equipment when the vehicle is no longer needed by the City. The manner of disposal shall be the most efficient and cost-effective as determined by the Manager. This includes, but is not limited to, competitive written bids, public auction, negotiated sales, or exchange. Any and all revenue, less costs of sale, received from the sale of City-owned vehicles or vehicular equipment shall be credited to the replacement account for the originating bureau.
- H.** Corporately-Owned Communications Equipment: The Chief Technology Officer is authorized to dispose of corporately-owned communications equipment maintained by the Bureau of Technology Services when such equipment is no longer needed by the City. The manner of disposal shall be the most efficient and cost-effective as determined by the Director. This includes, but is not limited to, competitive written bids, public auction, negotiated sales, or exchange. Any and all revenue, less costs of sale, received from the sale of corporately-owned communications equipment shall be credited to the replacement account for the originating bureau.

5.36.011 Donations of Surplus Personal Property.

(Repealed by Ordinance No. 179813, effective January 6, 2006.)

5.36.015 Disposition of Unclaimed and Found Personal Property.

(Added by Ordinance Nos. 153293 and 167825; effective June 22, 1994.)

- A.** Unclaimed Property: Unless directed otherwise by State law or a specific provision of this Code, all tangible personal property not owned by the City, that is under the control of a bureau and not reclaimed after notice has been sent, by the bureau in possession, to all parties who reasonably appear to have an interest in such property, of their right to claim such property within a specified period of time, shall become the property of the City, designated as surplus property, and, shall be disposed of as provided by this Chapter.
- B.** Found Property: All tangible personal property not owned by the City that is found by a bureau member and turned into the bureau, shall not become the property of the City until the requirements of the state law regarding the rights and duties of finders and owners of lost property are satisfied. After the requirements of State law are satisfied, found property shall be retained by the bureau which found it if the property is usable by the bureau. If the property is not usable by the bureau which found it, the bureau shall dispose of the property as surplus property as provided by this Chapter.

5.36.020 Sale of Buildings for Removal from City Property.

Whenever a Commissioner determines that a building or other structure assigned to a bureau under his control must be removed, he may authorize the Purchasing Agent to sell such building or other structure for removal by the purchaser. The Purchasing Agent shall use the method of sale which he finds most in the public interest. The Purchasing Agent shall specify terms and conditions of sale, except that such terms shall not include credit, and he shall fix the amount of bond or cash deposit to be given by the purchaser to guarantee removal of the building or structure and clearance of debris from the premises.

5.36.025 Purchase and Resale by the City of Tax-Foreclosed Property.

(Added by Ordinance No. 162023; Amended by Ordinance Nos. 179813 and 181483, effective January 18, 2008.)

- A. The provisions of this Section apply to property which meets each of the following conditions:
 - 1. Property that has outstanding City liens;
 - 2. Property that has been foreclosed by a county for collection of delinquent taxes; and
 - 3. Property that has been purchased by a bidder at a county sheriff's sale.
- B. The OMF Business Operations Division may purchase and sell property described in this Section without public notice or sale provided:
 - 1. The Council adopts an ordinance authorizing the OMF Business Operations Division to purchase property. The ordinance shall include a legal property description; the total amount of outstanding taxes and costs; the total amount of outstanding city liens, accrued interest, penalties and costs; and the source of funds to be used to purchase the property;
 - 2. Property will be sold to the successful bidder at a county sheriff's sale; and
 - 3. The Council adopts an ordinance authorizing the property sale and setting forth sale terms. The ordinance shall include the name and address of the successful bidder at the county sheriff's sale and the terms of the City sale. The Council may adopt sale terms and provisions as a part of the ordinance authorizing the purchase of property.

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- C.** Sale contracts and other legal documents related to the sale shall be reviewed and approved by the City Attorney prior to the sale. Upon approval as to form by the City Attorney, the Mayor and City Auditor shall be authorized to sign a deed transferring title to the property.
- D.** Proceeds from the sale shall be deposited in the City fund which incurred the expense of purchasing the property from the county unless otherwise directed by the Council in the ordinance authorizing the purchase and sale of the property.
- E.** The OMF Business Operations Division is authorized to adopt administrative rules and procedures necessary to carry out the provisions of this Section.

5.36.030 Loans of Personal Property Owned by the City.

(Amended by Ordinance No. 180917, effective May 26, 2007.) Each Commissioner and each officer or employee of the City is and shall be hereby prohibited from loaning any personal property owned by the City to any other person either gratuitously or for a consideration, without the consent of the Council expressed by ordinance. However, in the event of extraordinary circumstances involving hazard to the general public occasioned by fire, flood, earthquake, or other public disaster, the Commissioner of any department may permit equipment in his department to be used without the consent of the Council during such extraordinary circumstances upon the written order of the Commissioner; provided that the Chief of Portland Fire & Rescue may lend or rent to the owner or operator of property damaged by fire, flood, earthquake or other public disaster such equipment of Portland Fire & Rescue as may be temporarily needed to prevent further damage to such property, and such owner or operator so borrowing or renting such equipment, shall agree with the City:

- A.** To hold the City, its officers, agents and employees harmless for any loss or damage caused to the person or property of third persons while such equipment is in the possession of such owner or operator;
- B.** To waive any claim for damage to the person or property of such owner or operator arising in whole or in part from the use of such equipment; and
- C.** To return such equipment to Portland Fire & Rescue in as good condition as when received, reasonable wear and tear excepted. Such agreement shall be in writing on forms approved by the City Attorney and shall be filed with the Auditor of the City. Any rentals collected by Portland Fire & Rescue under such agreements shall be transmitted by Portland Fire & Rescue to the City Treasurer within 24 hours after receipt by the Bureau, the rentals to be credited to the General Fund.

5.36.035 Lost or Stolen City Property.

(Added by Ordinance No. 151849; effective June 25, 1981.) Any City employee charged with the care or having custody of any City property which is lost or stolen shall

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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.)

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5.36.080 Zoological Specimens.

The Director of the City Zoo be, and he hereby is, invested with the authority to accept for and on behalf of the City such gifts and donations of zoological specimens hereafter tendered as in his judgment will be beneficial to the Zoo and of interest to the public; all such gifts and donations and the acceptance thereof to be in writing, signed by the giver or donor and by the Director of the Zoo, substantially as shown in Exhibit "A" hereto attached and by reference made a part hereof. The past actions of the Director as respects the authority herein given, are hereby ratified and adopted.

Exhibit "A"
PORTLAND ZOOLOGICAL PARK
Zoological Specimen Release

IN CONSIDERATION OF THE CITY'S ACCEPTANCE OF THE SPECIMEN
HEREIN DESCRIBED, I HEREBY GIVE AND DONATE TO THE CITY OF
PORTLAND, FOR THE PURPOSES OF THE MUNICIPAL ZOO, THE FOLLOWING
ANIMAL:

Species. Sex. Age.
Physical Condition
How Long in Possession
Where Obtained

Special Remarks.
.
.
.

AND I HEREBY RELINQUISH ALL CLAIM TO SAID SPECIMEN AND/OR ITS
PROGENY:

Signed
Address
Date
Accepted for the Zoo by:
Signed
Date
Object Number

5.36.090 Gifts and Loans of Property.

- A. Whenever any real or personal property or the use thereof shall be offered to the City by way of donation, gift, grant, lease, loan or any other manner made available to the City by any person, firm, or corporation for the purpose of bestowing a gift or benefit upon the City, the Mayor hereby is authorized to

accept any and all such real or personal property or the use thereof. The Mayor also hereby is authorized to execute any necessary agreement or document and to agree to any reasonable terms and conditions for the gift, grant, lease, loan or other use of such real or personal property. Provided, however, that any such grant, lease or loan by which the City shall be obligated in an amount exceeding \$250 shall first be approved by the Council by special ordinance.

- B.** It shall be the duty of all bureau chiefs to promptly report to the Commissioner In Charge, the receipt of any gift, contribution, donation or other use of personal property from any person, firm or corporation for and on behalf of the City so that the Commissioner may cause such property to be promptly included in the City inventory.

5.36.100 Use of City Property for Elections.

The Commissioner In Charge of any property or premises of the City hereby is authorized to permit the use of such premises or facilities as polling places for any election held by the State, county or any municipal corporation.

5.36.110 Use of City Property for Air Quality Measuring Stations.

The Commissioner In Charge of any particular parcel of real property owned by the City is hereby authorized to grant permission in writing to any governmental body to install on said real property on a temporary basis an air quality measuring station; provided, however, that no such written permission shall be granted unless and until the requesting governmental body has stated in writing that the temporary installation will be accomplished without injury or damage to the City property and that said governmental body will reimburse City for all costs or expenses to City incident to the installation.

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

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

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

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

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

Chapter 5.40

DEMANDS AND DISBURSEMENTS

Sections:

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

5.40.010 Drawing Checks in Payments of Claims.

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

5.40.020 Certain Demands to be Submitted to Council.

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

5.40.030 Appropriation to be Charged for All Demands.

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

5.40.040 Requisitions Required.

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

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

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

5.40.070 Funds Held for Benefit of Police Contributions Committee.

No money held by the City Treasurer in the Trustee Fund for the benefit of Police Contributions Committee shall be disbursed by him except on written request of the Chief of Police who shall first be advised in writing by the Secretary of the Affirmative Action of the above-named Committee to pay a sum certain to a particular named donee. The Treasurer shall, not later than January 15th of each year, furnish to the Chief of Police a statement showing the amounts received by him for the benefit of the Police Contributions Committee and the amounts paid out by him, if any, and to whom paid. The Chief of Police shall immediately advise the Committee of the contents of the report of the City Treasurer. The Committee shall, not later than January 31st of each year, advise each donor as to the portion of his donation that is tax deductible.

5.40.080 Requisition of Funds for Purchasing Police Evidence.

The Chief of Police is hereby authorized to requisition funds in advance of expenditure for the purchase of evidence against the illegal sale of liquor, gambling or other violations of laws. Each advancement shall be on a memorandum requisition approved by the Commissioner In Charge of the Bureau of Police and charged to the appropriation of the Bureau of Police for evidence procurement. The requisition shall be accompanied by an affidavit signed by the Chief of Police which shall state that the amount of cash to be advanced will be used only for the purpose of evidence against the illegal sale of liquor, gambling or other violations of laws. There shall be no further formal accountability for such funds beyond the affidavit. However, the Chief of Police shall maintain sufficient confidential records to be able to provide a confidential accounting to the Commissioner In Charge on his request.

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Chapter 5.44

**EXECUTION OF CONTRACTS
AND BONDS**

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

Chapter 5.48

**CHARGES FOR SERVICES
PERFORMED**

Sections:

- 5.48.010 Authorization.
- 5.48.020 Application and Deposit.
- 5.48.030 Accounting Procedure.
- 5.48.035 Bureau of Emergency Communications - Recordings - Rates.
- 5.48.036 Office of City Attorney and OMF Risk Management Division - Records - Rates.
- 5.48.040 Collection of Money Due the City.
- 5.48.050 Improvements Without Assessment.
- 5.48.060 Interdepartmental Services Authorized.
- 5.48.070 Accounting Procedure for Interdepartmental Services.

5.48.010 Authorization.

Each Commissioner shall have authority to direct his subordinate employees to perform duly authorized services for private persons or other governmental agencies for all of which services a reasonable charge shall be made as provided in Section 5.48.030.

5.48.020 Application and Deposit.

Before any department or bureau of the City shall perform any service for a private person or other governmental agency, it shall be the duty of the department or bureau to obtain wherever practicable an application in writing requesting such service. A deposit may be required when in the judgment of the head of the department or bureau it shall be deemed necessary to guarantee the payment of the service to be performed. The application shall be retained by the department or bureau performing such services.

5.48.030 Accounting Procedure.

(Amended by Ordinance Nos. 132116, 137528, 138042 and 182377, effective December 26, 2008.) Unless the charge for services performed for private persons or governmental agencies other than the City is specifically fixed by the Charter or by action of the

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Council, all such services shall be charged for on the basis of actual costs, which shall be computed as follows:

- A. Labor.**
 - 1.** The amount for salaries and wages shall be either:
 - a.** Actual time computed at the applicable hourly payroll rate when the services being provided require less than the full time of an employee on an annual basis, or
 - b.** Annual salary including vacation, sick leave, holiday and other leave with pay when the services being provided require the full time of an employee on an annual basis.
 - 2.** To the amount for salaries and wages computed under paragraph A.1.a. above, add for the indirect cost of vacation, sick leave, holiday and other leave with pay and for the cost of disability, retirement and insurance as follows:
 - a.** For other than sworn police personnel add 39 percent of salaries and wages.
 - b.** For sworn police personnel add 42 percent of salaries and wages for labor provided at straight time. Add only 15 percent for labor provided at overtime rates.
 - 3.** To the amount for salaries and wages computed under paragraph A.1.b. above, add only for disability, retirement and insurance as follows:
 - a.** For other than sworn police personnel add 21 percent of salaries and wages.
 - b.** For sworn police personnel add 23 percent of salaries and wages provided at straight time only.
- B.** Materials consumed shall be at actual cost including delivery to the City. The Bureau of Water Works shall charge an additional 5 percent for stock handling.
- C.** Services from other City bureaus shall be at actual cost determined in accordance with Section 5.48.070.
- D.** Services provided from non-City sources shall be at actual cost to the City.

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- E. Motorized equipment, trailers, etc., shall be actual time at rates for each particular class of equipment established by the Commissioner In Charge.

5.48.035 Bureau of Emergency Communications-Recordings-Rates.

(Added by Ordinance No. 143377; effective March 30, 1977.) The Bureau of Emergency Communications is authorized to charge the following rates or the rate established by a court in a particular case for services rendered in locating and delivering particular segments of tape recordings for court use:

A. Labor.

1. Ten dollars per hour (straight time) for staff time expended for salaries and wages. After FY 1976-77 this rate shall be set equal to the 4-year rate for a police sergeant as approved in the official compensation plan of the City of Portland.
2. Plus 42 percent of the foregoing straight time amount or 15 percent of the foregoing for labor provided at overtime rates for indirect costs for the vacation, sick leave, holiday and leave with pay, and for the cost of disability, retirement and insurance.

B. Material Costs.

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

C. General Overhead.

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

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

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

5.48.040 Collection of Money Due the City.

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

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

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

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

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

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

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

5.48.050 Improvements Without Assessment.

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

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

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

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

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

- B. Advertising for bids and executing contract shall be authorized only by the City Council. In no event shall a contract be awarded for more than 93 percent of the funds on deposit.
- C. The deposited funds shall be disbursed by the City Treasurer on order of the Commissioner In Charge of the improvement project and after approval by the City Auditor. Disbursements shall be made as follows:
 1. Contract payments shall be paid directly to the contractor;
 2. Engineering fees and overhead shall be paid to the appropriate fund as revenue after the final cost of the contract has been determined.
 3. Prior to the issuance of the certificate of completion by the City Engineer the fees charged to the permittee will be adjusted to agree with the actual costs of services as recorded by the City Engineer. The remaining balance, if any, after payment of all costs shall be returned to the permittee. If additional funds are required of the permittee, they shall be paid prior to the issuance of the certificate of completion.

5.48.060 Interdepartmental Services Authorized.

(Amended by Ordinance No. 182377, effective December 26, 2008.) Each Commissioner shall have power and authority, in the direction of activities of their department, to use the officers, employees, material, and equipment in different bureaus or divisions of such department whenever in their judgment the most efficient and economical administration of the affairs of their department requires. Each Commissioner shall also have authority to direct their subordinate employees to perform duly authorized services for other bureaus or departments. The appropriations carrying the cost of such services shall be reimbursed by calculating the cost of such services.

5.48.070 Accounting Procedure for Interdepartmental Services.

(Amended by Ordinance No. 182377, effective December 26, 2008.) Unless a specific charge for interdepartmental services is fixed, reduced or waived by the Council, through ordinance or policy, all such services shall be charged on the same basis as work performed for private persons as provided in Section 5.48.030, except that stock handling costs under Subsection 5.48.030 B. shall not be added.

Chapter 5.50

COLLECTIONS SECTION

(Added by Ordinance No. 147159; passed
and effective Feb. 1, 1979.)

Sections:

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

5.50.010 Collections Section.

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

- A.** A Collections Section shall be established within the OMF Risk Management Division. This Section shall be responsible for the investigation, billing, collection and compromise of accounts receivable generated by losses suffered by the City including, but not limited to, vehicle accidents, street light and traffic accidents, property damage for vandalism or negligence and theft, and claims by the City for services rendered without a formal contract including, but not limited to property board ups, but not any claim for which the City may impose a lien. If necessary, the Collections Section may assign individual accounts to outside collection agencies. This Section shall also be responsible for gathering cumulative data necessary for establishing methods to remove or reduce the causes of such losses in the future.
- B.** The bureau sustaining the loss or damage shall send a report to the Collections Section within 2 working days from the date of loss or damage. The bureau shall supply all information relating to the loss to the Collections Section and shall cooperate with and assist the Collections Section in the investigation and collection of such loss or damage.
- C.** The Collections Section shall recommend that the City Attorney institute suit in appropriate cases. The City Attorney shall institute legal proceedings for the City in any court or tribunal upon direction of the Council or with the approval of the Commissioner of Finance and Administration and for good cause shown.
- D.** Nothing in this Chapter shall be applicable to accounts receivable arising under any contract.

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5.50.020 Compromise Authorization.

The Collections Section with the approval of the Commissioner of Finance and Administration is authorized and directed to effect compromises in all cases where in the judgment of the collections Section, substantial justice can thus be achieved. These compromises are authorized in all cases involving an original claim of \$5,000 or less.

Where the amount of the original claim is greater than \$5,000 but less than \$10,000, the Collections Section with the approval of the Commissioner of Finance and Administration is authorized to accept compromises which provide for payment to the City of not less than 50 percent of the amount of the original claim. Where the amount of the original claim is greater than \$10,000, the Collections Section with the approval of the Commissioner of Finance and Administration is authorized to effect compromises which provide for payment to the City of not less than 75 percent of the original claim. Where the amount of the original claim is greater than \$5,000, lesser amounts than herein specified may be accepted in compromise only with Council approval. The Collections Section with the approval of the Commissioner of Finance and Administration is authorized to cancel accounts receivable invoices of under \$5,000 in amount or accept promissory notes or confessions of judgment where in the judgment of the Collections Section, substantial justice can thus be achieved.

All compromises shall be in writing utilizing forms approved by the City Attorney.

5.50.030 Money Collected.

All monies collected by the Collections Section will be credited to the appropriate City fund less a service charge of 15 percent for all claims for damages to its property against any third party tort-feasors arising out of an accident or incident. A 25 percent service charge will be required if necessary to assign to an outside collection agency. This service charge will be credited to the Insurance and Claims Fund. Financial records of amounts recovered will be cumulated and maintained by the Collections Section indicating the bureau and fund for which such amounts are recovered.

Chapter 5.52

PETTY CASH AND CHECKS

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

Sections:

- 5.52.010 Petty Cash and Change Accounts.
- 5.52.020 Cancellation of Checks and Issue of in Lieu Checks.
- 5.52.030 Cancellation of City Assessments on Mortgage records.
- 5.52.040 When Checks Are to Be Canceled.
- 5.52.050 Drawing Checks on Charter Appropriations.

5.52.010 Petty Cash and Change Accounts.

(Amended by Ordinance Nos. 135063, 138943, 141163, 146673, 152320, 162106; 169321 and 177676, effective July 9 2003.)

- A.** Council by ordinance has authorized various offices of the City government to have petty cash and change funds. The Chief Administrative Officer shall approve establishment, closure, and administer changes to these funds, effective July 9, 2003. Petty cash accounts shall be for incidental expenditures and change cash accounts shall be for the purpose of making change at authorized locations and activities.
- B.** The amount of each purchase from petty cash accounts shall not exceed \$100 unless approved in writing by the Bureau Manager.
- C.** A petty cash account exceeding \$1,000 may be maintained as a checking account designated "City of Portland, Bureau of _____, (Title of Account.)" Such accounts shall be the responsibility of the individual bureaus/agencies, which will:
 - 1.** Authorize in writing three signatures for each account.
 - 2.** Require two signatures on each check.
 - 3.** Establish a dollar limit for each check.
 - 4.** Establish a control system for the account.
 - 5.** Provide for audit procedures.

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The City Treasurer shall provide technical assistance to the bureaus/agencies in the establishment of such accounts.

- D.** Reimbursement from petty cash accounts may be made to employees for the purchase of safety shoes and/or rain gear as provided in labor contracts with the City. Such reimbursements for these specific purchases shall be restricted to the \$100 limitation for petty cash purposes.

5.52.020 Cancellation of Checks and Issue of in Lieu Checks.

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

5.52.030 Cancellation of City assessments on Mortgage Records.

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

5.52.040 When Checks Are to Be Canceled.

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

5.52.050 Drawing Checks on Charter Appropriations.

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

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

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

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

Chapter 5.56

AMBULANCE SERVICE

Sections:

5.56.010 Police Radio Dispatch Service.

5.56.020 Acceptance by Ambulance Companies.

5.56.010 Police Radio Dispatch Service.

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

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

5.56.020 Acceptance by Ambulance Companies.

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

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Chapter 5.60

MISCELLANEOUS CHARGES

Sections:

- 5.60.010 Charges For Architectural Services.
- 5.60.040 Employee Lists Furnished by Accounting Division Manager.
- 5.60.050 Licensees' Lists Furnished by License Bureau.
- 5.60.110 Driving City Cars to and from Work
- 5.60.120 Lien Accounting System Access.

5.60.010 Charges For Architectural Services.

(New Section substituted by Ordinance No. 136092; passed and effective March 1, 1973.) Services performed by the Bureau of Architectural Planning for a service financed from a City fund other than the General Fund or by another governmental agency shall be charged for at the rate of 165 percent of the salary rates of the individuals working on the project. Services which are to be provided shall be undertaken only on approval of the Commissioner In Charge. Services to be charged for shall be authorized only after it has been determined that funds are available for payment.

5.60.020 Public Records Copy Charges.

(Repealed by Ordinance No. 156910, effective Dec. 26, 1984.)

5.60.040 Employee Lists Furnished by the Accounting Division Manager

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

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

5.60.050 Licensees' Lists Furnished by License Bureau.

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

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Licenses may furnish to any applicant a list of licensees. The fee for such list shall be as follows:

- A. For any list containing the names of not more than 15,000 licensees, the fee shall be \$250;
- B. For any list containing the names of more than 15,000 licensees, the fee shall be in addition to the above, \$1 for each 100 names or fraction thereof.
No list of names of licensees shall be furnished to any person not a City employee without the prior approval of the City Licenses Director.

5.60.110 Driving City Cars to and from Work.

(Amended by Ordinance Nos. 141835, 142504, 154639, 157641; 168313, 173369, and 176872, effective August 28, 2002.)

- A. Employees authorized to drive City vehicles to and from their place of residence shall pay to the City a rental charge for each accounting period of use.
If there is more than one City employee commuting in the same vehicle, the charge to the passenger will be equal to that of the driver. It shall be the responsibility of bureaus to report to the Accounting Division vehicles used as commuting vehicles.
Payroll deductions for rental charges shall be made from the employee's second payroll check of the month. Submission of the Personal Use of City Vehicle form is required upon vehicle assignment, cancellation, or when reduction is requested by Friday of the payroll submission week.
- B. Credit will be given when total consecutive working days of nonuse exceed working days.
- C. Requests for authorization to drive City vehicles to and from work must be approved by the employee's bureau manager and the employee's Commissioner In Charge.

5.60.120 Lien Accounting System Access.

(Added by Ordinance No. 159619; amended by Ordinance No. 176577, effective July 1, 2002.) Access to the City's automated Lien Accounting System shall be provided by internet access. Fees for use of the System by internet will be assessed on a per search basis. The City Auditor shall set the fee per search and the fee may be adjusted annually. Agencies and individuals not affiliated with the City of Portland shall be billed monthly for searches on the System.

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Chapter 5.64

**MISCELLANEOUS FISCAL
PROVISIONS**

Sections:

- 5.64.010 Fiscal Agency in New York City.
- 5.64.020 Appointment of Deputy Auditors.
- 5.64.030 Treasurer to Cash Credit Union Checks.
- 5.64.040 Bureau of Water Works Accounts.
- 5.64.050 Execution of Releases from Claims for Damages.
- 5.64.060 Cancellation of Refund Checks.
- 5.64.070 Refunds.
- 5.64.090 Investment of Available Funds.
- 5.64.100 Determination of City's Subrogation for Time Loss Payments.
- 5.64.110 Procedure upon Obtaining Real Property with Outstanding Liens, Assessments or Accumulated Interest.

5.64.010 Fiscal Agency in New York City.

The National Bank of New York, New York City, State of New York, shall be the fiscal agency in New York City for the City.

5.64.020 Appointment of Deputy Auditors.

The Auditor of the City shall have the authority to appoint as his deputies with power to act for and in his behalf any and all persons employed in the Office of the Auditor of the City. The authority hereby conferred shall in no way affect the classifications or salaries of employees so appointed, the authority being conferred merely for the purpose of facilitating the transactions of business in the office of the City Auditor.

5.64.030 Treasurer to Cash Credit Union Checks.

The City Treasurer is hereby authorized and directed to accept and cash checks properly drawn by the City Employees' Credit Union, signed by the Treasurer and countersigned by the President and Vice President. It shall be the duty of the Secretary of the City Employees' Credit Union to file with the City Treasurer annually at the time of election of officers of the credit union a certificate showing the name of the President, Vice-president and Treasurer of the Credit Union. In the event any change is made in the organization of the Credit Union whereby any other officers or individuals are authorized to sign or countersign checks, the same shall be immediately transmitted to the City Treasurer by the Secretary by the filing with the City Treasurer of a certificate so stating. In the event any change in officers is made at any time during the year the same shall be immediately transmitted to the City Treasurer in like manner.

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5.64.040 Bureau of Water Works Accounts.

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

5.64.050 Execution of Releases from Claims for Damages.

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

5.64.060 Cancellation of Refund checks.

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

5.64.070 Refunds.

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

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

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

5.64.090 Investment of Available Funds.

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

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

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

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

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

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

Chapter 5.68

**PROFESSIONAL, TECHNICAL AND
EXPERT SERVICE CONTRACTS**

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

Sections:

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

5.68.010 Definition.

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

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

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

- C.** "Estimated Fee" means City's reasonably projected fee to be paid for a QBS Consultant's services under the anticipated Contract, excluding all anticipated reimbursable or other non-professional fee expenses. The Estimated Fee is used solely to determine the applicable Contract solicitation method and is distinct from the total amount payable under the Contract.
- D.** "Price Agreement", for purposes of the QBS Rules is limited to mean an agreement related to the procurement of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under agreed-upon terms and conditions and possibly at a set price with:

 - 1.** No guarantee of a minimum or maximum purchase; or
 - 2.** An initial order or minimum purchase, combined with a continuing QBS Consultant obligation to provide Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services in which the City does not guarantee a minimum or maximum additional purchase.
- E.** "Project" means all components of a City's planned undertaking that gives rise to the need for a QBS Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under a Contract.
- F.** "Transportation Planning Services" include Project-specific transportation planning involved in categorical exclusions, environmental assessments, environmental impact statements and other documents required for compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services do not include transportation planning for corridor plans, transportation system plans, interchange area management plans, refinement plans and other transportation plans not associated with an individual Project which will require compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services also do not include transportation planning for Projects not subject to the National Environmental Policy Act, 42 USC 4321 et. seq.
- G.** "Related Services" means personal services, other than architectural, engineering, photogrammetric, mapping, Transportation Planning or land surveying services, that are related to planning, designing, engineering or overseeing public improvement projects or components of public improvements, including, but not

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

5.68.015 General Requirements– PTE Manual.

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

5.68.020 Application.

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

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

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

5.68.030 Public Announcement of Requirements.

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

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

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

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

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

- C. The Chief Procurement Officer is authorized, but not required, to waive any procedural irregularities in the PTE selection process provided the irregularities had no material effect on the selection of the proposed contractor.
- D. The provisions of Section 5.68.035 also apply to the procurement of services and contracts for services referenced in Subsection 5.68.020 B.

5.68.040 Process for Services Costing Under and Over The Formal Bid Threshold.
(Repealed by Ordinance No. 182213, effective September 24, 2008.)

5.68.050 Review by City Attorney and Chief Procurement Officer.
(Amended by Ordinance Nos. 182213 and 184427, effective February 23, 2011.)

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

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

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

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

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

5.68.070 Procedure for Selection of Bond Counsel.

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

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

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

5.68.080 Contractor's Compliance with Workers' Compensation Requirements.

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

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

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

5.68.100 Direct Contracts with Architects, Engineers and Land Surveyors.

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

5.68.110 Two-Tiered Selection Process.

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

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Chapter 5.72

**ECONOMIC DEVELOPMENT
PROJECTS**

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

Sections:

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

5.72.010 Purpose.

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

5.72.020 Definitions.

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

- A. “Economic development project”** includes any properties, real or personal, used or useful in connection with a revenue producing enterprise. “Economic development project” shall not include any facility or facilities designed primarily

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for the operation, transmission, sale, or distribution of electrical energy. “Economic development project” also includes multiple unit residential housing development on land having an assessed valuation of \$8 per square foot or more on September 13, 1975, land within a designated urban renewal or redevelopment area formed pursuant to ORS Chapter 457, land within an area designated as a Housing and Community Development target neighborhood pursuant to the Housing and Community Development Act of 1974, or projects which benefit low or moderate income tenants, or address slum and blight as defined by the 1974 Housing and Community Development Act.

- B. “Eligible project”** means an economic development project found by the City to meet standards adopted pursuant to this Chapter. “Eligible project” includes multiple unit residential housing development which increases available housing units through new construction, rehabilitation of nonresidential buildings, or provides for rehabilitation of residential buildings.
- C. “City”** means the City of Portland.
- D. “Costs”** as applied to any project must conform to all applicable Internal Revenue Service regulations and may include:

 - 1. The cost of construction and reconstruction.
 - 2. The cost of acquisition of property, including rights in land and other property, both real and personal and improved and unimproved and the cost of site improvements.
 - 3. The cost of demolishing, removing or relocating any buildings or structures on lands so acquired, including the cost of acquiring any lands to which the buildings or structures may be moved or relocated.
 - 4. The cost of eligible machinery and equipment and related financing charges.
 - 5. The cost of engineering and architectural surveys, plans and specifications.
 - 6. The cost of financing charges and interest prior to and during construction, and if deemed advisable by the City for a period not exceeding 1 year after completion of construction.
 - 7. The cost of consultant and legal services, other expenses necessary or incident to determining the feasibility or practicability of constructing a project, administrative and other expenses necessary to or incident to the

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.

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

5.72.040 Economic Development -Initial Review, Standards.

- A.** Upon receipt of an application, the Portland Development Commission shall review the application to determine whether the application should be further processed. In reaching such a determination, the Portland Development Commission staff may request additional information from the applicant as well as assemble any and all data deemed relevant to the decision.
- B.** The Portland Development Commission shall consider the following:
 - 1.** Economic feasibility and general benefits to the City of the proposed project.
 - 2.** Density of use and potential impact in the area affected by the proposed project.
 - 3.** Land use, transit, and transportation facilities in the vicinity of the proposed project.
 - 4.** City's ability to supply or support other needed services resulting from the Economic Development Project.
 - 5.** Effect of proposed project on balanced economic development of the City.
 - 6.** Employment and property tax income from the project.
 - 7.** Employment opportunities. City and Portland Development Commission will use employment agreements when and where appropriate.
 - 8.** Suitability of proposed area in the City for the particular type of proposed development project.
 - 9.** Conformance with Internal Revenue Service regulations and the Oregon Revised Statutes.

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- 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

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coverage with buildings, and amount of open space; type of construction; public and private access; parking and circulation plans; water, sewer, and other utility plans; landscaping; expected uses; and economic feasibility studies and market information including rent levels proposed.

5. A description of the existing use of the property including a proposed relocation plan for any persons who would be displaced from existing housing by the project; and for any businesses which would be displaced.
6. A site plan and supporting maps, which show in detail the development plan of the entire project, showing streets, driveways, sidewalks, pedestrian ways, off-street parking and loading areas; location and dimension of structures; use of the land and structure; major landscaping features; design of structures; and existing and proposed utility systems including sanitary sewers, storm sewers, water, electric, gas and telephone lines.
7. Any other information required by law or otherwise which is reasonable and necessary to effectuate the purposes of this Chapter.
8. The approximate amount of bond proceeds and allocation to eligible costs.
9. An agreement to indemnify and hold harmless the Portland Development Commission and the City of Portland, its officers and employees, from any and all liability for loss or damage to the company or any third person or entity arising from or alleged to have arisen from the processing of this application or any error or omission in any official statement or representation related to the contemplated financing.

5.72.060 Housing - Initial Review, Standards.

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

- A. Upon receipt of an application, the Portland Development Commission shall review the application to determine whether the application should be further processed. In reaching such a determination, the Commission may request additional information from the applicant as well as assemble any and all data deemed relevant to the decision.
- B. The Portland Development Commission shall, after review and comment by all relevant City bureaus, recommend approval, approval with conditions, or denial of the application, after consideration of the following:
 1. The economic feasibility of the project, with and without the use of revenue bonds.

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2. The need for housing resulting from the project.
 3. The general benefits to the City of the proposed project.
 4. The City's ability to supply or support other needed services required by the project.
 5. Employment and property tax income from the project.
 6. Suitability of the project as proposed in the specific proposed location.
 7. (Amended by Ordinance No. 157998; Nov. 21, 1985.) Projects applying for permanent financing must be determined to provide housing at rent or price levels 85 percent of which shall be affordable by households with incomes up to 150 percent of the area median income.
 8. Projects in the downtown, particularly the RX Zone, designated urban renewal or redevelopment areas shall receive highest priority.
 9. Conformance with Internal Revenue Service Regulations and the Oregon Revised Statutes.
 10. No application shall be recommended for approval unless the Portland Development Commission, after review and comment by all relevant City bureaus, determines that the project does not conflict with adopted City plans and policies.
 11. Projects applying for construction financing may be at rent or price levels up to 150 percent of median income, but must have available a firm commitment for long-term project financing.
- C.** No project may be approved which would result in the conversion of existing occupied residential rental units to condominium or cooperative projects.
- D.** The applicant, to be eligible for financing assistance under this program, must agree not to discriminate against any purchaser or tenant who is a parent or legal guardian with whom a child resides or is expected to reside, except in projects designed exclusively for households, the heads of whom are 62 years of age or older; or in projects designed for households, the heads of whom are 55 years of age or older, if the project meets the requirements of the applicable federal law.
- E.** Revenue bonds may be issued secured by revenues from mortgage payments from individual owners of condominium and cooperative units within multiple unit

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housing projects which are newly constructed, rehabilitated from other uses or rehabilitated in abandoned residential buildings. Applications for such projects shall be considered by the Portland Development Commission if:

1. No individual or company may have more than one loan outstanding at any one time under this program for individual condominium or cooperative units.
 2. No mortgage loan funds under this program may be used for refinancing by existing owners, and no loans may be assumed by persons not eligible for condominium or cooperative units.
- F. The applicant shall submit a relocation plan for any households, individuals, or businesses which may be displaced by the proposed project. The Portland Development Commission will be responsible for analysis of that proposal and recommendation of that plan, that plan with amendments, or an alternative plan. The relocation plan shall assure that such households, individuals, or businesses are relocated to affordable housing of comparable or better quality.

5.72.070 Initial Determination of Eligibility, Final Approval, Appeals.

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

- D.** If the Portland Development Commission staff recommends denial of the application, they shall notify the applicant in writing. The applicant may appeal by filing written notice thereof with the Portland Development Commission staff within 14 days of receipt of the notice of rejection. Upon receipt of the appeal, the Portland Development Commission shall, within 45 days, recommend by resolution, approval, approval with conditions or denial of the appeal.

5.72.080 General Conditions; Document Preparation and Review.

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

- A.** The following general conditions prevail in the issuance of all industrial development revenue bonds:
- 1.** City of Portland economic development revenue bonds may be sold at public or private sale, and the bonds may mature at any time or times within the useful life of the project. For public sales, special approval may be required.
 - 2.** Any bond authorized under this Chapter which is to be sold by public sale must be rated by either a nationally recognized rating agency as Investment Grade.
 - 3.** Bonds sold through a private sale do not require a rating. For purposes of this Chapter, “private sale” means a sale of all of the bonds to persons or entities that qualify as “accredited investors” under 15 USC Section 77b (15) (I) or 17 CFR Section 230.215. The purchasers must also certify, in a manner satisfactory to the City, that they have the financial sophistication, knowledge and experience in financial matters to evaluate the investment in the bonds and the appropriateness of that investment for them, and that they have received all the information required to make an informed judgement about the purchase of the bonds. Bonds which are sold through a private sale may be resold or transferred only to persons or entities that qualify as accredited investors and that provide the certification described in the preceding sentence.
 - 4.** The City of Portland does not guarantee the bonds and is not subject to any liability for their repayment.
 - 5.** The terms and conditions of the issuance and purchase of an industrial revenue bond issue are to be agreed upon by the applicant and bond purchaser with the concurrence of the Portland Development Commission (acting on behalf of the City.)

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6. Where residential rental property is assisted under this Chapter, construction of the project must begin within 9 months from the date of bond issuance.
 7. Applicant will be required to keep the Portland Development Commission advised of the schedule for document preparation and approval, and to provide drafts of documents to the Commission upon request of the Commission.
- B.** The following general conditions prevail regarding the preparation of all bond documents:
1. Bond counsel will be designated by the Portland Development Commission. Procedures for selecting bond counsel established by Section 5.68.080 of this Code shall not apply to projects initiated pursuant to this Chapter. The applicant will submit their recommendation of bond counsel.
 2. Bond counsel will advise the Portland Development Commission of all federal and state procedural requirements as they apply to issuance of the bonds.
 3. Bond counsel must be an Oregon law firm or other mutually acceptable bond counsel recognized in the Bond Buyers Directory of Municipal Bond Dealers of the United States.
 4. The trustee chosen by the applicant, and approved by the Commission, must be a bank or trust company doing business in the State of Oregon with trust powers.
 5. All documents to be approved by the Portland Development Commission must be in final form and received by the Portland Development Commission 14 days before the Commission meeting at which it will be acted upon.

5.72.090 Application Processing, Financial Considerations.

- A.** Upon receipt of a resolution approving the application, the Portland Development Commission shall consider:
1. The bond market for the types of bonds proposed for issuance.
 2. The terms and conditions of the proposed issue.

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3. Whether the applicant is financially responsible and fully capable and willing to fulfill its obligations under the agreement of lease, or contract, including the obligation to pay rent in the amounts and at the times required, the obligation to operate, repair and maintain at its own expense the project leased, or sold, and to serve the purposes of this Chapter and such other responsibilities as may be imposed under the lease or contract. In determining financial responsibility of the applicant consideration shall be given to the lessee's or purchaser's ratio of current assets to current liabilities, net worth, earning trends, coverage of all fixed charges, the nature of the industry or business involved, its inherent stability, any guarantee of the obligations by some other financially responsible corporation, firm or person, and other factors determinative of the capability of the lessee or purchaser, financially and otherwise, to fulfill its obligations consistently with the purposes of this Chapter and Chapter 772, Oregon Laws of 1977 (ORS 280.410 to 280.485.)
4. Such other relevant factors as the Development Commission considers necessary to protect the financial integrity of the City.
If the Development Commission shall determine that a bond issue is financially feasible it shall designate the underwriter, trustee and bond counsel and shall enter into appropriate agreements with each to carry out the provisions of this Chapter and Chapter 772, Oregon Laws of 1977 (ORS 280.410 to 280.485) subject to the approval of the Council pursuant to Section 5.72.110 of this Chapter. In reaching its determination, the Development Commission may appoint a Bond Review Committee to assist it in its deliberations, and may set administrative procedures from time to time as necessary.

5.72.100 Administrative Fees.

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

- A. The applicant agrees to pay all applicable City and Portland Development fees and expenses associated with the application whether or not the bonds are issued. A minimum application fee of \$500 shall be assessed to all projects at the time of filing the formal application with the Commission. In addition, the Commission shall be reimbursed in full for all direct and indirect costs incurred in the project. The fees shall be paid as follows:
 1. \$500 at the time of filing a formal application with the Portland Development Commission.
 2. The balance at the time of closing of the bond issue. In the event the financing is not completed, costs incurred to date by the Commission shall be subject to immediate reimbursement.

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- B.** Upon issuance of the bond, the applicant will pay the Portland Development Commission a one-time issuance fee equal to seven dollars per 1,000 dollars of the face amount of the bonds for ongoing administration of the bonds. On bonds issued prior to March 23, 1988, the annual administration fee will henceforth be seventy-five cents per 1,000 dollars of the outstanding principal, billed yearly in advance. On bonds issued prior to March 23, 1988, the Portland Development Commission and applicants of outstanding issues may enter into an agreement to pay a one-time fee in lieu of the annual administration fee.
- 1.** For refunding bonds issued under ORS Chapter 280 for economic development projects, if the one-time issuance fee has been paid in accordance with subsection (b) for the bonds being refunded, and the Portland Development Commission determines the refunding will not generate additional ongoing administration costs, the fee or an equitable portion thereof may be waived. Nothing in this subsection (1), however, should be construed to eliminate or limit the applicant's responsibility to pay all fees and expenses of the City and the Portland Development Commission described in subsection (a) of this section in connection with issuing the refunding bonds.

5.72.110 Bond Issuance.

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

5.72.120 Reporting Requirements.

- A.** Beginning no later than 12 months following the issuance of bonds by the City, and continuing annually for a period as long as the bonds are outstanding, the Portland Development Commission shall require each project owner of the assisted project to submit a written report which describes:
- 1.** Number of current employees by job category.
- 2.** Total assessed value and property taxes paid during the most recent period for the assisted facility or facilities.
- B.** In addition to the foregoing, owners of multi-family projects assisted under this Chapter are required to report annually the number of residential units occupied by individuals or families who, at the date of reporting, have low or moderate incomes.

Chapter 5.73

ARTS EDUCATION AND ACCESS INCOME TAX

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

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

5.73.010 Definitions.

(Amended by Ordinance No. 185827, effective December 19, 2012.) For the purposes of this paragraph, the following definitions apply unless the context requires a different meaning.

- A.** “Catchment” means the geographical area from which an elementary school within a District draws its students.
- B.** “Director” means the Director of the Revenue Bureau, or authorized designee.
- C.** “Gross Revenues” means the total of all revenue received by the City of Portland from the Arts Education and Access Income Tax without regard to collection, administrative or other costs.
- D.** “Net Revenues” means the revenue remaining after interest, collection, administrative and other costs and refunds are deducted from Gross Revenues.
- E.** “Portland K-5 Students” means students that reside within the geographical boundary of the City of Portland, Oregon that attend Kindergarten through 5th grade in public schools.
- F.** “Resident” or “resident of the City” means:
 - 1.** An individual who is domiciled in this City unless the individual:

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

5.73.020 Tax Imposed.

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

5.73.030 Net Revenues Distribution.

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

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- A.** First, funds shall be distributed to the School Districts for the purpose of hiring certified arts or music education teachers for elementary school students for Kindergarten through 5th grade (K-5). Distribution shall be based on a ratio of one teacher for every 500 K-5 students at schools that serve Portland K-5 students, except that Charter schools shall be funded based on a ratio of one teacher for every 500 Portland K-5 students served by the Charter school. Students attending schools that receive no distribution of funds shall not be counted. In the event that a school has less than 500 K-5 students, or in the case of Charter schools, less than 500 Portland K-5 students, funds shall be distributed on a pro rata basis based on the number of students attending that school. Funds shall not be distributed to:
1. Elementary schools within the School Districts that have no Portland K-5 students; and
 2. Elementary schools within the School Districts that have Portland K-5 students enrolled, but whose catchment does not overlap with the City of Portland's geographical boundaries.
- B.** Any funds remaining after distribution to the School Districts shall be distributed to the Regional Arts & Culture Council (RACC). The City shall execute a contract amendment with RACC to ensure the funds are spent as follows:
1. Up to 95 percent of the remaining funds shall be distributed to RACC for grants to support non-profit Portland arts organizations that demonstrate artistic excellence, provide service to the community, show administrative and fiscal competence and provide a wide range of high-quality arts programs to the public. RACC will make the determination as to which arts organizations shall be supported, in accordance with their contract with the City. In the event that RACC distributes less than 95 percent of the funds to non-profit Portland arts organizations, the remaining funds shall be distributed for the purpose of providing grants and programs as described in Subsection 2. below.
 2. A minimum of 5 percent of the remaining funds shall be distributed to RACC for the purpose of providing grants and programs to non-profit arts organizations, other nonprofits and schools that will give access to high-quality arts experiences to Kindergarten through 12th grade students (K-12) and for grants and programs that will make arts and culture experiences available to Portland residents, with particular emphasis on programs directed to communities who are underserved by local arts providers.

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3. These funds are in addition to existing and ongoing financial support from the City to RACC.

5.73.040 Intergovernmental Agreements.

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

5.73.050 Citizen Oversight Committee.

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

5.73.060 Audits.

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

5.73.070 Effective Dates.

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

5.73.080 Revenue Bureau Responsibilities.

The Revenue Bureau shall:

- A. Receive the Gross Revenues derived from the Arts Education and Access Income Tax and distribute the Net Revenues in accordance with the IGAs and RACC contract;
- B. Keep accurate records of the funds;
- C. Report to the City Council by way of a public record on all funds received and directed to the School Districts and RACC;
- D. Adopt administrative rules necessary to implement tax collection and administration.

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- E.** If necessary, contract with public or private agencies to fulfill any of its duties in regard to this Arts Education and Access Income Tax and the Arts Education and Access Fund; and
- F.** Accept any and all gifts and donations to the Arts Education and Access Fund.

5.73.090 Limitation on Costs.

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

5.73.100 Confidentiality.

(Added by Ordinance No. 185827, effective December 19, 2012.) It is unlawful for any City employee, agent or elected official, or for any person who has acquired financial information pursuant to Chapter 5.73 or the Bureau's administrative rules to divulge, release or make known in any manner any financial information submitted or disclosed to the City under the terms of the Arts Education and Access Income Tax, unless otherwise required by law. This Section does not prohibit:

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

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

5.73.110 Frivolous Filing, False Filing and Hacking.

(Added by Ordinance No. 185827, effective December 19, 2012.)

- A.** A \$250 penalty will be assessed if a taxfiler takes a "frivolous position" in respect to preparing the taxfiler's tax return. A tax return is considered frivolous if a taxfiler does not provide information on which the substantial correctness of the self-assessment may be judged or if the tax return contains information that on its face indicates that the self-assessment is substantially incorrect. Examples of "frivolous positions" as provided in Oregon Administrative Rule 150-316.992(5)(2) are hereby adopted by direct reference.
- B.** A \$250 penalty will be assessed if a taxfiler willfully makes or provides false statements related to their tax return filing.
- C.** The provisions of PCC Subsection 7.02.850 regarding Hacking apply.

Chapter 5.74

ACQUISITION OF PUBLIC ART

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

Sections:

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

5.74.010 Purpose.

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

5.74.020 Definitions.

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

A. As used in this Chapter:

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

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

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

5.74.030 Dedication.

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

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.

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5.74.050 Siting.

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

5.74.060 Guidelines.

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

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

5.74.070 Ownership.

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

5.74.080 Decisions.

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

5.74.090 Implementation.

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

CHAPTER 5.75

**CLAIMS UNDER
ORS CHAPTERS 195 and 197**

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

Sections:

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

5.75.010 Purpose.

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

5.75.020 Definitions.

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

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- C. Department.** The Oregon Department of Land Conservation and Development.
- D. Exempt Land Use Regulation.** A land use regulation that:
1. Restricts or prohibits activities commonly and historically recognized as public nuisances under common law;
 2. Restricts or prohibits activities for the protection of public health and safety;
 3. Is required in order to comply with federal law;
 4. Restricts or prohibits the use of property for the purpose of selling pornography or performing nude dancing; or
- E. Land Use Regulation.** A provision of the City of Portland comprehensive plan, zoning ordinance or land division ordinance that restricts the residential use of private real property zoned for residential use.
- F. Measure 37.** A ballot measure adopted by the voters of the State of Oregon and effective on November 6, 2004 that was codified as Oregon Revised Statutes (ORS) 197.352 and that required, under certain circumstances, the payment of just compensation to landowners if a government land use regulation restricted the use 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);

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8. The land use regulation described in paragraph 6 of this section was enacted after the date the property, or any portion of it, was brought into the Metro Urban Growth Boundary;
 9. The land use regulation described in paragraph 6 of this section was enacted after the date the property, or any portion of it, was annexed to the City of Portland;
 10. The enactment of the land use regulation caused a reduction in the fair market value of the property; and
 11. The highest and best use of the property was residential use at the time the land use regulation was enacted.
- C. A person filing an amended Measure 37 claim under this section must submit the following information:
1. The name, street address and telephone number of the claimant and all other persons and entities with an interest in the property;
 2. A title report issued no more than 30 days prior to submission of the claim that shows the claimant's current real property interest in the property, the deed registry of the instrument by which the claimant acquired the property, the location and street address and township, range, section and tax lot number(s) of the property, and the date on which the owner acquired the property interest;
 3. A written statement signed by all owners of the property, or any interest in the property, consenting to the filing of the claim;
 4. A reference to any and all specific, existing land use regulations the claimant believes reduced the value of the property and a description of the manner in which the regulation prohibits the residential use of the property;
 5. A copy of the city land use regulations that applied to the property at the time the challenged land use regulations became applicable to, or were enforced against, the property;
 6. An appraisal showing the fair market value of the property one year before the enactment of the land use regulation and one year after enactment, and expressly determining the highest and best use of the property at the time the land use regulation was enacted;

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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.

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

5.75.050 Hearing on Amended Claim by City Council.

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

5.75.060 Filing a New Claim.

- A.** A person may file a claim after June 28, 2007, and will qualify for compensation or waiver, if:

 - 1.** The claimant is an owner of the property and all owners of the property have consented in writing to filing of the claim;
 - 2.** The claimant's desired use of the property is a residential use;
 - 3.** The claimant's desired use of the property is restricted by a land use regulation enacted after January 1, 2007;
 - 4.** The enactment of the land use regulation has reduced the fair market value of the property; and
 - 5.** The highest and best use of the property was residential use at the time the land use regulation was enacted.
- B.** A person filing a claim under this section must submit the fee for processing the claim prescribed in Section 5.75.090 and the following information:

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1. The name, street address and telephone number of the claimant and all other owners of the property;
 2. A title report issued no more than 30 days prior to submission of the claim that shows the claimant's current real property interest in the property; the deed registry of the instrument by which the claimant acquired the property; the location and street address and township, range, section and tax lot number(s) of the property; the date on which the owner acquired the property interest; and any exceptions and encumbrances to title;
 3. A written statement signed by all owners of the property consenting to the filing of the claim;
 4. A citation to the land use regulation the claimant believes is restricting the claimant's desired use of the property;
 5. A description of the specific single-family residential use of the property that the claimant desires to carry out, but cannot because of the land use regulations;
 6. An appraisal showing the fair market value of the property one year before the enactment of the land use regulation and one year after enactment, and expressly determining the highest and best use of the property at the time the land use regulation was enacted;
 7. If the property is or has been enrolled in one or more of the special assessment programs listed in Measure 49, Section 9(6), information regarding taxes not paid as a result of the program or programs; and
 8. A statement whether the claimant filed a claim with other public entities on or before June 28, 2007, involving the same property and a copy of any decision made by the entity on the claim.
- C. A person filing a claim under this section must file the claim within five years after the challenged land use regulation was enacted.

5.75.070 Review of New Claim by Program Manager.

- A. The Program Manager shall review the claim to ensure that it provides the information required by Section 5.75.060. If the Program Manager determines that the claim is incomplete, the Program Manager shall, within 60 days after the filing of the claim, provide written notice of the incompleteness to the claimant. If the Program Manager does not notify the owner that the claim is incomplete

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

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

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

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

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

5.75.080 Hearing on New Claim by City Council.

- A.** The City Council shall hold a public hearing on a claim prior to its final determination. The Program Manager shall schedule the hearing for a date within 180 days after the filing of a completed claim.
- B.** The Program Manager shall provide notice of the date, time and location of the public hearing at least 30 days before the hearing to the claimant and owners of the subject property, owners and occupants of property within 100 feet of the subject property, the Department, Metro, and Multnomah County. The notice shall indicate that:
 - 1.** A copy of the Program Manager's recommendation is available upon request;
 - 2.** Judicial review of the City of Portland's final determination is limited to the written evidence and arguments submitted to the City of Portland prior to or at the public hearing; and
 - 3.** Judicial review is available only for issues that are raised with sufficient specificity to afford the City of Portland an opportunity to respond in its final determination.
- 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

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

5.75.100 Determination of Common Law Vested Right.

- A.** A person with an approved Measure 37 claim may apply for a determination that the person has a common law vested right to continue and complete a use or development allowed by an approved Measure 37 claim consistent with Measure 49.
- B.** An applicant seeking to establish a common law vested right for an approved Measure 37 claim must submit the following information:

 - 1.** The name, mailing address, and telephone number of the applicant.
 - 2.** A legal description and tax lot numbers of the subject property as well as a street address for the property, if any.
 - 3.** A copy of the approved Measure 37 claim decision from the City of Portland and, if appropriate, the State of Oregon.
 - 4.** Additional information sufficient to address each of the factors listed in Subsection C of this Section.
- C.** The factors to be considered by the Program Manager and the City Council in determining whether the applicant has a common law vested right to continue and complete a use or development allowed by an approved Measure 37 claim are:

 - 1.** The amount of money spent on developing the use in relation to the total cost of establishing the use.
 - 2.** The good faith of the property owner.
 - 3.** Whether the property owner had notice of the proposed change in law before beginning development.
 - 4.** Whether any improvements could be used for other allowed uses.
 - 5.** The kind of use, and the location and cost of the development.
 - 6.** Whether the property owner's acts are more than mere contemplated use or preparation, such as the leveling of land, boring test holes, or preliminary negotiations with contractors or architects.

7. Other relevant factors.

- D.** The Program Manager shall review the application to ensure that it provides the information required by Subsections B and C of this Section. If the Program Manager determines that the application is incomplete, the Program Manager shall, within 30 days after the filing of the application, provide written notice of the incompleteness to the applicant. If the applicant fails to respond or submit the missing information within 30 days of the date of the Program Manager's notice, the application shall be considered complete on the date it was filed with the City of Portland.
- E.** The Program Manager shall prepare a written report with the determinations required by Subsections B and C of this section and the reasoning to support the determination. The report shall include a recommendation to the City Council on whether the applicant has established a common law vested right to continue and complete a use or development allowed by an approved Measure 37 claim.
- F.** The Program Manager shall provide the report to the City Council, the claimant, Metro, and other persons who request a copy.

5.75.110 Hearing on a Common Law Vested Right By City Council.

- A.** The City Council shall hold a public hearing on an application for a common law vested right to continue and complete a use or development allowed by an approved Measure 37 claim prior to its final determination. The Program Manager shall schedule the hearing for a date within 90 days after the filing of a completed application.
- B.** The Program Manager shall provide notice of the date, time and location of the public hearing at least 30 days before the hearing to the applicant and owners of the subject property, owners and occupants of property within 100 feet of the subject property, and the Department. The notice shall indicate that:

 - 1. A copy of the Program Manager's recommendation is available upon request;
 - 2. Judicial review of the City of Portland's final determination is limited to the written evidence and arguments submitted to the City of Portland prior to or at the public hearing; and
 - 3. Judicial review is available only for issues that are raised with sufficient specificity to afford the City of Portland an opportunity to respond in its final determination.

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- 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.
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funeral vehicles, wedding vehicles, special events, security for visiting dignitaries, and other special restrictions deemed necessary by the Police Bureau or Bureau of Transportation. Special use permits will not be issued to allow the display or sale of merchandise.

- B.** No vehicle may park in a special use permit area unless authorized by the special use permit.

16.20.595 Improper Use.

(Amended by Ordinance Nos. 170923 and 179141, effective March 23, 2005.)

- A.** It is a violation to improperly use a permit, meter hood, sign, or curb marking, and will be cause for the revocation of the permit, meter hood, sign, or curb marking. A citation or a civil penalty will be assessed of up to \$1,000 by the City Traffic Engineer. Upon notice of revocation, the permit and/or meter hood(s) must immediately be returned to the City Traffic Engineer.
- B.** The permit applicant is fully responsible for any violation of the conditions of the permit.
- C.** All fees paid will be forfeited in the event of revocation. All fines are due within 30 days after the fine is levied. All civil penalties assessed by the City Traffic Engineer are due within 30 days unless an appeal is made.
- D.** Decisions of the City Traffic Engineer regarding the revocation of a general parking permit may be appealed to the Code Hearings Officer according to the provisions of Title 22 of the Portland City Code.

16.20.600 Vehicle Parking Permits.

16.20.601 Purpose.

A vehicle permit may be issued to allow a vehicle to legally park in violation of specific parking regulations. A vehicle permit may apply in a designated parking zone, parking meter, or elsewhere depending on the specifications of the permit.

16.20.603 Current Approval Required Before Use.

- A.** All vehicle permits, including meter hoods, must have current approval of the City Traffic Engineer at the time the permit is used by the permittee.
- B.** The City Traffic Engineer may deny a vehicle permit application based on a demonstrated history of permit abuse by the applicant during the previous 12-month period.

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- C.** Unless otherwise specified, all vehicle permits issued by authority of this Section will expire January 1, following the calendar year in which the permit was issued.
- D.** A duplicate permit may be issued by the City Traffic Engineer upon receipt of a replacement application and fee from the permittee.
- E.** No permit will be issued to any applicant who has an outstanding balance due for prior violation(s) of permits issued by the City Traffic Engineer.
- F.** Decisions of the City Traffic Engineer regarding the issuance of vehicle permits may be appealed to the Code Hearings Officer according to the provisions of Title 22 of the Portland City Code.

16.20.605 All Traffic Laws Apply to Permit Holder.

All permit holders and permitted vehicles are subject to all traffic laws and regulations not explicitly superseded by the permit.

16.20.610 Media Permit.

(Amended by Ordinance No. 176394, effective April 17, 2002.) A media permit allows parking in any area designated by the permit. This permit may be issued to a radio or television station and to a newspaper. The permit may contain restrictions as deemed necessary by the City Traffic Engineer.

16.20.620 Commercial Permit.

A commercial permit allows parking in any area designated by the permit. The permit may contain restrictions as deemed necessary by the City Traffic Engineer.

16.20.630 Delivery Permit.

A delivery permit allows parking in any area designated by the permit. This permit may contain restrictions deemed necessary by the City Traffic Engineer.

16.20.640 Disabled Person Permit.

(Amended by Ordinance Nos. 166575, 170923, 179141, 181507, 181914, 182345, 182935, 184628, 185036 and 185785, effective December 12, 2012.)

- A.** A vehicle with an official disabled person registration plate, while transporting a disabled person, or a vehicle while transporting a person with an official disabled person placard issued by a state Department of Motor Vehicles, may park:
 - 1.** In any space designated for a vehicle with a disabled person parking permit for any amount of time (subject to on-street storage regulations);
 - 2.** In any metered or nonmetered space with a designated time limit of 30 minutes or more for any amount of time without fee; or

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3. In any metered or nonmetered space with a designated time limit of less than 30 minutes for a period of time not to exceed the designated time limit with fee, if applicable, except in any space reserved for special types of vehicles or activities; e.g., truck loading zones, carpool zones, area parking permit areas.

B. A vehicle with a program placard issued under ORS 811.607 may park as provided under ORS 811.637.

C. Penalties:

1. Unlawful use: if a person is not a disabled person and is not transporting the holder of a disabled parking permit to or from the parking location and the person uses a disabled parking permit to exercise parking privileges under this Section, that person commits unlawful use under Oregon Revised Statutes.
2. Misuse: if a driver uses a disabled parking permit for any purpose other than exercising the privileges granted, the driver commits permit misuse under Oregon Revised Statutes.

D. A vehicle with an official disabled persons permit issued under ORS 811.602, 811.603, 811.604, 811.605, 811.606, 811.607, 811.608, and 811.609, or by the authority of another state, may park as provided under ORS 811.637.

E. Penalties:

1. Invalid use of a disabled persons parking permit occurs if:
 - a. Driver uses a disabled parking permit that has been previously reported lost or stolen,
 - b. Has been altered, was issued to a person who is deceased at the time of the citation,
 - c. Has not been issued under ORS 811.602, or by the authority of another state,
 - d. Is a photocopy or other reproduction of a permit,
 - e. The permit is displayed without the permit number and expiration date clearly displayed

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- F.** Parking privileges for vehicle parking utilizing Section 16.20.640 will be extended under Senate Bill 716 Section 7 (3). All regulations within this Section will be granted and enforced; this Section will expire on June 30, 2013.

16.20.645 Wheelchair User Disabled Person Parking Permit.

(Added by Ordinance No. 181507, effective January 1, 2008.)

- A.** A vehicle with a “Wheelchair User” placard or decal issued by a state Department of Motor Vehicles, while transporting a disabled person, or a vehicle while transporting a person with a “Wheelchair User” placard or decal, may park:
- 1.** In any space designated for a vehicle with a “Wheelchair User” placard or decal for any amount of time (subject to on-street storage regulations);
 - 2.** In any metered or non-metered space with a designated time limit of 30 minutes or more for any amount of time without fee; or
 - 3.** In any metered or non-metered space with a designated time limit of less than 30 minutes for a period of time not to exceed the designated time limit with fee, if applicable, except in any space reserved for special types of vehicles or activities; e.g., truck loading zones, carpool zones, area parking permit areas.
- B.** A vehicle with a program placard issued under ORS 811.607 may park as provided under ORS 811.637.
- 1.** Penalties:
 - a.** Unlawful use: if a person is not a disabled person and is not transporting the holder of a “Wheelchair User” placard or decal to or from the parking location and the person uses a “Wheelchair User” placard or decal to exercise parking privileges under this Section, that person commits unlawful use under Oregon Revised Statutes.
 - b.** Misuse: if a driver uses a “Wheelchair User” placard or decal for any purpose other than exercising the privileges granted, the driver commits permit misuse under Oregon Revised Statutes.
- C.** A vehicle with a “Wheelchair User” placard or decal issued under ORS 811.602 through 811.637 or by the authority of another state with current Wheelchair User permit, may park as provided under ORS 811.637.
- 1.** Penalties:

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16.40.650	Horse-Drawn Carriage Insurance Requirements.
16.40.660	Horse-Drawn Carriage Temperature, Time and Place Restrictions.
16.40.670	Operation of Horse-Drawn Carriages: Requirements and Prohibitions.
16.40.680	Care of Carriage Horses.
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16.40.010 Purpose.

- A.** The purpose of Chapter 16.40 is to provide for the safe, fair and efficient operation of private “for-hire” transportation services. The industry should be allowed to operate without unnecessary restraint. However, because the industry constitutes an essential part of the City’s transportation system and because transportation so fundamentally affects the City’s well being and that of its citizens, some regulation is necessary to insure that the public safety is protected, the public need provided, and the public convenience promoted. It is not the purpose of Chapter 16.40 to displace competition with regulation or monopoly public service.
- B.** The provisions contained herein should be applied and enforced in such a manner as to require the “for-hire” transportation industry to:
 - 1.** Promote innovation and adaptation to changing needs; and
 - 2.** Allow competition, so long as the public interest is served thereby.

16.40.020 Chapter Applies to All Companies, Drivers and Vehicles.

- A.** The requirements of Chapter 16.40 – along with any penalties that may be assessed for violations of Chapter 16.40 – apply to all for-hire transportation companies, vehicles and drivers, whether legally and validly permitted or not.
- B.** It is not a defense to any regulatory action (including penalties and fines) to assert that the City cannot act because the driver, company or vehicle does not possess a valid City-issued permit, decal or taxiplat.

16.40.030 Definitions.

(Amended by Ordinance No. 184361, effective February 11, 2011.)

- A.** “Administrator” means the private for-hire transportation Program Administrator.
- B.** “Approved Mechanic” means a mechanic on a list maintained on a quarterly basis by the Bureau that is published annually and whom meets all the following criteria:
 - 1.** does not own, lease or drive a vehicle for-hire;
 - 2.** has no financial interest in any for-hire transportation company operating within the States of Oregon or Washington;

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- 3. has received ASE (Automotive Service Excellence) A Series (Automobile/Light Truck Certification) master certification; and
 - 4. is not employed by any for-hire transportation company.
- C.** “Board” means the Private For-Hire Transportation Board of Review.
- D.** “Branded Vehicle” (aka “Reconstructed Vehicle”) means any vehicle that has been purchased by an insurance company because the vehicle has been severely damaged typically due to collision, fire or flood damage, and the value of the vehicle is considered less than the cost to repair the vehicle.
- E.** “Bureau” means the Revenue Bureau of the City of Portland.
- F.** “Carriage” means any vehicle or conveyance that is drawn, pulled or propelled by a horse or other animal(s).
- G.** “Certificate of Safety” means a document from an approved mechanic certifying that a particular vehicle meets all safety standards as set forth in this Chapter and/or administrative rules.
- H.** “Company Permit” means the permit issued to a private for-hire transportation company under the terms of this Chapter and/or administrative rules.
- I.** “Compensation” means any form of payment or gratuity by a customer or customer’s agent to a permitted for-hire driver or company for the use of the driver or company’s for-hire transportation services. For-hire transportation providers that only accept gratuities, tips, etc, are considered to be providing “for-hire” transportation services.
- J.** “Conduct Business” means operating a for-hire vehicle or company, receiving money or other compensation from the use of a for-hire vehicle, causing or allowing another person to do the same, or advertising the same.
- K.** “Customer” means a person who purchases for-hire transportation service from a for-hire transportation service provider that is permitted or should be permitted by the City. The customer may or may not also be a passenger.
- L.** “Day” means a business day and not a calendar day unless specifically stated otherwise.
- M.** “Decal” means the numbered identification sticker issued by the City and affixed to an LPT vehicle.

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- N.** “Decaled” means that a particular for-hire transportation vehicle is in full compliance with the requirements of Chapter 16.40 and is operating legally and validly in the City of Portland.
- O.** “Director” means the Director of the Revenue Bureau.
- P.** Driver Permit” means the permit issued to a private for-hire transportation driver under the terms of this Chapter.
- Q.** Driver” means a for-hire transportation driver, including taxi drivers and LPT drivers.
- R.** Executive Sedan” means a large expensive passenger sedan or full-sized sports utility vehicle (SUV) commonly recognized by the limousine industry as an executive vehicle and used to provide ongoing luxury transportation.
- S.** Fareless Square” means “Free Rail Zone” the area as defined by TriMet and located in the City of Portland wherein no paid fare is required to ride a TriMet bus, the Portland Streetcar or the MAX train. It is generally defined to include most of downtown Portland (within the boundaries of the Willamette River, NW Irving Street, and the I-405 freeway), as well as MAX stations from the Rose Quarter to Lloyd Center and bus stops along NE Multnomah to 13th Avenue.
- T.** “Horse-Drawn Carriage” is a vehicle or conveyance operating for hire that is drawn, pulled, propelled or powered, in whole or in part, by a horse, mule or other animal(s).
- U.** “Horse-Drawn Carriage Driver Permit” means the permit issued to a horse-drawn carriage driver under the terms of this Chapter.
- V.** “Limited Passenger Transportation Company” (LPT Company) means a for-hire transportation company other than a taxi company.
- W.** “Limited Passenger Transportation” (LPT) means providing for-hire transportation services with non-motorized vehicles or motorized vehicles other than taxicabs. LPTs include, but are not limited to, horse-drawn carriages, pedicabs, executive sedans, limousines, shuttles and SATs.
- X.** “Limousine” means an Executive Sedan whose chassis and wheelbase have been altered by a Qualified Vehicle Modifier (QVM) program participant (or its equivalent) beyond the length of the manufacturer’s original specifications, whether at the time of manufacture or after, and which is commonly recognized by the limousine industry as a “limousine”.

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- Y.** “Operate” means driving a for-hire vehicle, using a for-hire vehicle to conduct a business, receiving money from the use of a for-hire vehicle, or causing or allowing another person to do the same.
- Z.** “Passenger” means a person traveling in a for-hire transportation vehicle that is not the operator of that vehicle.
- AA.** “Pedicab” means a tricycle that:
- 1.** transports or is capable of transporting passengers on seats attached to the tricycle;
 - 2.** is powered by human power or an electrical assist; and
 - 3.** is used as a for-hire transportation service.
- BB.** “Pedicab Driver Permit” means the permit issued to a pedicab driver under the terms of this Chapter.
- CC.** “Permittee” means a person or business entity that has been issued a driver or company permit under the terms of this Chapter.
- DD.** “Permitted” means that a for-hire transportation company, driver or vehicle has a valid city-issued permit, decal or taxiplate.
- EE.** “Person” means any individual, partnership, joint venture, association, club, trust, estate, corporation, or other form of business organization recognized by Oregon Law.
- FF.** “Plate” means the numbered identification plate issued by the City and affixed to a horse-drawn carriage or pedicab.
- GG.** “Prearranged” means that the customer, passenger or passenger’s agent has personally asked the driver of a validly permitted for-hire vehicle or a validly permitted for-hire transportation company for transportation services, regardless of the communication format used. The Bureau may establish by administrative rule the amount of time required between asking and receiving transportation services to allow a presumption that the services were “prearranged”.
- HH.** “Private for-hire transportation” means providing vehicular, horse-drawn carriage or pedicab transportation for compensation of any kind within the Portland City limits. However, it does not include transportation provided by a public or governmental entity, transportation that is regulated entirely by the state of Oregon or the federal government.

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- II.** “Private for-hire vehicle” means motorized or non-motorized vehicle used to transport persons for-hire or other consideration and which is not exclusively regulated by the State. This includes limousines, taxis, executive sedans, shuttles, SATs, pedicabs, and horse-drawn carriages; but does not include school buses, charter buses or ambulances.
- JJ.** “Revocation” means that a permit, taxiplate or decal is no longer valid and cannot be renewed without approval by the Director of the Revenue Bureau.
- KK.** “Shuttle Transportation” means transportation provided in a vehicle over a fixed route and time schedule.
- LL.** “Specially Attended Transportation” (SAT) means transportation used for agency-sponsored, contracted transportation of non-emergency medical and/or special needs passengers. Ambulance vehicles providing basic life support (BLS) and advanced life support (ALS) services are excluded from this definition.
- MM.** “Suspension” means that a permit, taxiplate or decal is temporarily invalid and that the holder of that permit, taxiplate or decal may not engage in any for-hire transportation activity under the authority granted to that suspended permit, taxiplate or decal.
- NN.** “Taxicab Company” means any entity operating taxicabs other than as a driver and regardless of whether the vehicles so operated are owned by the company, leased, or owned by individual members of the company.
- OO.** “Taxicab driver” means any person operating taxicabs as a driver for any taxicab company regardless of whether the vehicles so operated are owned by the company, leased, or owned by individual members of the company.
- PP.** “Taxicab” means any vehicle that carries passengers for-hire where the destination and route traveled may be controlled by a passenger and the fare is calculated on the basis of an initial fee, distance traveled, waiting time, or any combination thereof.
- QQ.** “Taximeter” means a mechanical or electronic device that calculates and displays a fare based on an initial fee, distance traveled, waiting time, or any combination thereof.
- RR.** “Taxiplate” means the numbered metal identification plate issued by the City and permanently affixed to the rear of a taxicab.

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- SS.** “Taxiplate” means that a particular for-hire transportation taxicab is in full compliance with the requirements of Chapter 16.40 and is operating legally and validly in the City of Portland.
- TT.** “Waiting time” means the time during which a taxicab is under the direction of a passenger and the taxicab is moving slower than the per-mile rate allowed by this Chapter.
- UU.** “Week” means the 7-day period from Monday through Sunday.
- VV.** “Wheelchair Accessible” means that a for-hire transportation vehicle is equipped with a hydraulic lift or ramps designed for the purpose of transporting wheelchair users or others using mobility devices, or which contains any other physical device or alteration designed to permit access to and enable the transportation of physically handicapped persons.

16.40.040 Private For-Hire Transportation Board of Review.

- A.** Membership and Terms. The Private For-Hire Transportation Board of Review (“Board”) consists of 14 members, including a Chairperson. The Director serves as the Chairperson and is a permanent member of the Board. All other members serve 2-year staggered terms as prescribed by administrative rule. In order to achieve the necessary staggered terms, the initial terms of some members will be for less than two years, as prescribed by administrative rule.
- B.** Composition. The Board is composed of:
1. The Director, or his or her designee;
 2. A representative from the Portland Bureau of Transportation;
 3. A representative from the tourism industry;
 4. A representative for persons with disabilities;
 5. A representative of the riding public;
 6. A representative from the Port of Portland;
 7. A representative from TriMet;
 8. A representative from the taxicab companies;
 9. A representative from the non-limousine LPT companies;

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10. A representative from the SAT companies;
 11. A representative from the limousine companies;
 12. A representative from the pedicab companies;
 13. A representative from the taxicab drivers; and
 14. A representative from the LPT drivers.
- C.** Selection of Members. The Commissioner-in-Charge of the Bureau appoints the Board positions described in Subsections 16.40.040 B.2 - B.7. The Board positions described in Subsections 16.40.040 B.8. - B.14 are selected as provided by Administrative Rule and these are termed "Industry Board member positions". All validly-permitted for-hire transportation companies and drivers may vote on selecting their respective industry representatives.
- D.** Salary. Board members serve without pay, except they may receive their regular salary during time spent on Board matters.
- E.** Meeting Times; Quorum. Unless the Director cancels a meeting for good cause, the Board will meet every odd-numbered month beginning in July 2009. Eight members must be present to have a quorum, with at least five members present from the positions described in Subsections 16.40.040 B.1. - B.7. Meetings must be noticed and conducted as provided by ORS 192.610 et seq. The Board Chairperson will maintain order and establish and limit the matters to be considered at all Board meetings. The Director may schedule a special meeting provided that at least 5 days' notice is given and the meeting is otherwise noticed and conducted as provided by ORS 192.610 et seq.
- F.** Absences. If any Board member is absent from more than three regularly-scheduled Board meetings during a 12-month period, that member may be dismissed by a majority vote of the Board. If a Board member sends an alternate in his or her place as provided by Subsection 16.40.040 G., then no absence is considered to have occurred.
- G.** Alternate Members. If any Board member cannot make a regularly-scheduled meeting, that member may send an alternate in the member's place provided that the member gave at least 5 days' notice to the Director. Any alternate attending as a result of this Subsection may not vote on any Board action, unless the alternate has been appointed as an alternate by the City Council.

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- H.** Company Representative Requirements. Company representatives cannot serve as a specific industry representative unless:
1. at least 85 percent of that company's business is derived from that industry; or
 2. the company has at least 20 vehicles in that industry.
- I.** Vacancies. Any Board position that becomes vacant for any reason will be filled in the same manner as required by Subsection 16.40.040 C. for non-industry member positions, and by administrative rule for industry member positions.

16.40.050 Board Authority.

- A.** The Board advises the Bureau on matters relating to the for-hire transportation industry operating within the jurisdiction of the City of Portland.
- B.** In addition to its advisory role, the Board has the following specific authority and jurisdiction:
1. Adopt or reject administrative rules proposed by the Director;
 2. Impose, modify or remove fuel surcharges that are in addition to any fare amounts regulated under Chapter 16.40;
 3. Approve or deny applications by an LPT company to increase the number of decaled vehicles it may operate if the number has been capped by administrative rule pursuant to Section 16.40.200;
 4. Approve or deny applications by a taxi company to increase the number of permitted taxicabs it may operate pursuant to Section 16.40.210; and
 5. Recommend approval or denial of taxicab company applications pursuant to 16.40.160.

16.40.060 Board Standing Committees.

- A.** The Board has three permanent standing committees of which only validly-permitted companies and drivers may be members:
1. A "Company Standing Committee," consisting of all for-hire transportation company owners or managers;
 2. A "Taxi Driver Standing Committee," consisting of all taxi drivers; and

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- 3.** An “LPT Driver Standing Committee,” consisting of all LPT drivers.
- B.** No entities or persons regulated under Chapter 16.40 are required to attend the standing committees described in Subsection 16.40.060 A.
- C.** The Company Standing Committee will select five members who will serve as the Board members described in Subsections 16.40.040 B.8. - B.12. The selection will take place according to administrative rule. The Company Standing Committee will also select one person to serve as its Chairperson from among the five members serving on the Board.
- D.** The Driver Standing Committees will each select a member who will serve as both Chairperson of that committee and as the Board members described in Subsections 16.40.040 B.13. - B.14.
- E.** The representatives will bring to the Board’s attention issues that are important to their respective committees.
- F.** The Board may task any standing committee to review and discuss issues relevant to the for-hire transportation industry and ask the standing committee to issue a report to the Board at a future meeting. The report may or may not include specific recommendations based on the standing committee’s review and discussion.
- G.** The standing committees are responsible for adopting rules of procedure for their meetings, including the frequency of their meetings and the procedure for conduct of the meetings, except that all standing committees are required to keep minutes of the meetings and take attendance of those present. The minutes and attendance records must be reported to the Board at the next regularly-scheduled Board meeting following a standing committee meeting.
- H.** The City will assist the standing committees with notices, meeting rooms and other administrative requirements.

16.40.070 Fuel Surcharges.

- A.** The Board has the authority to impose, modify and rescind fuel surcharges. Any fuel surcharge imposed under this Section or any modification of a fuel surcharge already in place that increases the fuel surcharge must be reviewed by the Board within 180 days from its effective date.
- B.** A failure by the Board to review any fuel surcharge as required in Subsection 16.40.070 A. automatically rescinds the surcharge and it is of no further effect.

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- C.** Fuel surcharges authorized under this Section may only be imposed or modified pursuant to the criteria found in administrative rule. Fuel surcharges may be rescinded by the Board at any time, even if the criteria for allowing a fuel surcharge currently exist.
- D.** If at any time a fuel surcharge is currently in place, appropriate notification of the surcharge must be given to the public. The Board may determine by administrative rule what suffices for appropriate notification, but at a minimum all vehicles subject to a fuel surcharge must have signage in the vehicle notifying of the surcharge.

16.40.080 Pedicab Driver Permits Required – Application Process & Requirements.

- A.** Permit Required. No person may drive a pedicab without a valid, current pedicab driver's permit issued under Chapter 16.40.
- B.** Application Documents Required. Applicants for a pedicab driver's permit must submit to the Administrator the items listed below. The failure to submit any of the items listed will result in a denial of the permit:

 - 1.** a completed application on a form approved by the Administrator;
 - 2.** a copy of the applicant's current driver's license or government issued photo identification (if the company has a Bureau-approved training class relating to traffic rules and regulations); and
 - 3.** if necessary, any information that reasonably relates to the application or is a clarification of information provided to the Administrator.
- C.** Photographs. Applicants will be photographed by the Bureau upon submittal of the driver permit application. The photograph then becomes a part of the applicant's submittal package.
- D.** Fees Required. Applicants must submit a nonrefundable application fee in the amount listed in the Fee Table in Section 16.40.590.
- E.** Age and Criminal History. Applicants for a pedicab driver's permit may not be issued a permit if any of the following conditions exist:

 - 1.** The applicant has a felony of any kind in the 10 years preceding the submission of the application;

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2. The applicant has a felony involving physical harm or attempted physical harm to a person, regardless of when the conviction occurred;
 3. During the 5-year period preceding the submission of the application, the applicant has been convicted of any criminal offense involving:
 - a. any misdemeanor involving theft, robbery, burglary, assault, sex crimes, drugs, prostitution, or weapons; or
 - b. any traffic crime, including but not limited to: driving under the influence of intoxicants, reckless driving, attempt to elude a police officer, or leaving the scene of an injury accident;
 4. The applicant is less than 18 years old.
- F.** Driver Safety and Customer Service Training Requirements. Applicants must successfully complete the following training and classes within 6 months of issuance of the driver's permit:
1. A Bureau-approved driver safety program; and
 2. A Bureau-approved customer service training class.
- G.** Driver Knowledge and Skills Testing Requirements. Applicants must successfully complete each of the following tests as administered by the Bureau before a permit can be issued:
1. Map-reading;
 2. Relevant City Code provisions and administrative rules; and
 3. Portland-area attractions.

16.40.090 LPT and Taxi Driver Permits Required – Application Process & Requirements.

(Amended by Ordinance No. 185496, effective August 10, 2012.)

- A.** Permit Required. No person may drive a for-hire transportation vehicle without a valid, current for-hire transportation driver's permit issued under Chapter 16.40.
- B.** Application Documents Required. Applicants for a for-hire transportation driver's permit must submit to the Administrator the items listed below. The failure to submit any of the items listed will result in a denial of the permit:

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1. a completed application on a form approved by the Administrator;
 2. a copy of the applicant's current driver's license;
 3. a copy of the applicant's non-Oregon driving record for any year in which the applicant was not a resident of Oregon during the last 10 years, regardless of the jurisdiction; and
 4. if necessary, any information that reasonably relates to the application or is a clarification of information provided to the Administrator.
- C.** Photographs. Applicants will be photographed by the Bureau upon submittal of the driver permit application. The photograph then becomes a part of the applicant's submittal package.
- D.** Fees Required. Applicants must submit a nonrefundable application fee in the amount listed in the Fee Table in Section 16.40.590.
- E.** Age, Criminal History, Driving History and Insurability Requirements. Applicants for a driver's permit may not be issued a permit if any of the following conditions exist:
1. The applicant has a felony of any kind in the 10 years preceding the submission of the application;
 2. The applicant has a felony involving physical harm or attempted physical harm to a person, regardless of when the conviction occurred;
 3. During the 5-year period preceding the submission of the application, the applicant has been convicted of any criminal offense involving:
 - a. any misdemeanor involving theft, robbery, burglary, assault, sex crimes, drugs, prostitution, or weapons; or
 - b. any traffic crime, including but not limited to: driving under the influence of intoxicants, reckless driving, attempt to elude a police officer, or leaving the scene of an injury accident;
 4. During the 5-year period preceding the submission of the initial application, the applicant had greater than 10 traffic infractions as defined in ORS 801.557; greater than five serious traffic violations as defined in ORS 801.477; greater than five motor vehicle accidents that are required to be reported to the Oregon Department of Motor Vehicles pursuant to

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ORS 811.720; or, greater than five of any combination of serious traffic violations or motor vehicle accidents as provided above;

5. During the 10-year period preceding the filing of the initial application, the applicant's driving privileges were suspended or revoked by any governing jurisdiction as a result of a driving-related incident;
 6. The applicant has more than two traffic violations or infractions of any kind within the previous 12 months from the date of the application;
 7. The applicant has more than four infractions of any kind within the previous 12 months from the date of the application;
 8. The applicant does not have at least 2 years' worth of continuous driving experience in a United States jurisdiction immediately prior to the date of the application's submission;
 9. The applicant is less than 21 years old; or
 10. The applicant is unable to obtain car insurance for any reason.
- F.** Driver Safety and Customer Service Training Requirements. Applicants must successfully complete the following training and classes within 6 months of issuance of the driver's permit:
1. A Bureau-approved driver safety program; and
 2. A Bureau-approved customer service training class.
- G.** Driver Knowledge and Skills Testing Requirements. Applicants must successfully complete each of the following tests as administered by the Bureau before a permit can be issued:
1. Map-reading;
 2. Relevant City Code provisions and Administrative Rules; and
 3. Portland-area attractions.
- H.** CPR Training for SAT Drivers. In addition to all other requirements found in Section 16.40.090, SAT drivers must have CPR and advanced first aid certifications within 6 months of issuance of the driver's permit.

- I.** The Director is authorized to provide by Administrative Rule the special permitting process for round trip medical transportation from distant areas for service provided by medical brokerages under contract with the Oregon Health Authority.

16.40.100 Issuance of Driver's Permit; Term; Replacements.

- A.** Issuance and Fees. If an applicant submits the required documents and otherwise satisfies all conditions and requirements found in Section 16.40.090 or, if applicable, Section 16.40.080 (pedicabs), the Administrator will issue a driver's permit to the applicant within 20 days of completion of all requirements and payment of the permit fees outlined in the Fee Table in Section 16.40.590.
- B.** Permit Requirements: All driver permits must:
- 1.** contain the permit number, permit expiration date, the driver's name and the driver's photograph;
 - 2.** be posted in a prominent place within any vehicle driven by the permitted driver if the vehicle is a taxicab, pedicab, shuttle or SAT; and
 - 3.** be inside the vehicle and available for inspection by any customer, passenger, police officer or designated City employee if the vehicle is a limousine or executive sedan.
- C.** Term. Driver's permits are valid for a period of 12 months from the date of issuance and must be renewed upon expiration. Permits expire on the last day of any given month, regardless of what day of the month the Bureau issued the permit. In order to achieve the goal of staggered renewal dates, the Board may by administrative rule require that initial permit terms following passage of this ordinance are valid for a period of less than 12 months.
- D.** Replacements. If a driver's permit is lost, damaged or stolen, the Administrator will issue a replacement permit for a fee in the amount outlined in the Fee Table in Section 16.40.590.
- E.** Compliance with Business License Tax Law. If applicable, any driver issued a driver's permit under this Chapter must comply with all provisions of the Business License Tax Law, Chapter 7.02, within 60 days of issuance of a driver's permit.
- F.** Suspension for Failure to Complete Training. Drivers that do not successfully complete all training and skills tests as required by Subsections 16.40.080 F., 16.40.090 F. and 16.40.090 H. within 6 months of the permit's issuance must

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return their permits to the City and those permits are thereafter suspended pending completion of all required skills tests and trainings. If the required tests and trainings are not completed within 9 months of the permit's original issuance date, the permit is revoked and applicants must begin the permit process again.

16.40.110 Further Review and/or Denial of a Driver Permit Application.

- A.** “Request for More Information” Letter. If the Administrator determines that a permit cannot be issued due to an incomplete application, a failure to pay the application fee, or for any reason found in Section 16.40.090 or, if applicable, Section 16.40.080 (pedicabs) that can potentially be corrected, the Administrator will send the applicant a “Request for More Information” letter (the “Information Letter”) within 21 days of the initial application date. If the applicant is a taxi driver, the Administrator will also mail a copy of the Information Letter to the sponsoring taxi company. If the Administrator does not grant a permit or send an Information Letter within 21 days, the application is deemed denied and the applicant may appeal pursuant to Section 16.40.580.
- B.** Contents of Information Letter. The letter must list the reason(s) in Section 16.40.090 or, if applicable, Section 16.40.080 (pedicabs) that require further information and/or review before a permit may be issued.
- C.** Applicant Response Opportunity. If an applicant receives an Information Letter, the applicant may respond by either:
 - 1.** Submitting any missing information as requested by the Administrator in the letter;
 - 2.** Submitting any explanatory information regarding any criminal or driving infraction that was the subject of the denial;
 - 3.** Completing, within 90 days, any skills tests, driving tests, or knowledge tests that the applicant failed; or
 - 4.** Demonstrating to the Bureau's satisfaction that the disqualifying factor is either not likely to reoccur or that it occurred under circumstances that diminish the seriousness of the behavior.
- D.** Successful Response. Applicants that successfully and timely address the initially-disqualifying reason found in the Information Letter will be issued a driver's permit pursuant to Section 16.40.100.
- E.** Failure to Respond. An application is deemed rejected if the applicant fails to respond in writing within 10 days to an Information Letter. Rejected applicants

that subsequently wish to obtain a driver's permit must file a new application and meet all the requirements of Section 16.40.090 or, if applicable, Section 16.40.080 (pedicabs), including paying all necessary application fees. If the applicant shows that the delay in responding was based on good cause, the Administrator may allow the applicant to respond to the Information Letter in the manner prescribed in Subsection 16.40.110 C.

16.40.120 Driver Permit Renewals; Consequences of Failure to Renew.

- A.** Driver permits must be renewed every 12 months from the date of issuance.
- B.** Every 2 years from the date of the initial permit, drivers must successfully complete all driver safety classes as described in Subsection 16.40.090 F. In addition, the City will conduct a review of the driver's criminal history and DMV records during this time.
- C.** The following information, certificate of completion and payment amount must be submitted to the Bureau no less than 1 month prior to the renewal date:
 - 1.** Updated file information if any information in the original application has changed;
 - 2.** Payment of the renewal fee as outlined in the Fee Table in Section 16.40.590.
 - 3.** Certificate of completion of a Bureau-approved driver safety class as described in Subsection 16.40.090 F.
- D.** Permits will not be renewed unless the driver is in compliance with the City's Business License Tax Law, Chapter 7.02, if applicable.
- E.** Except as provided in Subsection 16.40.120 B., permits will not be renewed if the driver fails to satisfy any condition that would have been grounds to deny the initial permit, including any criminal activity or driving crimes/violations.
- F.** Permits will not be renewed if the driver has more than five assessed civil penalties or more than \$4,500 in assessed civil penalty fines in the 12 months prior to the renewal date.
- G.** If a driver fails to timely pay the permit renewal fee, timely provide the renewal information required by Subsection 16.40.120 C., or fails to timely complete any training course as required by Subsection 16.40.120 B., the permit expires and becomes void. Voided driver permits require the former permittee to file an initial

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permit application and pay all necessary fees as outlined in Section 16.40.090 or, if applicable, Section 16.40.080 (pedicabs) to obtain a valid permit.

16.40.130 LPT Company Permits Required – Application Process & Requirements. (Amended by Ordinance No. 185496, effective August 10, 2012.)

- A.** Permit Required. No person or entity may conduct business as an LPT for-hire transportation company without a valid, current LPT company permit issued by the City under Chapter 16.40.
- B.** Application Requirements. An applicant for an LPT company permit must submit to the Administrator:
 - 1.** a completed application on a form supplied by the Bureau;
 - 2.** proof of registration with the Secretary of State for any corporate, LLC or LLP entity;
 - 3.** proof of registration with the Secretary of State for any assumed business name, along with a listing of the registrant of such;
 - 4.** The name of any person or entity holding an ownership interest of 20 percent or more for any corporation, limited liability company or limited liability partnership;
 - 5.** If an SAT company, proof that it has at least one valid government-approved contract for services; and
 - 6.** A nonrefundable application fee in the amount outlined in the Fee Table in Section 16.40.590.
- C.** Additional Requirements. In addition to the requirements of Subsection 16.40.130 B., the Board has the authority to require, by administrative rule, that the applicant demonstrate some or all of the following:
 - 1.** that it has an adequate amount of financial resources to ensure compliance with the requirements of this Chapter, including, but not limited to, insurance and vehicle requirements,
 - 2.** that it has a valid business plan to enter into the for-hire market,
 - 3.** that there is a need for additional LPT service providers in the City limits to service a growing demand or that the applicant has a business model to attract new business in the current market.

- D.** Compliance with Secretary of State Rules. No permit will be issued unless the company is validly registered with the Secretary of State, including all assumed business names.
- E.** The Director is authorized to provide by Administrative Rule the special permitting process for round trip medical transportation from distant areas for service provided by medical brokerages under contract with the Oregon Health Authority.

16.40.140 Issuance of LPT Company Permits; Term; Replacements.

- A.** Issuance of Permit. If the applicant provides all necessary documents required in Subsection 16.40.150 D., and if the applicant has a current business license issued under Chapter 7.02, the Administrator will issue an LPT Company permit upon the payment of the required permit fee as outlined in the Fee Table in Section 16.40.590. If the applicant fails to satisfy any requirement, the permit will be denied.
- B.** Term. LPT Company permits are valid for a period of 12 months from the date of issuance. Permits expire on the last day of any given month, regardless of what day of the month the Bureau issued the permit. In order to achieve the goal of staggered renewal dates, the Board may by administrative rule require that initial permit terms following passage of this ordinance are for less than 12 months.
- C.** Replacement Permit. If an LPT company permit is lost, damaged or stolen, the Administrator will issue a replacement permit for a fee amount as outlined in the Fee Table in Section 16.40.590.

16.40.150 Taxicab Company Permits Required – Application Process & Requirements.

- A.** Permit Required. No person or entity may conduct business as a taxicab company without a valid, current company permit issued by the City under Chapter 16.40.
- B.** Application Requirements. An applicant for a taxicab company permit must submit to the Administrator:
 - 1.** a completed application on a form supplied by the Bureau;
 - 2.** proof of registration with the Secretary of State for any corporate, LLC or LLP entity;
 - 3.** proof of registration with the Secretary of State for any assumed business name, along with a listing of the registrant of such;

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4. A list of all persons or entities with more than 10 percent stock ownership if the company issues stock certificates; and
 5. A nonrefundable application fee in the amount outlined in the Fee Table in Section 16.40.590.
- C. Compliance with Secretary of State's Rules. No permit will be issued unless the company is validly registered with the Secretary of State, including all assumed business names.

16.40.160 Issuance or Denial of Taxicab Company Permit; City Council Action.

- A. Administrator Review Process. After receiving a completed taxicab company application form and upon successful completion of all the requirements of Section 16.40.150, the Administrator will review the application in order to make a recommendation to the Board for approval or denial.
- B. Recommendation Factors. The Administrator's recommendation will be based upon the requirements of Chapter 16.40, any regulations established by the Board pursuant to Section 16.40.050, and the following additional factors:
1. The current status of the public transportation system in the City;
 2. The current and future ability of the public transportation system to provide the timely and effective movement of persons;
 3. The ratio of population within the City of Portland to the number of taxicabs currently in operation;
 4. The demonstrated need for additional taxicab service in the City that is not accomplished by existing companies, as shown by the applicant;
 5. The present utilization patterns of taxicabs currently in operation; and
 6. The interests of the applicant in establishing a local business to legitimately serve the citizens of this City.
- C. Administrator's Staff Recommendation Report. Upon completion of the review process outlined in Subsection 16.40.160 A., the Administrator will prepare a Staff Recommendation Report that recommends approval or denial of the application. If the Administrator recommends denial, the Administrator will state the specific reasons therefore in the Staff Recommendation Report.

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- D.** Board Review. Upon completion of the Staff Recommendation Report the Administrator will forward it and the original taxi company application to the Board for consideration at the next regularly-scheduled Board meeting. The Board will review the application and the Staff Recommendation Report and will consider the Administrator's recommendation. Board members may ask questions of the applicant during the Board meeting. Upon the Board's review and consideration of the application, it will then vote on whether it recommends approval or denial of the application. The Board will reduce its recommendation to a written document (the "Board Recommendation") and the Bureau will forward it to the City Council along with the Staff Recommendation Report.
- E.** Council Hearing. Once the Bureau has forwarded the Staff Recommendation Report and the Board Recommendation to City Council, the Administrator will contact the Auditor's Office and set a Council hearing date on the Board's recommendation of the applicant's approval or denial. The Council will conduct a public hearing regarding the Board's recommendation on the application. At such hearing the officers and/or major stockholders in the applicant company may be directed by the Council to personally appear before it.
- F.** Council's Standard of Review. The Council's review is de novo, but it will consider the Staff Recommendation, the Board's Recommendation, and the factors found in Subsection 16.40.160 B. in determining whether to grant an application for a new taxicab company permit.
- G.** Issuance or Denial of Permit. At the close of the hearing, the Council will direct the Bureau to issue a taxicab company permit to the applicant only if it finds:

 - 1. That the interests of the City will be served thereby; and
 - 2. That the applicant has sufficient financial resources to be able to meet the minimum standards established by Section 16.40.270.
- H.** Conditions of Permit. If the permit is granted, it may contain such terms or conditions as the Council deems appropriate.
- I.** Fees. The Bureau cannot issue the taxicab company permit until the applicant pays the permit fee outlined in the Fee Table in Section 16.40.590.

16.40.170 LPT and Taxicab Company Permit Renewals.

(Amended by Ordinance No. 185721, effective November 7, 2012.)

- A.** LPT and Taxicab Company permits must be renewed 12 months after issuance. All permits expire on the last day of any given month, regardless of what day of the month the original permit was issued.

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- B.** The following information and documents must be submitted to the Bureau no later than 1 month prior to the renewal date:
 - 1.** Updated file information if any information in the initial application has changed; and
 - 2.** Updated copies of insurance certificates for any permitted vehicles that are subject to the requirements found in Section 16.40.410.
- C.** LPT and taxi companies must pay the renewal fees outlined in the Fee Table in Section 16.40.590.
- D.** Permits will not be renewed if the company fails to satisfy any condition that would have been grounds to deny the initial permit.
- E.** Permits will not be renewed unless the company is in compliance with the City's Business License Tax Law, Chapter 7.02.
- F.** Permits will not be renewed if the company does not have a current, valid registration with the Oregon Secretary of State's office, including registration of all assumed business names.
- G.** Company and vehicle permits will not be renewed if the company does not achieve the minimum score on the matrix of taxi company performance standards. The number of taxi vehicle permit renewals granted will be related to review of the performance standards. Taxi company performance standards will be described by administrative rule.

16.40.180 Pedicab Decals Required – Application Process & Requirements.

- A.** Decal Required for Pedicabs. No pedicab may be used as a for-hire transportation vehicle without a valid and unobstructed decal issued by the City under Chapter 16.40. Applicants for a vehicle decal must satisfy the conditions as set forth in Subsections 16.40.180 B. – F. for every vehicle decal application, which includes providing to the Bureau a copy of all certificates required.
- B.** Application Form. The applicant for a pedicab decal must complete a "Pedicab Decal Application Form" provided by the Administrator and which includes the following requested information:
 - 1.** Pedicab Make;
 - 2.** Pedicab Model; and

3. Pedicab Owner.
- C. Insurance Certificate. All pedicab applicants must provide the Bureau with an insurance certificate of liability indicating that the requirements of Section 16.40.420 have been satisfied.
- D. Safety Inspection. The Board has the authority, by administrative rule, to require that a pedicab satisfy certain safety standards before it may be decaled. This may include inspection by an independent third party or inspection by City personnel.
- E. Pedicab Condition. Notwithstanding Subsection 16.40.180 D., no pedicab will be decaled if the Administrator determines that the interior is not clean and/or the exterior is not in good condition.
- F. Fees. Pedicab companies must pay a nonrefundable application fee for each for-hire pedicab applying for a decal in the amount outlined in the Fee Table in Section 16.40.590.

16.40.190 LPT Decals and Taxiplates Required; Application Process & Requirements.
(Amended by Ordinance Nos. 185496 and 185497, effective August 10, 2012.)

- A. Decal Required for LPT Vehicles. No LPT vehicle may be used as a for-hire transportation vehicle without a valid and unobstructed decal issued by the City under Chapter 16.40. Applicants for a vehicle decal must satisfy the conditions as set forth in Subsections 16.40.190 C. – J. for every vehicle decal application, which includes providing to the Bureau a copy of all certificates required.
- B. Taxiplate Required for Taxicabs. No taxicab vehicle may be used as a for-hire transportation vehicle without a valid and unobstructed taxiplate issued by the City under Chapter 16.40. Applicants for a taxiplate must satisfy the conditions as set forth in Subsections 16.40.190 C. – J. for every vehicle taxiplate application, which includes providing to the Bureau a copy of all certificates required.
- C. Application Form. The applicant for a vehicle decal or taxiplate must complete a “Decal/Taxiplate Application Form” provided by the Administrator and which includes the following requested information:
 1. Vehicle Make;
 2. Vehicle Model;
 3. Vehicle Identification Number (VIN);

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4. Vehicle Owner;
 5. Vehicle Model Year;
 6. Vehicle License Plate Number; and
 7. Whether the vehicle is wheelchair accessible
- D.** Age of Vehicle. After December 31, 2011, decals and taxiplates will not be issued to a for-hire vehicle applicant unless the vehicle meets the age requirements below. For the purposes of Chapter 16.40, the age of a vehicle is determined by the manufacturer's model year, regardless of when the vehicle was purchased or put into service as a "for-hire" vehicle. Apart from the exception found in Subsection 16.40.190 E., no for-hire vehicle may be older than the following ages:
1. Taxicabs: 10 years
 2. Shuttles: 10 years
 3. Executive Sedans: 10 years
 4. SAT's: 10 years
 5. Wheelchair Accessible Vehicles: 10 years for all new and replaced wheelchair accessible vehicles, effective January 1, 2013; except that vehicles purchased and put into service prior to January 1, 2013 may be used and renewed until they are 15 years old, so long as they remain continuously permitted and in service from the time of purchase.
- E.** Vehicle Age Exception. Applicants whose vehicles are considered "classic" or "antique" under criteria found in administrative rule may petition the Administrator for an exception to the vehicle age requirements found in Subsection 16.40.190 D. Applicants who can demonstrate to the Administrator that their vehicle is in excellent safety, mechanical and physical condition despite it being beyond the age limits found in Subsection 16.40.190 D. may be granted an exception to those age limits.
- F.** Insurance Certificate. All decal and taxiplate applicants must provide the Bureau with an insurance certificate of liability indicating that the requirements of Section 16.40.410 have been satisfied.
- G.** Safety Certificate. Each vehicle must pass a standardized vehicle safety test as performed by a certified mechanic approved by the City. The Certified Mechanic

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will then issue to the applicant a “Safety Certificate” stating that the vehicle passed the required safety inspection. A list of certified mechanics and the things that must be inspected by the mechanic are found in administrative rules.

- H.** Vehicle Condition. Notwithstanding the issuance of a safety certificate, no vehicle will be decaled or taxiplated if the Administrator determines that the interior is not clean and/or the exterior is not in excellent condition.
- I.** Vehicle Registration. All applicants must provide the Administrator with a copy of the appropriate state-issued vehicle registration for all for-hire transportation vehicles.
- J.** Fees. All for-hire companies must pay a nonrefundable application fee for each for-hire vehicle applying for a decal or taxiplate in the amount outlined in the Fee Table in Section 16.40.590.
- K.** The Director is authorized to provide by Administrative Rule a substitute decal or permit card for round trip medical transportation from distant areas for service provided by medical brokerages under contract with the Oregon Health Authority.

16.40.200 Limit on Number of LPT Vehicles Allowed.

- A.** The total number of LPT decal-issued vehicles for any specific LPT industry (sedan, limousine, shuttle, SAT or pedicab) may be capped by administrative rule if the Bureau determines that market saturation exists. In determining if market saturation exists, the Bureau will examine the factors outlined in administrative rule.
- B.** If the Bureau determines that market saturation exists after examining the factors listed in administrative rule, the Director may ask the Board to adopt an administrative rule capping the number of LPT vehicles for that specific industry. In making this determination, the Bureau is not required to find that all factors are present, nor is it required to give any one factor priority over other any other factor.
- C.** If the Board adopts an administrative rule that caps the number of LPT decaled vehicles, then no new permits will be issued by the Bureau in that specific industry category.
- D.** Notwithstanding Subsection 16.40.200 C., no currently-decaled vehicle will be required to forfeit its decal upon adoption of any administrative rule capping the number of decaled vehicles allowed.

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- E.** Notwithstanding Subsection 16.40.200 C., any vehicle that has been providing for-hire transportation for at least 12 months prior to June 1, 2009, and which was not subject to this Chapter's requirements at that time but which is subject to this Chapter's requirements as of June 1, 2009, may be permitted provided that the Bureau receives its application for a permit by August 31, 2009.
- F.** If the Board adopts an administrative rule that caps the number of decaled LPT vehicles, any LPT company affected by the cap may apply to the Board for an increase in the number of decaled vehicles that it may operate notwithstanding the cap. The application must be in a form established by the Administrator. Applications will only be accepted from April 1 – April 30 and September 1 – September 30 of any given year. Requests for more LPT vehicle decals will be considered by the Board at the first regularly-scheduled board meeting after July 1 for the April applications and after December 1 for the September applications. Bureau staff will submit a recommendation to the Board at least 10 days prior to the meeting, but the Board is not required to follow staff's recommendation. The Board may grant the application in whole or in part upon a finding that an increase in decaled vehicles for the applicant would not detrimentally affect market saturation or that the applicant has demonstrated a need for increased vehicles to serve a growing demand for that applicant.

16.40.210 Limit on Number of Taxicabs Allowed.

(Amended by Ordinance No. 185721, effective November 7, 2012.)

- A.** No taxicab company may operate more taxicabs than authorized by the Council, unless additional taxicabs have been authorized by the Board pursuant to Subsection 16.40.210 B.
- B.** A taxicab company may apply to the Board for an increase of the number of taxicabs that the company may operate. The application must be in a form established by the Administrator. Applications will only be accepted from April 1 – April 30 and September 1 – September 30 of any given year. Requests for more taxiplates will be considered by the Board at the first regularly-scheduled board meeting after July 1 for the April applications and after December 1 for the September applications. Bureau staff will submit a recommendation to the Board at least 10 days prior to the meeting, but the Board is not required to follow staff's recommendation. The Board may grant the application in whole or in part.
- C.** If the Board approves an increase in the number of taxicabs that a company may operate, it may also impose additional conditions, including but not limited to, vehicle type or utilization. If a condition is imposed under this Subsection, the Board may remove it upon application by the taxi company if the Board determines that the reasons for the condition no longer exist or have otherwise been minimized.

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- D.** Any Board action that authorizes an increase in the number of taxicabs operated by a taxicab company is automatically stayed if a timely appeal of such action is filed by an aggrieved party pursuant to the procedures in Section 16.40.580.
- E.** Board review of taxi company requests for additional vehicle permits will include evaluation of taxi company performance standards, as described by administrative rule.

16.40.220 Vehicle Decal and Taxiplate Issuance or Denial.

- A.** Upon successful completion of the vehicle or pedicab decal/taxiplate application process and payment of the required permit fee as outlined in the Fee Table in Section 16.40.590, the Administrator will issue a vehicle identification decal bearing a bar code and the city seal for each LPT vehicle or pedicab that qualifies, and the Administrator will issue a taxiplate bearing a unique City-issued number for each taxicab that qualifies.
- B.** Decals and taxiplates are valid for a period of no more than 12 months from the date of issuance, and all decals and taxiplates expire on the same day as the expiration of the LPT or Taxi Company permit with which they are affiliated. Fees for decals and taxiplates that are not issued contemporaneously with a company permit will be prorated to equal the cost of the number of months remaining until the company permit expires.
- C.** Decals must be affixed to the vehicle's front and back window in a manner outlined by administrative rule.
- D.** Taxiplates must be affixed to the trunk, tailgate or rear bumper of the taxicab.
- E.** All decals and taxiplates must be clearly visible upon outside inspection.
- F.** Permittees may not operate any substitute vehicle or pedicab until the substitute vehicle or pedicab has passed the safety inspection process and has a decal or taxiplate affixed to it.
- G.** Decals that are intentionally destroyed or damaged by the permittee prior to renewal and without the City's authorization are not subject to renewal.

16.40.230 Vehicle Decal and Taxiplate Renewals.

- A.** Company permittees must pay a renewal fee in the amount outlined in the Fee Table in Section 16.40.590 for each decaled and taxiplate vehicle no later than 1 month prior to the decal or taxiplate's expiration date.

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- B.** If the permittee fails to pay the renewal fee or provide other renewal information as required by Subsection 16.40.230 A., the vehicle decal or taxiplate is deemed abandoned and the vehicle decal or taxiplate becomes void within 30 days of its original expiration date.
- C.** Voided vehicle decals and taxiplates are not renewable in the year following their voidance.
- D.** Once a vehicle decal or taxiplate is voided, a for-hire transportation company may not renew that decal or taxiplate and instead must complete the initial application process if the company seeks a decal or taxiplate for that vehicle.
- E.** With the exception of pedicabs, vehicle decals and taxiplates will not be renewed unless the vehicle passes the safety inspection test outlined in Subsection 16.40.190 G. and the permittee provides the City with a Certificate of Safety.
- F.** No decal or taxiplate will be issued as a renewal if any condition exists that would have been grounds for denial of the initial decal or taxiplate.

16.40.240 Transfer of Decal, Permit or Taxiplate Interest Prohibited.

- A.** All permits, decals and taxiplates issued by the City under the terms of this Chapter are City property and cannot be leased, sold, transferred or assigned in any manner.
- B.** Any decal, taxiplate or permit that is not returned to the City within 21 days upon revocation or upon a failure to renew is considered conversion of City property and is an actionable offense in a court of competent jurisdiction.
- C.** Any person or company that fails to return, within 21 days, any decal, taxiplate or permit upon revocation or upon a failure to renew is subject to a civil penalty of \$1,500.

16.40.250 Knowingly Providing False Information; Penalties.

- A.** Any person that knowingly provides materially false information on any document, insurance form, report or application required under this Chapter is subject to a civil penalty of \$250 for each occurrence.
- B.** If the correct information would have been grounds for a denial of a permit for any reason, then any permit issued due to the false information is revoked in addition to the penalty found in Subsection 16.40.250 A.

- C.** If a person knowingly provides materially false information to an insurance agent, broker or company as part of the requirements for insurance under this Chapter, then all permits issued to that person will be revoked immediately upon the date the violation is discovered by the Administrator.

16.40.260 Late Submission of Payments Due, Information or Documents; Penalties.

- A.** Any person that does not timely submit any payment when due, or who does not timely submit any information or documents required under this Chapter or requested by the Administrator, is subject to a civil penalty as described in Subsection 16.40.260 B.
- B.** Civil penalties for late submissions will be assessed as follows:
 - 1.** If less than 10 days late, the penalty is \$50 per occurrence.
 - 2.** If more than 10 days late but less than 21 days late, the penalty is \$100 per occurrence.
 - 3.** If more than 21 days late the penalty is \$200 per occurrence and, if the information or documents are necessary for the issuance or renewal of a permit, the permit will not be issued by the City absent a showing of good cause for the delay.

16.40.270 Minimum Standards of Service for Taxicab Companies.

Permitted taxicab companies must comply with the following minimum standards:

- A.** A dispatch system in operation 24 hours each day capable of providing reasonably prompt service in response to requests received by telephone.
- B.** Acceptance of any request for taxicab service received from any location within the City.
- C.** Service city-wide, 24 hours a day, 7 days a week. If more than 65 percent of the company's permitted taxicabs are found within a 1 mile radius of the Portland International Airport's main entrance road at any given time (not including any taxicabs at a company headquarters), a rebuttable presumption exists that the company is not providing city-wide service.
- D.** A minimum fleet of 15 taxicabs.
- E.** At least 2/3 of the taxicab company's permitted fleet must be utilized and in service at all times. Utilization is measured by the number of days in operation divided by a given number of days. This test will be for no fewer than 30 days.

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16.40.280 Taxicab Digital Security Camera Systems.

- A.** Digital security cameras are required in every permitted taxicab. Taxicab companies own the cameras and are responsible for their maintenance and the records produced by them.
- B.** Taxicab companies must perform inspection and testing of the cameras according to the recommended product specifications, requirements and schedule.
- C.** If a Portland Police Bureau Officer requests access to any record produced by the digital security camera systems to assist in the investigation of any crime, the taxi company must provide access thereto within 24 hours. Except as provided by Subsection 16.40.280 B., no person other than a Portland Police officer may intentionally access any record produced by the digital security camera systems.
- D.** No taxicab company or driver may allow any person to intentionally access any records produced by the digital security camera systems.
- E.** No taxicab company or driver may benefit or gain from any records produced by digital security camera systems.
- F.** No taxicab driver may tamper with, damage, disturb, remove or disable a digital security camera system in a taxicab.
- G.** Taxicab drivers must utilize the digital security camera and immediately notify the taxicab company if a digital security camera system is or appears to be damaged, stolen or inoperative.

16.40.290 Taxicab Fare Rates.

(Amended by Ordinance No. 185722, effective November 7, 2012.)

- A.** The following are the maximum rates that can be charged for the transportation of passengers in taxicabs for trips within the City limits:
 - 1.** An initial charge of \$2.50, for one passenger, and waiting time at a rate of \$30 per hour or proportionate fraction thereof;
 - 2.** Subsequent to the initial charge provided for in Subsection 16.40.290 A.1., the maximum charges may not exceed \$2.60 per mile; and
 - 3.** For each extra passenger, \$1 additional charge.

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- B.** Taxi companies are authorized, per company policy, to require that passengers must use cash only to pay for fares of less than \$5. If a taxi company has such a policy in effect, it must post that policy in all taxiplated taxicabs in a manner consistent with the requirements of Subsection 16.40.290 G.
- C.** The Bureau has the authority to perform a rate study annually to determine appropriate maximum meter rates.
- D.** If there is more than one passenger during a taxi trip, the last person leaving the cab is responsible for the entire fare – regardless of when other passengers boarded or disembarked. The taximeter is started at the beginning of the trip but not again until the last passenger has arrived at that passenger's destination.
- E.** No extra charge is to be made for transporting any items belonging to a passenger if those items fit within the interior of the taxicab (including the trunk but not the front seat), provided that the items in total can be carried by the driver and/or passenger(s) in one walking trip from the vehicle to the building entrance, and each item can be carried by a single person.
- F.** No charge is to be made for time lost or distance traveled while the taxicab is disabled. No charge is to be made for traveling empty while en route to pick up a passenger, unless the person requesting the taxicab unreasonably refuses to hire it after it arrives, in which case an amount equal to the minimum charge on file as specified in Subsection 16.40.290 A. may be charged.
- G.** A clear and complete summary of a taxi company's rate schedule must be posted in a conspicuous place in the passenger compartment of every taxicab. Every taxicab company must provide the Administrator with a copy this summary prior to posting them in the taxis. A summary of the meter rate in a form approved by the Administrator must be placed in a manner to be visible from the outside of every taxicab. If the Administrator approves a change of rate schedule upon proper filing by the taxi company, the taximeter, rate card, and rates posted must be converted for every taxicab within 30 days. The rates posted must match those used in the taximeter of any taxicab in service.

16.40.300 Wheelchair Accessible Taxicabs.

- A.** At least 20 percent of every taxi company fleet must be wheelchair accessible.
- B.** Notwithstanding Subsection 16.40.300 A., companies that participate in the Portland Accessible Cab Association Agreement (PACA) are required to have only 10 percent of their fleet wheelchair accessible.

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- C.** The percentages required under this Section are calculated with respect to taxicab vehicles that are permitted by the City of Portland and not to the entire taxicab fleet if some percentage of the fleet operates outside the City. The percentages apply only to vehicles being used exclusively as taxicabs and not as specially attended transportation vehicles in conjunction with any other agency, private or government contract.
- D.** Taxi companies that participate in the PACA are required to provide wheelchair accessible taxi service within a reasonable time. It is a rebuttable presumption that any time beyond 30 minutes is unreasonable.

16.40.310 Taximeter Requirements.

- A.** Every taxicab must be equipped with a taximeter in accurate operating condition, with a lighted face that can easily be read at all times by the passenger.
- B.** Every taximeter must be inspected by a certified taximeter installer and certified at installation, at change in rate, and within 1 year of the last inspection. A certificate of inspection must be issued by a qualified taximeter repair service upon each inspection. A copy of the certificate of inspection must remain in the taxicab.
- C.** Certificates of inspection must include:
 - 1.** The identifying number of the taximeter;
 - 2.** The make, model and license number of the taxicab in which the taximeter is installed;
 - 3.** The name of the taxicab company;
 - 4.** The date of inspection;
 - 5.** A statement that the taximeter has been inspected and approved as operating within the limits of accuracy as specified by Subsection 16.40.310 E., as well as on the basis of rates on file with the Administrator under Section 16.40.290; and
 - 6.** The signature of the individual making the certification.
- D.** Taxi companies must keep on file copies of all certificates of inspection until the taximeter is recalibrated and the certificate is no longer accurate.

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- E.** Taximeters must operate within the following limits of accuracy: Plus or minus 50 feet in 1 mile and 1 second in 1 minute of waiting time.
- F.** Certificates of inspection may be examined or a taximeter re-inspected by any police officer or the Administrator at any time during normal business hours.
- G.** All taximeters must be approved by the National Type Evaluation Program (NTEP) as evidenced by a “Certificate of Conformance” issued by an authorized inspector. All taximeters must have an active NTEP Certificate of Conformance number.

16.40.320 Required Taxicab Equipment.

Every taxicab must be equipped with a top light, have seat belts for every passenger and have signage in a visible location within the taxicab that says: YOU ARE ON CAMERA. IT IS A FELONY IN OREGON TO ASSAULT A TAXICAB DRIVER.

16.40.330 Identification of Taxicab Vehicles.

- A.** Every taxicab must prominently display on both sides of the vehicle the following information:
 - 1.** the full name of the taxicab company;
 - 2.** the company-assigned taxi number;
 - 3.** the telephone number of that company where service can be requested; and
 - 4.** the word "taxi", "cab" or "taxicab".
- B.** Every taxicab must be painted in the colors of its company. No two taxicab companies may have the same colors.
- C.** Only vehicles with City-issued taxiplates may be equipped with a top light or taximeter, and only those vehicles may use the words “taxi”, “cab” or “taxicab” anywhere on the vehicle, unless the company’s legally registered name at the time this ordinance passes contains the word “cab”.

16.40.340 Driver Conduct Requirements and Prohibitions.

- A.** No permitted driver shall:
 - 1.** Allow another person to use his/her driver’s permit;

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2. Drive or allow another person to drive a for-hire transportation vehicle without a valid driver's license;
 3. Operate any for-hire transportation vehicle while consuming, or while under the influence of alcohol, or in a careless or reckless manner or in a manner contrary to the laws of this City or the State of Oregon;
 4. Operate any for-hire transportation vehicle while consuming, or while under the influence of illegal drugs;
 5. Operate any for-hire transportation vehicle if impaired by any legally-prescribed or over-the-counter drugs;
 6. Use a for-hire transportation vehicle in the commission of any crime;
 7. Use profane or obscene language offensive to the passenger while operating a for-hire transportation vehicle;
 8. Smoke any substance or use tobacco in any form inside a permitted vehicle, unless it is a pedicab;
 9. Allow any passenger to smoke any substance or use tobacco in any form inside a permitted vehicle, unless it is a pedicab;
 10. Defraud a passenger in any way;
 11. Be discourteous to a passenger;
 12. Refuse to issue a fully completed receipt for a fare paid if one is requested; or
 13. Drive passengers to their destination by any other than the most direct and safe route, unless requested to do so by the passenger.
- B.** In addition to the prohibitions in Subsection 16.40.340 A. above, no taxicab driver shall:
1. Charge a fare higher than that authorized by Chapter 16.40 for passenger transportation; or
 2. Refuse to transport to his requested destination any passenger of proper demeanor who requests services or is assigned by a taxicab service company when the taxicab is not already in service, and who is able to demonstrate the ability to pay the fare.

- C. The Administrator has the authority to investigate any and all complaints concerning possible violations of Chapter 16.40 or administrative rules adopted hereunder and to fine accordingly if a violation is found.

16.40.350 Pedicab Regulations.

Unless the context clearly requires otherwise or unless the regulations and requirements are more stringent than those found in Sections 16.40.080, 16.40.180 or 16.40.360, pedicab drivers, companies, and vehicles are subject to the regulations and requirements found in this Chapter. Pedicab drivers, vehicles and companies are specifically exempted from the insurance requirements found in Section 16.40.410.

16.40.360 Pedicab Driver and Vehicle Requirements and Prohibitions.

- A. Pedicab vehicles are required to satisfy the following conditions when operating between dusk and dawn:
1. Make use of working battery-powered lights;
 2. Be equipped with one headlight capable of projecting a beam of light for a distance of at least 500 feet; and
 3. Be equipped with two red taillights mounted on the right and left area of the pedicab's rear.
- B. No pedicab may be operated on a public sidewalk, unless it is allowed to do so pursuant to either city, county or state bicycle and tricycle traffic laws.
- C. No pedicab may use any public street, public property or right-of-way as a waiting area unless such area is a legal motor vehicle parking area or unless it is allowed to do so as a bicycle or tricycle pursuant to city, county or state traffic laws
- D. All pedicab drivers must have a valid driver's license or government-issued photo identification in their possession while in control of any pedicab.
- E. No pedicab driver may exceed the pedicab manufacturer's limits on the amount of weight the pedicab may safely carry.
- F. No bicycle or tricycle may operate as a pedicab by pulling any kind of cart, trailer or other enclosed seating contraption behind the bicycle or tricycle.
- G. Every pedicab must be:

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1. Kept clean;
2. Kept in good appearance and good repair; and
3. Kept in a safe condition.

16.40.370 Maximum Hours For Drivers.

- A. No taxi or LPT driver is allowed to drive or be on duty (in any combination thereof) for more than 14 hours in any given 24-hour period.
- B. Each taxi and LPT company must maintain hours of service records for its drivers for a period of at least 1 year from the date of the driver's last for-hire service.
- C. Both drivers and companies are subject to penalties for any violation of Section 16.40.370.

16.40.380 For-Hire Vehicle Requirements and Prohibitions.

- A. All private for-hire transportation vehicles must be:
 1. Kept clean;
 2. Kept in good appearance and good repair;
 3. Properly equipped, including but not limited to carrying a standard first aid kit and a fire extinguisher;
 4. Kept in a safe condition; and
 5. Equipped with all pollution control equipment originally installed by the manufacturer.
- B. The use of tobacco products are prohibited in any for-hire transportation vehicle. Signs detailing this prohibition must be displayed in each taxi, shuttle and SAT vehicle in a form and manner as described in administrative rule.
- C. The Administrator has the authority to demand that a for-hire vehicle be made available for inspection within 48 hours notice. Authorized City personnel have the authority to inspect any for-hire vehicle at any time if the vehicle:
 1. is within the City limits;
 2. does not have a passenger inside; and

3. is parked in the public right of way or on public property.

D. If the Administrator determines that the vehicle violates any provision of Section 16.40.380 A., the Administrator may issue a civil penalty and set a deadline of not less than 48 hours in which the vehicle must be in compliance. If the vehicle is not in compliance at the time of the deadline, the Administrator may suspend the vehicle permit until the violations are corrected.

16.40.390 Identification of SAT Vehicles.

All Specially Attended Transportation vehicles must prominently display on the outside of the vehicle, on both sides, the full name and telephone number of the permittee, and the words "RESERVED, NOT FOR-HIRE" on both rear doors or rear windows. All required signage must be in lettering at least 3 inches in height with proportional width and must be clearly visible at all times.

16.40.410 LPT and Taxi Insurance Requirements.

A. Coverages and Limits: All for-hire transportation company permit holders must obtain, comply with, and maintain the minimum levels of insurance coverage outlined below during the entire term that the permit is valid:

1. Commercial Business Insurance. Company permit holders must secure and maintain a Commercial General Liability policy reflecting limits of not less than \$1,000,000 per Occurrence and \$2,000,000 Aggregate for covered claims arising out of, but not limited to, Bodily Injury, Property Damage, Personal and Advertising Injury, and Contractual Liability in the course of the permit holder's work under a for-hire transportation company permit.
2. Vehicle Insurance. All for-hire company permit holders, regardless of whether the company holds title to a vehicle or not, must provide the City with a copy of a valid Commercial Auto Liability policy reflecting a Combined Single Limit of not less than 500,000 per occurrence for claims arising out of, but not limited to, bodily injury and property damage incurred from the business use of any scheduled, non-owned, and hired automobile in the course of the vehicle's use as a for-hire transportation vehicle. The Commercial Auto Liability policy must comply with the mandatory laws of the State of Oregon and/or other applicable governing bodies.
3. Worker's Compensation and Employers Liability Insurance. The company permit holder must secure and maintain a Workers Compensation and Employers Liability policy where required by state law.

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- B.** Additional Policy Conditions: Policies required under Subsections 16.40.410 A.1. and/or 16.40.410 A.2. must also contain, include, provide for or comply with the following:
1. The Commercial General Liability and Commercial Auto Liability coverage must name the City and its officers, agents and employees as additional insureds as respects to claims, in the course of the permit holder's work as a for-hire transportation company, covered by such policies;
 2. Policy coverages must be primary and non-contributory, and any insurance coverage maintained by the City must be considered excess.
 3. The insurance limits are subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the permit's term;
 4. The insurance policy must allow for written notice to the Administrator 30 days before any policy is canceled;
 5. The insurance policy must allow for written notice to the Administrator 30 days before a policy will expire or be reduced in coverage;
 6. All insurance companies issuing policies under this Section must carry at least an A.M. Best Company rating of A-, VIII or better; and
 7. The adequacy of insurance coverage outlined in this Section is subject to the review and approval of the City Attorney's Office.
- C.** Permit Holder's Insurance Obligations. All company permit holders must comply with the following obligations with respect to insurance reporting, updating and filing:
1. The permit holder must maintain continuous, uninterrupted coverage for the duration of the permit. Any lapse in insurance coverage, even if it is later backdated by the insurance company, is subject to a civil penalty.
 2. The permit holder must file a certificate of liability with the Administrator that evidences insurance coverage and terms that are in compliance with the requirements of this Section. The certificate of liability must be on a standard ACORD form or its equivalent.

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3. The permit holder must file with the Bureau a copy of the insurance company-issued additional insured endorsements naming the City and its officers, agents and employees as additional insureds.
 4. The permit holder must keep a copy of the vehicle's proof of insurance in every for-hire vehicle.
- D.** Independent Contractors/Owner-Operators. If an independent contractor/owner-operator relationship exists with a permit holder and the independent contractors/owner-operators provide services under the permit holder's permit, then the permit holder and the City require the same insurance coverages and limits and conditions as outlined in Subsections 16.40.410 A. - C. The same certificate of liability and additional insured endorsement requirements will apply.
- E.** Alternative to Insurance Requirements. Alternatives to insurance, such as self-insurance, may occur only if the level of coverage and the terms, conditions and obligations meet the same or higher requirements as found in Subsections 16.40.410 A. – C., and only if the public safety and well-being is not endangered thereby. The adequacy of proposed alternative insurance coverage is subject to approval by the City Attorney's Office before such alternative insurance may become effective.

16.40.420 Pedicab Insurance Requirements.

- A.** Coverages and Limits: All pedicab transportation company permit holders must obtain, comply with, and maintain the minimum levels of insurance coverage outlined below during the entire term that the permit is valid:
1. Commercial Business Insurance. Company permit holders must secure and maintain a Commercial General Liability policy reflecting limits of no less than \$500,000 per Occurrence and \$1,000,000 Aggregate for covered claims arising out of, but not limited to, Bodily Injury, Property Damage, Personal and Advertising Injury, and Contractual Liability in the course of the permit holder's work under a for-hire transportation company permit.
 2. Worker's Compensation and Employers Liability Insurance. The company permit holder must secure and maintain a Workers Compensation and Employers Liability policy where required by state law.
- B.** Additional Policy Conditions. Policies required under Subsection 16.40.420 A.1. must also contain, include, provide for or comply with the following:

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1. The Commercial General Liability coverage must name the City and its officers, agents and employees as additional insureds as respects to claims, in the course of the permit holder's work as a for-hire transportation company, covered by such policies;
 2. Policy coverages must be primary and non-contributory, and any insurance coverage maintained by the City must be considered excess;
 3. The insurance limits are subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the permit's term;
 4. The insurance policy must allow for written notice to the Administrator 30 days before any policy is canceled;
 5. The insurance policy must allow for written notice to the Administrator 30 days before a policy will expire or be reduced in coverage;
 6. All insurance companies issuing policies under this Section must carry at least an A.M. Best Company rating of A-, VIII or better; and
 7. The adequacy of insurance coverage outlined in this Section is subject to the review and approval of the City Attorney's Office.
- C. Permit Holder's Insurance Obligations.** All pedicab company permit holders must comply with the following obligations with respect to insurance reporting, updating and filing:
1. The permit holder must maintain continuous, uninterrupted coverage for the duration of the permit. Any lapse in insurance coverage, even if it is later backdated by the insurance company, is subject to a civil penalty.
 2. The permit holder must file a certificate of liability with the Administrator that evidences insurance coverage and terms that are in compliance with the requirements of this Section. The certificate of liability must be on a standard ACORD form or its equivalent.
 3. The permit holder must file with the Administrator a copy of the insurance company-issued additional insured endorsements naming the City and its officers, agents and employees as additional insureds.
- D. Alternative to Insurance Requirements.** Alternatives to insurance, such as self-insurance, may occur only if the level of coverage and the terms, conditions and obligations meet the same or higher requirements as found in Subsections

16.40.420 A. – C., and only if the public safety and well-being is not endangered thereby. The adequacy of proposed alternative insurance coverage is subject to approval by the City Attorney's Office before such alternative insurance may become effective.

16.40.430 Financial and Operating Restrictions and Reporting.

(Amended by Ordinance No. 185723, effective November 7, 2012.)

- A.** For the purposes of investigating citizen complaints and to aid in enforcement of this Chapter, the Administrator may require a for-hire transportation company to report financial and operating data, in such form and at such times as the Administrator requires. The company must compile the necessary data and submit reports to the Administrator as requested and within the timeframe demanded subject to the requirements of this Section, but in no event must the company be forced to submit this information without at least 72 hours prior notice by the Administrator.
- B.** Except as otherwise required by law, information submitted to the Administrator under this Section can only be used within the City government. Such information may not be released to the public except in aggregate form.
- C.** Notwithstanding the provisions of Subsection 16.40.430 B., information submitted under this Section may become a matter of public record as necessary to initiate, prosecute and defend an enforcement action.
- D.** All permitted taxi companies must submit to the Director, or his or her designee, a comprehensive accounting of all current payments required from drivers to the taxi company as of October 1, 2012;
- E.** Any payments or fees charged by taxi companies to drivers may not be raised or modified without the review and approval of the Director, or his or her designee, after receiving written application from the taxi company.
- F.** The Director or his or her designee will review the application in accordance with the criteria established in Administrative Rule.

16.40.440 Reports to the Administrator.

- A.** For-hire transportation companies must report any of the following events to the Administrator within 24 hours of it becoming known by any company officer or principal managing employee:

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1. The arrest or conviction for any criminal offense of any officer or principal managing employee of the company involving the operation of that company;
 2. Any accident required to be reported to the State of Oregon involving a company vehicle;
 3. The filing of any lawsuit against or on behalf of the for-hire company related to the operation of the company;
 4. The initiation of bankruptcy proceedings or corporate or partnership dissolution by the company; and
 5. Any information required to be disclosed by Subsection 16.40.440 B that comes to the attention of a for-hire transportation company's management.
- B.** Every for-hire transportation driver must report any of the following events to the Administrator and to the driver's for-hire transportation company within 24 hours of its occurrence:
1. Any arrest, charge, or conviction of the driver for any criminal offense, or any traffic violation, that occurs during, or arises out of, the driver's operation of a for-hire transportation vehicle;
 2. Any arrest, charge or conviction of the driver for any criminal offense involving theft, robbery, burglary, assault, sex crimes, drugs, prostitution, or any related offense;
 3. Any vehicle accident required to be reported to the State of Oregon involving any vehicle operated as for-hire transportation by the driver; and
 4. Any restriction, suspension or revocation of the driver's motor vehicle driver's license.

16.40.450 Limousine, Executive Sedan and Taxi Logs Required.

- A.** Limousine, executive sedan and taxi transportation providers must maintain a log in either electronic or written form in which a record of every trip is kept.
- B.** Limousine and Executive Sedan Requirements. The following information is required for each trip:
1. customer name;

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2. passenger name if different than customer name;
 3. date and time of initial reservation;
 4. date and start and end times of trip;
 5. initial and destination addresses; and
 6. the fare amount paid.
- C.** Taxi Requirements. The following information is required:
1. date and time of initial reservation; and
 2. initial and destination addresses.
- D.** The logs must be kept in a form approved by the Administrator.
- E.** The company must retain these logs for not less than 1 year after the date of the driver's last entry.
- F.** The logs must be made available to the Administrator or other designated City staff upon request.
- G.** Except as otherwise required by law, information submitted to the Administrator under this Section can only be used within the City government. Such information may not be released to the public except in aggregate form.
- 16.40.460 Limousine and Executive Sedan Transportation Must Be Prearranged; Exceptions.**
- A.** All limousine and executive sedan service must be provided on a prearranged basis.
- B.** Notwithstanding Subsection 16.40.460 A., limousine and executive sedan transportation providers may operate "on demand" at the Portland International Airport if permitted to do so by the Port of Portland.
- C.** Notwithstanding Subsection 16.40.460 A., limousine and executive sedan transportation providers may operate "on demand" provided that the limousine or executive sedan company has a written contract with TriMet, the Port of Portland, a major hotel, or an airline company, in which case the limousine or executive sedan company is considered "on call" for such service requests.

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- D.** If a limousine or executive sedan company wishes to be considered “on demand” as provided in Subsection 16.40.460 C., the company must comply with the following conditions:
1. file with the Administrator all such contracts indicating the contracting party’s name along with the beginning and ending contracted dates, and a minimum fee of \$50.00 to the airport from the downtown is required;
 2. provide the Administrator with a brief description of the service provided under the contract including the specific basis for reimbursement and schedule of fees/fares;
 3. provide the Administrator with notarized signatures from all contracting parties stating that the contract is currently effective and listing the end date.; and
 4. pay to the Bureau an “on demand” license fee of \$2,500 for the first vehicle and \$1,000 for each additional vehicle used to service the contract, valid for a period of 12 months from the date of the license’s issuance; and
 5. transportation provided by a third party company as part of the Contract must be prearranged, in compliance with Subsection 16.40.460 A.
- E.** If a civil penalty is issued to a limousine or executive sedan company or driver because service was provided without the requisite prearranged reservation, it is no defense to assert that a valid and current contract existed at the time of the penalty but was simply not filed with the City. Limousine and executive sedan companies must file all contracts with the City prior to the acceptance of any fare “on demand”. A failure to file a contract with the City is prima facie evidence that “on demand” service does not exist with that contracting party.
- F.** If a limousine or executive sedan service provider is in a marked hotel zone or loading/unloading zone, it is a rebuttable presumption that it is providing for-hire transportation services that require a reservation.
- G.** Hotels are liable for a civil penalty of \$500 per occurrence for every instance in which a hotel employee, agent or independent contractor allows a hotel guest to obtain limousine or executive sedan transportation services without the required 60-minute reservation. This Subsection does not apply if the limousine or executive sedan service provider has complied with the conditions found in Subsections 16.40.460 C. and D.

16.40.470 Maximum Fares for Shuttles; No Charge for Luggage.

- A.** Maximum flat rates apply for shuttles that provide for-hire transportation service between the airport and Portland's Fareless Square and/or the AMTRAK station (in either direction), whether paid by the passenger or by a third party. The maximum rates are prescribed in administrative rules.
- B.** On routes in which the maximum rates apply, shuttle operators may not charge any fee for luggage or any other allowed item that the passenger carries on board.
- C.** Rates charged for shuttle services must be at least 35 percent lower, per passenger, than the prevailing taxicab rates for the same route.

16.40.480 Minimum Fares for Limousine and Executive Sedans.

- A.** Minimum flat rates apply for limousine and executive sedans that provide for-hire transportation service between the airport and Portland's Fareless Square and/or the AMTRAK station (in either direction), whether paid by the passenger or by a third party. The minimum rates are prescribed in administrative rules.
- B.** The minimum fare requirement in Subsection 16.40.480 A. for limousine and executive sedans does not apply if the limousine or executive sedan company has a contract on file with the City pursuant to Subsection 16.40.460 C.
- C.** Rates charged for limousine and executive sedan services must be at least 35 percent higher than the prevailing taxicab rates for the same route.

16.40.490 Safety Fund.

- A.** The For-Hire Transportation Safety Fund (Safety Fund) is designed to provide adequate funding to ensure the safety of both the riding public and the for-hire transportation drivers.
- B.** The Bureau administers the Safety Fund. The Bureau has the authority to determine appropriate expenditures of the Safety Fund for driver, passenger and vehicle safety improvements for the industries regulated by Chapter 16.40.
- C.** The Safety Fund is funded by revenues generated by permit, decal and taxiplate fees.
- D.** The Bureau will disperse Safety Fund revenues only by grant, with the grant process outlined in administrative rule. Utilization of digital security camera system grants by taxicab companies is restricted to the cost of purchase of digital

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security camera systems plus an amount sufficient to subsidize installation of the cameras as determined by the Board.

16.40.500 Compliance with Federal, State and Local Laws.

Any for-hire transportation company, driver or vehicle that is not in compliance with all federal, state or local laws relating to “for-hire transportation” services is likewise not in compliance with Chapter 16.40, and is subject to penalties, suspension or revocation.

16.40.510 Prior Board Orders of No Effect.

Any Board Order, Board Rule or Board Regulation in effect prior to the passage of this ordinance has no legal effect and is hereby repealed.

16.40.520 Administrative Rule Authority and Process.

- A.** The Director may implement procedures, forms and written policies for administering the provisions of Chapter 16.40.
- B.** The Board may adopt administrative rules for administering the provisions of Chapter 16.40 under the authority granted to it in Section 16.40.050.
- C.** Before a rule is adopted, the Director must first provide notice of the proposed rule to the public in a manner reasonably calculated to accomplish such notice. 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.
- D.** In addition to the general notice required in Subsection 16.40.520 C., the Director must also announce the proposed rule at a regularly-scheduled Board meeting (the “Announcement Meeting”) prior to the meeting in which public testimony will take place (the “Testimony Meeting”). At the Announcement Meeting, the Director will provide a copy of the proposed rule to anyone in attendance that so requests, and the Director will announce the date and time of the Testimony Meeting. The Testimony Meeting must take place no less than 14 days or more than 75 days from the Announcement Meeting.
- E.** At the Testimony Meeting, the Board will receive oral and written testimony concerning the proposed rule. Upon completion of the public testimony, the Director may then choose, at the Director’s sole discretion, to either:
 - 1.** move that the Board adopt the proposed rule as originally proposed;
 - 2.** move that the Board adopt a slightly modified version of the originally propose rule;

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3. move that a substantially modified version of the originally proposed rule be considered at a later Board Meeting and with additional public testimony; or
 4. withdraw the proposed rule altogether and allow no further vote on it.
- F.** If no Board member seconds the Director's motion under Subsections 16.40.520 E.1. - E.3. above, then the proposed rule does not take effect. Only the Director can make the motion to adopt a proposed rule.
- G.** If a Board member seconds the Director's motion to adopt the proposed rule under Subsections 16.40.520 E.1. or E.2., the Board will then consider and discuss the proposed rule, taking into account any public testimony received. Upon completion of the Board's discussion, the Director will then call for a vote on the proposed rule. If a majority of the Board votes to adopt the rule, it is thereby adopted.
- H.** If a Board member seconds the Director's motion under Subsection 16.40.520 E.3., then additional public review must be conducted, but no additional public notice is required if an announcement is made at the Testimony Meeting of a future hearing for a date, time and place certain at which the substantially modified rule will be discussed. After the additional testimony is received at the future hearing date, the proposed rule will be subject to the discussion, testimony and voting procedures found Subsections 16.40.520 E. - G.
- I.** Unless otherwise stated, all rules are effective upon adoption by the Board. All rules adopted by the Board will be filed in the Bureau's office. Copies of all current rules will be made available to the public upon request.
- J.** Notwithstanding Subsections 16.40.520 C. and D., the Director may adopt an interim rule without prior public notice or Board action upon a finding that a failure to act promptly will likely result in prejudice to the public interest or the interest of the affected parties. If the Director adopts a rule under this Subsection, the Director must state the specific reasons for such prejudice. Any interim rule adopted pursuant to this Subsection is effective for a period of not longer than 120 days.
- K.** Administrative Rules adopted by the Board have the same force and effect as any other provision of Chapter 16.40. To the extent that any administrative rule conflicts with the provisions of Chapter 16.40, Chapter 16.40 will control and prevail.

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16.40.530 Civil Penalties.

- A.** Any civil penalty assessed must be paid in full within the time ordered and under the terms and conditions specified. If either the payment is not made or the required conditions are not met, the penalty will become a suspension, which will take effect immediately upon the deadline given for payment of the civil penalty. The suspension will remain in effect until the penalty is paid in full and/or the conditions required are met.
- B.** Unless a specific civil penalty amount is prescribed by any Section of this Chapter, penalties for specific code and administrative rule violations are found in the Civil Penalty Table in Section 16.40.540. Any violation of a code Section that is not found in the Civil Penalty Table and which is not specifically prescribed by a code Section, but which places an obligation or requirement on a driver or company, will result in a penalty of \$100 for the 1st violation, \$500 for the 2nd violation and \$1,000 for 3rd violation.

16.40.540 Civil Penalty Table.

(Amended by Ordinance No. 185498, effective August 10, 2012.)

- A.** The following table outlines the penalties that will be assessed for a violation of the specific code Sections listed. In addition to the civil penalty, and the suspension and revocation provisions in Section 16.40.550, any second offense is grounds for suspension of the permit and any third or subsequent offense is grounds for revocation of the permit.

Code Section	Requirement	1st Offense	2nd Offense	Subsequent Offenses
16.40.070 D.	Fuel Surcharge Sticker	\$50	\$100	\$500
16.40.080 A.	Pedicab Driver Permit	\$500	\$1,000	\$2,500
16.40.090 A.	LPT and Taxi Driver Permit	\$1,000	\$2,500	\$5,000
16.40.100 E.	Business License	\$250	\$500	\$1,000
16.40.130 A.	LPT Company Permit	\$1,500	\$2,500	\$5,000
16.40.150 A.	Taxi Company Permit	\$1,500	\$2,500	\$5,000
16.40.180 A.	Pedicab Decal	\$250	\$500	\$1,000
16.40.190 A.	LPT Decal	\$1,250	\$2,500	\$5,000
16.40.190 B.	Taxiplate	\$1,250	\$2,500	\$5,000
16.40.210 C.	Taxi Conditions	\$1,250	\$2,500	\$5,000
16.40.220 C. - E.	Decal/Taxiplate	\$1,250	\$2,500	\$5,000

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16.40.220 F.	Substitute Vehicle	\$1,250	\$2,500	\$5,000
16.40.240 A.	Decal/Taxiplate Interest	\$1,250	\$2,500	\$5,000
16.40.270	Minimum Standards	\$500	\$1,000	\$2,000
16.40.280	Security Camera	\$1,250	\$2,500	\$5,000
16.40.290 A.	Taxi Fare	\$1,500	\$2,500	\$5,000
16.40.290 D. - F.	Fares	\$500	\$1,000	\$2,500
16.40.300 A.	Wheelchair	\$500	\$1,000	\$2,500
16.40.310	Taximeter	\$1,250	\$2,500	\$5,000
16.40.320	Required Equipment	\$1,250	\$2,500	\$5,000
16.40.330	Identification	\$1,250	\$2,500	\$5,000
16.40.340	Driver Conduct	\$1,250	\$2,500	\$5,000
16.40.360	Pedicab Requirements	\$200	\$500	Suspension
16.40.370	Maximum Hours	\$1,250	\$2,500	\$5,000
16.40.380 A.- B.	Vehicle Requirements	\$1,250	\$2,500	\$5,000
16.40.380 C.	Vehicle Inspection	\$1,250	\$2,500	\$5,000
16.40.390	SAT ID	\$500	\$1,000	\$2,500
16.40.410 A.-E.	Insurance	\$1,250	\$2,500	\$5,000
16.40.420 A.-E.	Pedicab Insurance	\$1,000	Suspension	Revocation
16.40.430	Financial Data	\$250	\$500	\$1,000
16.40.440	Reports to Administrator	\$1,250	\$2,500	\$5,000
16.40.450 A.	Logs Required	\$500	\$1,000	\$2,500
16.40.450 B. - E.	Log Entries	\$500	\$1,000	\$2,500
16.40.450 F.	Log Availability	\$500	\$1,000	\$2,500
16.40.460	Prearranged	\$500	\$1,000	\$2,500
16.40.470	Maximum Fares	\$500	\$1,000	\$2,500
16.40.480	Minimum Fares	\$500	\$1,000	\$2,500

- B.** Offenses are measured by a period of 36 months. Offenses for the same violation that occur more than 36 months apart from each other are not considered “subsequent” offenses for purposes of them being the “second”, “third”, etc, offense.
- C.** Nothing in this Section prohibits the Bureau from suspending or revoking any permit, decal or taxiplate after a third offense for the same violation.

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16.40.550 Company and Driver Permit Suspension and Revocation.

- A.** Suspension. Any permit, decal or taxiplate issued under Chapter 16.40 may be suspended by the Administrator if the Administrator finds reasonable grounds to believe that any of the following apply:
1. A temporary suspension is necessary to protect the public safety;
 2. The permittee's insurance is not current; or
 3. The permittee has failed to fully pay a civil penalty when due and the permittee did not file a timely appeal.
- B.** Revocation. Any permit, decal or taxiplate issued under Chapter 16.40 may be revoked by the Administrator if the Administrator finds reasonable grounds to believe that any of the following apply:
1. The revocation is necessary to protect the public safety;
 2. The permittee did not comply with the terms and conditions of a temporary suspension;
 3. The permittee is found operating as a for-hire company or driver while on suspension;
 4. A taxi driver permittee has fraudulently altered the calibration of the driver's taximeter;
 5. The permittee provides either the City, an insurance agent or an insurance carrier with materially false information regarding vehicle insurance; or
 6. The permittee has incurred a total of five penalties and/or temporary suspensions during any consecutive twelve-month period.
- C.** Simultaneous Revocation. In the event that a for-hire transportation company permit is revoked, all vehicle decals and/or taxiplates assigned to that company are simultaneously revoked and void.
- D.** Notice Requirements for Suspensions. If the Administrator has reasonable grounds to impose a suspension based on any factor found in Subsection 16.40.550 A., the Administrator will send a "Notice of Proposed Suspension" to the permittee by both regular and certified mail (return receipt requested) at the address listed in the permittee's application form. The written notice must include the following:

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1. the Administrator's findings concerning the alleged violation;
 2. notice that alleged violator has 10 days from the date of the letter in which to file a written response to the Administrator if the permittee denies that any violation has occurred;
 3. the terms, conditions and timeframe of the proposed suspension;
 4. notice that a failure to comply with the terms and conditions may result in a revocation of the permit; and
 5. the permittee's appeal rights.
- E.** Notice Requirements for Revocations. If the Administrator has reasonable grounds to revoke a permit based on any factor found in Subsection 16.40.550 B., the Administrator will send a "Notice of Proposed Revocation" to the permittee by both regular and certified mail (return receipt requested) at the address listed in the permittee's application form. The written notice must include the following:
1. the Administrator's findings concerning the alleged violation;
 2. notice that alleged violator has 10 days from the date of the letter in which to file a written response to the Administrator if the permittee denies that any violation has occurred; and
 3. the permittee's appeal rights.
- F.** Actual Notice Presumed. Actual notice of the proposed suspension or revocation is presumed after 5 days of mailing the notices described in Subsections 16.40.550 D. and E. above.
- G.** Effective Date of Suspensions and Revocations. Suspensions and revocations are effective as provided in Subsections 16.40.550 D. and E., except that they are effective immediately if the Administrator finds reasonable grounds to believe that:
1. A permittee is not covered by liability insurance as required by Sections 16.40.410 or 16.40.420; or,
 2. Continued operation by the permittee would cause, or is likely to cause, danger to the public health or safety.

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- H.** Suspension Length. If the suspension resulted from the failure to pay a civil penalty or due to an ongoing code violation, the suspension continues until the penalty is paid or the violation is corrected. If no correction or payment is made within 60 days from the date that the suspension became effective, the suspension becomes a revocation. In all other cases, the suspension will be for a specific number of days and will end automatically with no further required action from the City or permittee.
- I.** Right to a Stay. Suspensions and revocations are stayed if a timely appeal is filed, unless the grounds for suspension or revocation relate to public safety issues, in which case there is no right to a stay.
- J.** Renewal Not Allowed After Revocation or During Suspensions. Permits, decals and taxiplates that have been revoked during their term are not renewable. Permits, decals and taxiplates that are in suspended status at the time of renewal are not renewable unless the suspension is for a specific number of days. Drivers and companies whose permits, decals or taxiplates were not renewable due to a prior revocation or suspension are required to successfully complete the initial application process to obtain another permit, decal or taxiplate.

16.40.560 Criminal Penalties.

(Amended by Ordinance No. 185498, effective August 10, 2012.)

- A.** It is unlawful to tamper with a taximeter or to conduct any fraudulent scheme with the intent to charge any person a fare greater than that allowed by Chapter 16.40.
- B.** Any violation of Subsection 16.40.560 A. is punishable upon conviction by a fine of not more than \$1,000 or imprisonment for not more than 6 months or both.
- C.** In addition to the civil penalties listed in Section 16.40.540, any violation of Subsections 16.40.090 A., 16.40.130 A., 16.40.150 A., 16.40.190 A., or 16.40.190 B., is punishable, upon conviction, by imprisonment for not more than 6 months.
- D.** Vehicles operated for-hire in violation of Subsections 16.40.090 A., 16.40.130 A., 16.40.150 A., 16.40.190 A., or 16.40.190 B. are subject to vehicle towing and impoundment.

16.40.570 General Appeals.

- A.** Civil Penalties. Any person or entity assessed a civil penalty may appeal that decision to the Code Hearings Officer under the provisions of Chapter 22.10.
- B.** Permit/Decal/Taxiplate Denials, Suspensions and Revocations; Exception.

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1. Any person or entity whose permit, decal or taxiplate application is denied, or whose permit, decal or taxiplate is suspended or revoked, may appeal that decision to the Code Hearings Officer under the provisions of Chapter 22.10.
 2. If the suspension is due to a failure to timely pay a civil penalty when due, then the underlying reasons for the civil penalty may not be appealed to the Code Hearings Officer. In that situation, the person or entity may only appeal to the Code Hearings Officer to determine if the Bureau properly followed the notice requirements found in Section 16.40.550.
- C. **Limit on Number of LPT Vehicles.** If the number of LPT vehicles for a particular LPT industry is capped by administrative rule, then any LPT company whose application to the Board for more LPT vehicles is denied may appeal that decision to the Code Hearings Officer pursuant to the provisions of Chapter 22.10, but only for the purpose of determining if the Bureau and the Board followed the appropriate procedures. The Code Hearings Officer may not review any factual determinations made by the Bureau or Board.
- D. **Stays.** If a timely appeal is made pursuant to this Section, the action appealed from is stayed pending the outcome of the appeal. This includes any civil penalty payment, suspension or revocation.

16.40.580 Appeals Regarding Taxicab Limits.

- A. Any taxicab company aggrieved by a decision of the Board pursuant to Section 16.40.210 may appeal such action to the City Council by filing a written notice of appeal to the Bureau within 10 days of the Board's decision. The Bureau will then forward that request to the City Auditor within 5 business days.
- B. Within 60 days of receiving the Bureau's notice, the City Auditor will:
1. set the time for the appeal to be heard by the City Council;
 2. place the hearing of the appeal upon the calendar of the Council; and
 3. notify the appealing taxi company and the Administrator of the time set no less than 10 days prior to that time.
- C. The appealing taxi company may appear personally via a company representative and/or by counsel and present such facts and arguments as may tend to support the appeal.

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- D.** The Bureau will provide Council with a staff report outlining the Board's decision and the reasons therefore. The Director or his/her designee must be present at the hearing, representing the Board, to answer any questions that Council may have regarding the Board's decision.
- E.** The Council will uphold the Board's decision, reverse it, or modify it to allow more taxicabs with any conditions that the Council deems appropriate. If no Council action is taken within 60 days, the appeal is deemed denied. The Council's decision may not be appealed to the Code Hearings Officer.

16.40.590 Fee Table.

(Amended by Ordinance No. 185723, effective November 7, 2012.)

- A.** The following table outlines the fee costs associated with this Chapter.

PERMIT and APPLICATION FEES				
PERMIT TYPE	APPLICATION (nonrefundable)	INITIAL PERMIT	RENEWAL	REPLACEMENT
Taxi/LPT Driver	\$100	\$100	\$100	\$25
Pedicab Driver	\$25	\$25	\$25	\$10
LPT Company	\$250	\$500	\$500	\$75
Taxi Company <25 permitted vehicles	\$250	\$1,250	\$500	\$75
Taxi Company 25-50 permitted vehicles	\$250	\$1,250	\$1,000	\$75
Taxi Company 50-100 permitted vehicles	\$250	\$1,250	\$2,000	\$75
Taxi Company >100 permitted vehicles	\$250	\$1,250	\$3,000	\$75
Pedicab Company	\$100	\$125	\$125	\$75
Taxi Vehicle	N/A	\$225	\$600	\$75
LPT Vehicle	N/A	\$225	\$180	\$75
Pedicab	N/A	\$25	\$25	\$10

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GENERAL FEES			
Moving Decals or Taxiplates to Another Vehicle	\$150		
Temporary Decals During Vehicle Repair	\$25		

- B.** Fees are rounded up to a full monthly rate when being prorated for any particular decal, taxiplate or permit, regardless of what date of the month the fee is actually paid on.
- C.** For the purposes of this Fee Table Schedule, pedicabs are not considered to be LPT vehicles and are treated separately.

16.40.600 Currently Permitted Companies, Vehicles and Drivers Grandfathered; Renewal Process.

- A.** All companies, vehicles and drivers that are currently permitted by the City on the date that this ordinance passes do not need to reapply for new permits upon passage of the ordinance, but must otherwise adhere to all the requirements as found in this Chapter.
- B.** As of January 1, 2010, all previously permitted companies, vehicles and drivers must comply with all provisions of this Chapter, regardless of their permit, decal or taxiplate expiration date. All companies, vehicles and drivers are required to obtain new permits, decals and taxiplates by January 1, 2010.
- C.** To achieve the goal of staggered renewal dates, the Board may by administrative rule require that the initial permit term of some permittees be for less than the 12 month term required under this Chapter. The fees associated with any permit terms that are less than the 12 month requirement will be prorated as necessary to reflect the shorter permit duration.
- D.** Notwithstanding 16.40.600 A., all drivers that are currently permitted by the City on the date this ordinance passes must satisfy the customer service, knowledge and skills tests outlined in 16.40.090 F. – G. no later than December 31, 2010.

16.40.610 Severability.

If a court of law finds any provision of this Chapter invalid or unenforceable as to any person, business or circumstance, then that provision is considered severed from this Chapter. The severed provision has no effect on the remainder of the Chapter or its application to other persons, businesses and circumstances.

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16.40.620 Horse-Drawn Carriage Driver Permits Required – Application Process and Requirements.

(Added by Ordinance No. 184361, effective February 11, 2011.)

- A.** Permit Required. No person may operate a horse-drawn carriage without a valid, current horse-drawn carriage driver's permit issued under Chapter 16.40, except that no permit issued pursuant to this chapter is required of a person who is operating a horse-drawn carriage as an entry in a parade or otherwise permitted special event, where the horse-drawn carriage entry is specifically noted and approved in said special event permit, and where the horse-drawn carriage rides are not being offered on-demand or by reservation to members of the general public.
- B.** Application Documents Required. The failure to submit any required application documents as listed below is grounds for denial of the permit. It is the applicant's responsibility to make certain that the information and forms required have been completed in full, and that there are no errors or omissions. Applicants for a horse-drawn carriage driver's permit must submit to the Administrator the items listed below:
1. A completed application on a form provided by the Administrator;
 2. Proof of current residence address;
 3. Legal proof that the applicant is at least 18 years of age;
 4. A copy of the applicant's current motor vehicle driver's license, if any;
 5. A copy of the applicant's non-Oregon driving record, if any, for any year in which the applicant was not a resident of Oregon during the last 10 years, regardless of the jurisdiction;
 6. Disclosure of all applicable criminal history and driving and motor vehicle record history, as listed on the application form;
 7. Certification of a horse-drawn driver training program approved by the Administrator;
 8. Confirmation that the driver will be employed for a horse-drawn carriage company with current and valid horse-drawn carriage company and vehicle permits.

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9. If necessary, any information requested by the Administrator that reasonably relates to the application or is a clarification of information provided.
- C. Photographs. The applicant will be photographed by the Bureau after submission of the driver permit application. The photograph then becomes a part of the applicant's submittal package.
- D. Fees Required. The applicant for a horse-drawn carriage driver's permit must submit an initial permit fee of \$25, and \$25 per year renewal fee.
- E. Disqualifying Factors. The following disqualifying factors are grounds for denial of a horse-drawn carriage driver's permit:
 1. The applicant has a felony conviction of any kind within the 10 years preceding the application and permit processing;
 2. The applicant has a felony charge pending;
 3. The applicant has a felony conviction involving physical harm or attempted physical harm to a person, regardless of when the conviction occurred;
 4. The applicant has a felony charge pending involving physical harm or attempted physical harm to a person;
 5. The applicant has been convicted of any criminal offense involving animal cruelty or neglect, regardless of when the conviction occurred;
 6. During the 5-year period preceding the application and permit processing, the applicant has been convicted of a criminal offense involving:
 - a. any misdemeanor involving theft, identity theft, robbery, burglary, assault, sex crimes, drugs, prostitution, or weapons; or
 - b. any traffic crime, including but not limited to: driving under the influence of intoxicants, reckless driving, attempt to elude a police officer, or leaving the scene of an injury accident;
 7. During the 5-year period preceding the application and permit processing, the applicant had 10 or more traffic infractions as defined in ORS 801.557; or three or more serious traffic violations as defined in ORS 801.477; or three or more motor vehicle accidents required to be reported to the Oregon Department of Motor Vehicles pursuant to ORS 811.720;

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or, three or more of any combination of serious traffic violations or motor vehicle accidents as provided above;

8. During the 10-year period preceding the application and permit processing, the applicant had five or more serious traffic violations as defined in ORS 801.477; or the applicant's driving privileges were limited, suspended, or revoked by any governing jurisdiction as a result of a driving-related incident;
 9. The applicant has more than two traffic infractions or violations of any kind within the previous 12 months from the date of the application;
 10. The applicant has a current Oregon Department of Motor Vehicles license restriction, suspension or revocation;
 11. The applicant is less than 18 years old;
 12. Upon review of the applicants criminal and motor vehicle background check, and other information deemed pertinent to the application, the administrator determines that information contained in the application is false or incomplete; or
 13. Review of the applicant's traffic and criminal record, and other information the supervisor deems pertinent, is reasonable grounds for the determination that the public safety would not be served by the issuance of a driver's permit to the applicant.
- F. Driver Safety and Customer Service Training Requirements.** The applicant must provide documentation of successful completion of Bureau-approved horse-drawn carriage driver training prior to issuance of a horse-drawn driver's permit.
- G. Driver Knowledge and Skills Testing Requirements.** The applicant must successfully complete each of the following tests as administered by the Bureau or its designee before a permit can be issued:
1. Basic carriage horse care;
 2. Demonstrate ability to operate and control a horse-drawn carriage;
 3. Relevant City Code provisions and Administrative Rules.

16.40.630 Horse-Drawn Carriage Company Permits Required – Application Process and Requirements.

(Added by Ordinance No. 184361, effective February 11, 2011.)

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- A.** Permit Required. No person or entity may operate a for-hire horse-drawn carriage company without a valid, current horse-drawn carriage company permit issued by the City under Chapter 16.40.
- B.** Each horse-drawn carriage company permit application must satisfy the requirements of Section 16.40.130 LPT Company Permits Required.
- C.** Applicants must provide the physical location (address) of each stable or other facility used to house the carriage horses. Each facility must be available for inspection during normal hours of operation by the Administrator or designee.
- D.** Applicants for a horse-drawn carriage company permit must obtain certification for each carriage horse to be used in the operation of the permitted carriages. Application requirements for carriage horse certification are:

 - 1. A description of the horse's name, age, breed, gender;
 - 2. A photograph and physical description of the horse, to include color, markings or other identifying marks, such as brands or tattoos, or any other identifiers, such as microchips;
 - 3. Certification of examination (Health Certificate) by an equine veterinarian within thirty day days prior to the application for a permit that the horse is able to perform the work described (in the horse-drawn carriage company application) without undue stress or effort.
 - 4. Additional veterinary certification requirements are provided in Administrative Rule.
- E.** Insurance Certificate. All horse-drawn carriage applicants must provide the Bureau with an insurance certificate of liability and an additional insured endorsement indicating that the requirements of Section 16.40.650 have been satisfied.
- F.** Applicants must provide to the Administrator a description of the types, dates and time range, length and location of horse-drawn carriage rides offered; and
- G.** Applicants must provide to the Administrator a schedule of rates and charges. An updated schedule must be provided to the Administrator when the rates are changed during the course of the permit.

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- H.** Horse-drawn carriage company permit fees are: \$100 nonrefundable application fee, to be paid at the time of permit application; \$125 for initial one year permit, and \$125 per year annual permit renewal.

16.40.640 Horse-Drawn Carriage Permit and Plate Required – Application Process and Requirements.

(Added by Ordinance No. 184361, effective February 11, 2011.)

- A.** Permit and Decal or Plate Required for Horse-Drawn Carriages. No horse-drawn carriage may be used as a for-hire transportation vehicle without a valid and current permit and a valid and current, unobstructed plate issued by the City under Chapter 16.40. Applicants for a carriage vehicle permit and carriage plate must be the owner of the carriage. Carriage permits will only be issued to an owner who has obtained a horse-drawn carriage company permit.
- B.** Application Form. The applicant for a horse-drawn carriage permit must complete a “Horse-Drawn Carriage Application” in the form required by the Administrator, which includes, but is not limited to, the following required information:
- 1.** Carriage make, model and manufacturer;
 - 2.** Seating capacity and weight limits;
 - 3.** A photograph of each carriage to be registered;
 - 4.** If necessary, any information that reasonably relates to the application or is a clarification of information provided to the Administrator.
- C.** Safety Inspection. The Board has the authority, by Administrative Rule, to require that a horse-drawn carriage operator demonstrate by inspection that all safety standards are met prior to a permit plate or decal being issued.
- D.** Horse-Drawn Carriage Condition. No horse-drawn carriage will be issued a plate or decal if the Administrator determines that the carriage is not clean and in good repair, with all required equipment in sound operating condition.
- E.** Horse-Drawn Carriage Equipment: Specific equipment requirements are provided by Administrative Rule.
- F.** Each horse-drawn carriage shall be made available for inspection at the request of the Administrator or his designee.

- G.** Fees. Horse-drawn carriage companies must pay a \$25 initial and annual renewal fee for each horse-drawn carriage vehicle permit and plate.

16.40.650 Horse-Drawn Carriage Insurance Requirements.

(Added by Ordinance No. 184361, effective February 11, 2011.)

- A.** Coverage and Limits: All horse-drawn carriage company permit holders must obtain, comply with, and maintain the minimum levels of insurance coverage outlined below during the entire term that the permit is valid:
- 1.** Commercial Business Insurance. Company permit holders must secure and maintain a Commercial General Liability policy reflecting limits of no less than \$1,000,000 per Occurrence and \$2,000,000 Aggregate for covered claims arising out of, but not limited to, Bodily Injury, Property Damage, Personal and Advertising Injury, and Contractual Liability in the course of the permit holder's work under a for-hire horse-drawn carriage company permit.
 - 2.** Worker's Compensation and Employers Liability Insurance. The company permit holder must secure and maintain a Workers Compensation and Employers Liability policy where required by state law.
- B.** Additional Policy Conditions. Additional insurance policy requirements are provided in Administrative Rule.
- C.** Permit Holder's Insurance Obligations. All horse-drawn carriage company permit holders must comply with the following obligations with respect to insurance reporting, updating and filing:
- 1.** The permit holder must maintain continuous, uninterrupted coverage for the duration of the permit. Any lapse in insurance coverage, even if it is later backdated by the insurance company, is subject to a civil penalty.
 - 2.** The permit holder must file a certificate of liability with the Administrator that evidences insurance coverage and terms that are in compliance with the requirements of this Section. The certificate of liability must be on a standard ACORD form or its equivalent.
 - 3.** The permit holder must file with the Administrator a copy of the insurance company-issued additional insured endorsements naming the City and its officers, agents and employees as additional insureds.
- D.** Alternative to Insurance Requirements. Alternatives to insurance, such as self-insurance, may occur only if the level of coverage and the terms, conditions and

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obligations meet the same or higher requirements as found in Subsections 16.40.650 A. through C., and only if the public safety and well-being is not endangered thereby. The adequacy of proposed alternative insurance coverage is subject to approval by the City Attorney's Office before such alternative insurance may become effective.

16.40.660 Horse-Drawn Carriage Temperature, Time and Place Restrictions.

(Added by Ordinance No. 184361, effective February 11, 2011.)

- A.** No horse-drawn carriage may operate between the hours of 6 a.m. and 10 a.m. or between the hours of 3 p.m. and 6 p.m. except on Saturdays, Sundays and City holidays, unless an exemption from this restriction is granted by the Administrator.
- B.** No horse-drawn carriage may operate when the outdoor temperature is greater than 90 degrees Fahrenheit.
- C.** No horse-drawn carriage may operate when the outdoor temperature/humidity exceeds the Carriage Operators of North America (CONA) standards.
- D.** No horse-drawn carriage may operate in the presence of weather conditions that make horse-drawn carriage travel unsafe.
- E.** Should any condition or combination of conditions in Subsections 16.40.660 B. through D. occur, the horse-drawn carriage driver will remove the horse from the street to a safe location, provide appropriate rest and shade or shelter, and will return the horse to its stable or usual boarding facility, by the least-strenuous and shortest safe route possible.
- F.** No horse-drawn carriage may operate on a street that does not have a posted speed limit of 35 mph or less.
- G.** No horse-drawn carriage may operate along a street with MAX or street car tracks. Upon written request, permission may be granted by the Administrator, to allow brief access or crossing of streets with MAX or streetcar tracks in order to provide access to particular locations. The Administrator may provide a list of excepted circumstances and locations in Administrative Rule.
- H.** The Administrator or his designee, who observes a horse-drawn carriage operating in adverse weather or other dangerous conditions creating a threat to the health and safety of the horse, passengers, or to the general public, may order the ride discontinued and the horse returned to its boarding facility by the least-strenuous and shortest safe route possible.

16.40.670 Operation of Horse-Drawn Carriages: Requirements and Prohibitions.

(Added by Ordinance No. 184361, effective February 11, 2011.)

- A.** The company and carriage permit holder is responsible to ensure that all drivers operating have a current and valid City horse-drawn carriage driver permit, and that all drivers operate in compliance with the requirements of this Chapter. Penalties may be issued to both company and driver for violations of operating requirements.
- B.** Each horse-drawn carriage must maintain unobstructed the City horse-drawn carriage permit plate in the location and manner prescribed in Administrative rule.
- C.** Each horse-drawn carriage driver must carry his horse-drawn carriage driver permit when operating a horse-drawn carriage, and present the permit for inspection when requested by the Administrator or his designee.
- D.** Each horse-drawn carriage and horse-drawn carriage operator shall comply with all other requirements of State, federal and local law.
- E.** No horse-drawn carriage driver shall permit other persons to operate the carriage under his control at any time under any circumstances.
- F.** No driver shall operate a horse-drawn carriage at a weight or capacity in excess of the manufacturer's recommendation for that carriage;
- G.** No driver shall operate a horse-drawn carriage when the combined weight of the carriage and passengers exceeds the weight of the horse;
- H.** Horse-drawn carriages and equipment must be available for inspection immediately upon request by the Administrator or his designee.
- I.** A copy of the Health Certificate for the working carriage horse, as described in Subsection 16.40.630 D., shall be in the custody of the company owner at all times. The driver will keep a copy of this Certificate in any operating carriage, and make said Certificate immediately available for inspection upon request by the Administrator or his designee.
- J.** No horse-drawn carriage driver shall leave a horse untethered or unattended except when confined to a stable or other safe enclosure.
- K.** Each driver operating a horse-drawn carriage shall maintain the horse at a speed no faster than a walk or slow trot.

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- L.** Waste catchers must be in place and functioning properly at all times. It shall be the responsibility of the horse-drawn carriage operator to clean up any spillage.
- M.** The operator of a horse-drawn carriage must comply with the orders of the Administrator or his designee, or any police officer, parking enforcement officer, or animal control officer regarding the operation of the carriage. Failure to comply with these directions is grounds for revocation of the horse-drawn carriage driver's permit and the horse-drawn carriage vehicle and company permits.

16.40.680 Care of Carriage Horses.

(Added by Ordinance No. 184361, effective February 11, 2011.)

- A.** Horse-drawn carriage rides must not be initiated nor continued when the ambient temperature is greater than 90 degrees Fahrenheit, or when the combination of temperature and humidity exceeds current Carriage Operators of North America (CONA) standards.
- B.** When the temperature exceeds 90 degrees Fahrenheit, or the combination of temperature and humidity exceeds current CONA standards, the carriage driver will end the ride and return the horse to the home boarding facility or pasture by the least-strenuous and shortest safe route possible, providing rest and shelter as required.
- C.** When the temperature is between 84 and 90 degrees Fahrenheit, no carriage ride will be initiated if the local weather forecast predicts temperatures to rise over 90 degrees Fahrenheit during the time for which the ride is scheduled, or within the time allowed for the trip back to the boarding facility.
- D.** When conducting horse-drawn carriage rides when the temperature is between 78 and 90 degrees Fahrenheit, the driver will monitor respiratory rate, heart rate and temperature of the horse every hour. Horses exceeding the following resting parameters should immediately undergo cooling measures, then be brought to the stable for rest, and not worked for the remainder of that day:
 - 1.** Respiratory rate > 36 breaths per minute after 1 minute;
 - 2.** Temperature > 103 degrees;
 - 3.** Heart rate > 52 beats per minute after 1 minute recovery time.
- E.** Horses must be provided with a blanket for dryness and warmth when appropriate.

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- F.** Owners, operators and drivers of a horse-drawn carriage will monitor the condition of each horse and will not allow a horse to work when there are signs of exhaustion, dehydration, sickness, disease, injury or severe stress.
- G.** No stallions, no mares with unweaned foals, and no pregnant mares at gestation greater than 9 months shall be used as carriage horses.
- H.** The towing weight of the horse-drawn carriage may not exceed the weight of the horse.
- I.** Tie ropes used around the neck or attaching to the halter shall be carried on all horse-drawn carriages. No horse shall be tied using the bridle, bit or reins.
- J.** No animal shall work pulling a horse-drawn carriage for more than 5 hours in a 24 hour period, nor more than 5 days in any given week.
- K.** Each horse will be given at least a 10 minute rest period at the end of each hour of work. The horse must be provided ready access to clean drinking water during each break, and must be allowed at reasonable intervals to consume food and water during the workday.
- L.** Stables or other boarding facilities must be sanitary. Stables and stalls must be in good repair, well-ventilated, and free of hazards and debris.
- M.** Horses must be turned out for at least one hour per day. Adequate turn-out facilities include dry paddocks, runs, or pastures of dimensions equal to or greater than 12 feet by 24 feet.

16.40.690 Horse-Drawn Carriage Regulations.

(Added by Ordinance No. 184361, effective February 11, 2011.) Unless the context clearly requires otherwise or unless the regulations and requirements are more stringent than those found in Sections 16.40.620 through 16.40.700, horse-drawn carriage drivers, companies, and vehicles are subject to the regulations and requirements found in this Chapter.

16.40.700 Horse-Drawn Carriage Penalties.

(Added by Ordinance No. 184361, effective February 11, 2011.)

- A.** For violation of the regulations and requirements in Sections 16.40.620 through 16.40.690, the penalties are \$250 for the first occurrence, \$500 for the second occurrence, and \$1,000 and permit suspension for the third occurrence.
- B.** Three or more violations within one year are grounds for permanent revocation of horse-drawn carriage driver, vehicle and company permits.

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16.40.710 Paid Passenger Referrals Prohibited.

(Added by Ordinance No. 185720, effective November 7, 2012.)

- A.** All private for-hire transportation drivers are prohibited from providing payment to hotel staff, dispatchers, or any other person for referral of a passenger or passengers. The penalties for violation of Subsection 16.40.710 A. are as follows: \$1,500 for the first offense; \$2,000 and 10-day driver permit suspension for the second offense; and \$2,500 and driver permit revocation for the third offense.
- B.** It is prohibited for any person to solicit or accept payment for referral of a passenger to a motor vehicle for hire, or for any person or business, firm, association or corporation to act in concert with or on behalf of another person or persons to solicit or accept payments for the referral of passengers to a motor vehicle for hire. This prohibition does not include payment for legitimate advertising placement, such as placement of flyers or posters, or legitimate commissions provided by tour companies that do not operate on demand. Advertising or commission payments exempted herein must be documented, and said documentation must be provided to the Administrator when requested. The penalties for violation of Subsection 16.40.710 B. are as follows: \$1,500 for the first offense; \$2,500 for the second offense; and \$3,500 for the third and each subsequent offense.
- C.** It is prohibited for any person to solicit or accept gifts and/or gratuities or anything of value from any holder of a City of Portland company, vehicle or driver permit, except as authorized in this Chapter, in return for any dispatch call, assignment, vehicle or shift. The penalties for violation of Subsection 16.40.710 C. are as follows: \$1,500 for the first offense; \$2,500 for the second offense; and \$3,500 for the third and each subsequent offense.
- D.** If a limousine, executive sedan, taxicab, shuttle or other for-hire vehicle is in a marked hotel zone or loading/unloading zone, it is a rebuttable presumption that it is parked there to provide private for-hire transportation services that require a log book entry. Taxis, shuttles, executive sedans and limousines parked in a hotel zone must provide properly documented log book entry when requested by the Administrator. The penalties for violation of Subsection 16.40.710 D. are as follows: \$500 for the first offense; \$1,000 for the second offense; \$2,500 and suspension for the third and subsequent offenses.
- E.** Other than for drop off, for-hire vehicles may not park in the hotel zone without a reservation or request for service. Per Section 16.40.460 limousine and executive sedan service must be prearranged. The penalties for violation of Subsection 16.40.710 E. are as follows: \$500 for the first offense; \$1,000 for the second offense; and \$2,500 and suspension for the third and subsequent offenses.

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- F.** Taxicabs may not park in the hotel zone or loading/unloading zone prior to 15 minutes before pick up for a dispatch or request for service. The dispatched call/request for service must be documented in the required log format, and available for review by any authorized enforcement officer inspecting logs in the field. The penalties for violation of Subsection 16.40.710 F. are as follows: \$500 for the first offense; \$1,000 for the second offense; and \$1,000 and driver permit suspension for the third offense.

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Chapter 16.48

TAXICAB REGULATIONS

(Chapter added by Ordinance No. 139316; Replaced by Ordinance No. 147243;
Repealed by Ordinance No. 165189; Reinstated by Ordinance No. 165522,
and repealed by Ordinance No. 165947, effective October 28, 1992.)

Chapter 16.50

MASS TRANSIT

Sections:

- 16.50.001 Purpose.
- 16.50.100 Designation of Transit Lanes.
- 16.50.110 Designation of the Transit Mall and Auxiliary Vehicular Lanes.
- 16.50.200 Prohibited Use of Transit Lanes, Transit Mall and Auxiliary Vehicular Lanes.
- 16.50.300 Vehicles Allowed In Transit Lanes, Auxiliary Vehicular Lanes and on the Transit Mall.
- 16.50.400 Vehicles Allowed in Non Transit Mall Transit Lanes During Certain Hours.
- 16.50.410 Vehicles Allowed on the Transit Mall and Auxiliary Vehicular Lanes by Permit.
- 16.50.500 Regulation and Permit Procedure.

16.50.001 Purpose.

(Amended by Ordinance No. 182921, effective June 17, 2009.) This section describes how mass transit lanes, the Transit Mall and Auxiliary Vehicular Lanes are designated, the regulations that apply, and which vehicles may use them.

16.50.100 Designation of Transit Lanes.

(Amended by Ordinance No. 182921, effective June 17, 2009.) Designation of transit lanes, excluding the Transit Mall and Auxiliary Vehicular Lanes separately designated herein will be made by the City Traffic Engineer upon advice of the City Engineer and the Tri-County Metropolitan Transportation District of Oregon (TriMet). Designation will be shown by official signs or markings. Signs or markings will distinguish whether the transit lane may be used by:

- A. Bus only;
- B. Light rail vehicle only;
- C. Trolley or streetcar vehicle; or
- D. Carpool vehicle only; or some combination of the above.

16.50.110 Designation of the Transit Mall and Auxiliary Vehicular Lanes.

(Added by Ordinance No. 182921, effective June 17, 2009.) The Transit Mall is hereby designated to be that portion of 5th Avenue and 6th Avenue between NW Irving Street and SW Jackson Street including NW Irving Street between NW 5th Avenue and NW 6th

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Avenue, and SW Morrison and Yamhill Streets between SW 4th Avenue and SW Broadway specifically designated with official signs or marking for the use of transit vehicles. The automobile lanes on 5th Avenue, 6th Avenue, NW Irving Street, SW Morrison Street and SW Yamhill Street adjacent the Transit Mall are hereby designated as Auxiliary Vehicular Lanes for purposes of this Section.

16.50.200 Prohibited Use of Transit Lanes, Transit Mall and Auxiliary Vehicular Lanes.

(Amended by Ordinance No. 182921, effective June 17, 2009.)

- A.** Except as otherwise provided for in this Section, no vehicle may enter upon, park on, or use an officially designated transit lane, or the Transit Mall.
- B.** Restrictions on transit lane use will vary depending on whether the lane is designated for light rail, motor bus, trolley, or carpool use.
- C.** Except as otherwise provided for in this Section, no vehicle may stop or park on Auxiliary Vehicular Lanes except vehicles acting in compliance with law, or at the direction of a police officer or a control device or Multnomah County prisoner transfer vehicles actively transferring people.
- D.** Except vehicles may cross the Transit mall to ingress or egress the following driveways provided that the vehicles shall obey all applicable traffic control devices:
 - 1.** The driveway located on the west side of SW 5th Avenue immediately south of SW Jefferson Street.
 - 2.** The first two driveways located on the west side of SW 5th Avenue immediately north of SW College Street.
 - 3.** The driveway located on the west side of SW 5th Avenue immediately south of SW Harrison Street.

16.50.300 Vehicles Allowed In Transit Lanes, Auxiliary Vehicular Lanes and on the Transit Mall.

(Amended by Ordinance Nos. 182921 and 183979, effective August 13, 2010.) The following vehicles may enter upon, stop or park in a transit lane or the Transit Mall:

- A.** A vehicle owned or operated by the Tri-County Metropolitan Transportation District of Oregon.

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- B.** A vehicle so allowed by the terms of a maintenance contract with the City of Portland or TriMet or City Transportation maintenance crews engaged in maintenance.
- C.** A police, fire, ambulance, or outpatient vehicle, if performing emergency services.
- D.** A vehicle and equipment engaged in emergency response:
 - 1.** Towing;
 - 2.** Snow removal; or
 - 3.** Street, sewer, utility, bus or fire alarm repair.
- E.** Street Car.

16.50.400 Vehicles Allowed in Non Transit Mall Transit Lanes During Certain Hours.
(Amended by Ordinance Nos. 173627, 182389 and 182921, effective June 17, 2009.)

- A.** A vehicle may enter upon and park in a transit lane if the lane is closed by a street closure permit from the City Engineer per Title 17 and if the vehicle is specifically authorized to do so by the street closure permit.
- B.** A vehicle with a travel lane parking permit (16.20.550) or an angle loading permit (16.20.540) may park in a transit lane if authorized to do so by the permit.
- C.** A public utility or construction vehicle engaged in work on or adjacent to a transit lane may enter upon, park, and use transit lanes designated for bus-only use except during the following hours: 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., Monday through Friday, after giving notification as required by regulations governing the Special Traffic Control District (17.23.050).
- D.** A public utility or construction vehicle engaged in work on or adjacent to a transit lane may enter upon, park, and use transit lanes designated for bus-only use between the hours of 7 a.m. to 9 a.m. and/or 4 p.m. to 6 p.m., Monday through Friday, when specifically allowed during this time by a permit from the City Traffic Engineer. The City Traffic Engineer will notify Tri-Met and the City Engineer before issuing such a permit.
- E.** A vehicle requiring direct access to properties facing a transit lane for ingress/egress or special loading may enter upon and use (but not park in) the transit lane(s) between 7 p.m. and 6 a.m. A permit from the City Traffic Engineer is required for this access between 6 a.m. and 7 p.m.

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- F.** A taxicab, for hire vehicle, delivery vehicle, maintenance vehicle, or garbage truck may enter certain transit lanes during times established by the Bureau of Transportation's Administrative Rules.

16.50.410 Vehicles Allowed on the Transit Mall and Auxiliary Vehicular Lanes by Permit.

(Added by Ordinance No. 182921; Amended by Ordinance No. 183979, effective August 13, 2010.)

- A.** A public utility or construction vehicle engaged on or adjacent to the Transit Mall may enter upon, park and use the Transit Mall and/or the Auxiliary Vehicular Lanes if the Transit Mall and/or Auxiliary Vehicular Lanes are closed by permit from the City Engineer per Title 17, or TriMet access permit, and the vehicle is specifically authorized to do so by the permit.
- B.** Except in the case of emergency and as otherwise provided for herein, the City Engineer shall not issue permits for the use of Auxiliary Vehicular Lanes between the hours of 6:00 AM and 7:00 PM Monday through Friday. The City Engineer may issue permits for Saturday and/or Sunday, but permits shall not be short term closures as required for operational safety of the service provider and shall not interrupt TriMet service.
 - 1.** "Emergency" shall mean any unscheduled repair of existing facilities which must be accomplished immediately to protect the life, health and well being of the public, or to protect public or private property. Under this definition, "emergency" work shall encompass only immediately required repairs and shall not include extensive replacement or upgrading of the facility.
- C.** The City Engineer may issue permits for the use of Auxiliary Vehicular Lane on SW 6th Avenue between SW Taylor and SW Morrison Streets to accommodate events permitted and authorized by Pioneer Courthouse Square, Inc. as may be deemed appropriate in the judgment of the City Engineer.
- D.** All permits shall include a traffic control plan approved by the City Engineer and Tri-County Metropolitan Transportation District of Oregon (TriMet).

16.50.500 Regulation and Permit Procedure.

- A.** The Traffic Engineer must notify the Tri-County Metropolitan Transportation District of Oregon of any rule, regulation or permit proposed to be issued under this chapter. The rule, regulation or permit will become effective on a date agreed upon by both parties. In the event of disagreement between Tri-Met and the

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Traffic Engineer, the City Council will determine whether the rule be adopted or the permit issued based upon the amount of interference to mass transit operations.

- B.** No limitation or prohibition of use herein applies to vehicles on a street intersecting or crossing a transit lane unless it is specifically designated as a transit lane.

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Chapter 16.60

MOTOR VEHICLE FUELS

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

Sections:

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

16.60.010 Definitions.

(Amended by Ordinance No. 180671, effective January 12, 2007.) As used in this Chapter, the following terms shall be defined as provided in this section:

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

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- G.** “Diesel” means petroleum based liquid that is suitable for use as a fuel in diesel powered vehicles.
- H.** “E10” means a fuel mixture of 10% ethanol and 90% gasoline.
- I.** “Ethanol” means ethyl alcohol, a flammable liquid used or sold for the purpose of blending or mixing with gasoline.
- J.** “Feedstock” means the plant or animal matter from which a biofuel is derived.
- K.** “Fuel” means all gasoline or diesel sold within the City of Portland for the purpose of operating motor vehicles on public roadways.
- L.** “Fuel distributor” means a person that causes the transportation or storage of fuel at any point between a refinery or importer’s facility and any retail outlet or wholesale purchaser-consumer within the City of Portland.
- M.** “Gasoline” means any fuel sold for use in spark ignition engines.
- N.** “Motor Vehicle” means every inanimate vehicle which is self-propelled. For the purposes of this Chapter, the definition of motor vehicle shall not include aircraft, watercraft, or locomotives.
- O.** “Nonretail dealer” means any person who owns, operates, controls or supervises an establishment at which motor vehicles fuel is dispensed through a car or key-activated fuel dispensing device to nonretail customers.
- P.** “Reseller” means a person who purchases fuel and resells or transfers it to a retailer or wholesale purchaser-consumer within the City of Portland.
- Q.** “Retail outlet” means any establishment within the City of Portland at which fuel is sold or offered for sale to the ultimate consumer for use in motor vehicles.
- R.** “Retailer” means any person who owns, leases, operates, controls or supervises a retail outlet within the City of Portland.
- S.** “Wholesale purchaser-consumer” means any organization within the City of Portland that is an ultimate consumer of fuel, and which purchases or obtains diesel or gasoline from a fuel distributor or reseller for use in motor vehicles, and receives delivery of that product into a storage tank or directly into a vehicle’s tank.

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16.60.020 Biofuel Requirements.

(Amended by Ordinance No. 180671, effective January 12, 2007.)

A.

1. On and after July 1, 2007, all diesel fuel sold by fuel distributors or resellers to fuel retailers, nonretail dealers or wholesale purchaser-consumers within the City of Portland shall contain a minimum blend of 5% Biodiesel (B5 fuel).
2. On and after August 15, 2007, all diesel fuel sold by fuel retailers, dispensed by nonretail dealers or purchased by wholesale purchaser-consumers within the City of Portland shall contain a minimum blend of 5% Biodiesel (B5 fuel).

B.

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

C.

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

- D.** The Director of the Bureau of Development Services shall establish, and revise as necessary, standards for biofuels sold in the City of Portland. The Director shall consult specifications established for biofuels by the American Society for

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Testing and Materials, the Oregon Department of Agriculture or similar specifications, in forming its standards.

- E.** Biodiesel produced from a feedstock of palm oil may not be used to satisfy the requirements of this Chapter.
- F.** The Bureau of Development Services shall study and monitor biodiesel production, use and sales in Oregon and in the City of Portland. When the production of biodiesel from Oregon grown feedstock and used cooking oil reaches a level of at least two million five hundred thousand gallons on an annualized basis for at least three months, the Bureau of Development Services shall notify all fuel distributors, resellers, retailers, nonretail dealers and wholesale-purchaser consumers that:
 - 1.** The production of biodiesel from Oregon grown feedstock and used cooking oil has reached the level described above; and
 - 2.** That three months from the date of the notice, all biodiesel used for the purposes of satisfying the requirements of this Chapter shall contain a minimum of 50% (by volume) of biodiesel produced from used cooking oil and/or feedstock from the Genera Brassica, Camelina, Helianthus or Carthamus.
- G.** Fuel retailers shall be required to conspicuously place signage denoting the type of biofuel mixture available for sale by the fuel retailer in accordance with the labeling guidelines or rules established by the Oregon Department of Agriculture. For example, B5 fuel shall be labeled “B5 Biodiesel Blend.”

16.60.025 Additional Regulation in the 122nd Avenue Subdistrict.

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

16.60.030 Exemptions.

(Amended by Ordinance No. 180671, effective January 12, 2007.)

- A.** Any retailer who offers a biodiesel blend of 20% (B20 fuel) or greater shall be exempt from the requirements of Section 16.60.020 (A) and (B), and may also provide for sale, on the same site or a contiguous site, diesel fuel which does not contain biodiesel.

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- B.** The Director of the Bureau of Development Services may temporarily suspend or modify the minimum biofuel content requirements of this Chapter based on a determination that such requirements are temporarily infeasible due to economic or technical circumstances. The Director's determination shall be made by filing a report with the City Council.
- C.** The requirements of this Chapter do not apply to fuel used for the operation of railroad locomotives, watercraft or aircraft.
- D.** Nothing in this Chapter is intended to prohibit the production, sale, or use of motor fuel for use in federally designated flexibly fueled vehicles capable of using up to eighty-five percent ethanol fuel blends.

16.60.040 Enforcement and Notice of Violation.

(Amended by Ordinance No. 180671, effective January 12, 2007.)

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

16.60.050 Penalties.

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

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

16.60.060 Disclosure.

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

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16.60.070 Additional Regulations.

(Amended by Ordinance No. 180671, effective January 12, 2007.)

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

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Chapter 16.65

FUNERAL PROCESSIONS

(Chapter added by Ordinance No. 176022,
effective November 16, 2001.)

Sections:

16.65.010 Funeral Processions.

16.65.010 Funeral Processions.

As used in this Section, funeral procession means four or more motor vehicles accompanying the body of a deceased person in the daytime, when each of such vehicles has its headlights lighted.

- A.** Pedestrians and the operators of all vehicles, except emergency vehicles, must yield the right-of-way to each vehicle which is a part of a funeral procession. Whenever the lead vehicle in the funeral procession lawfully enters an intersection, the remainder of the vehicles in such a procession may continue to follow such lead vehicle through the intersection notwithstanding any traffic control device or right-of-way provisions prescribed by statute or ordinance, provided the operator of each vehicle exercises due care to avoid colliding with any other vehicle or pedestrian upon the streets or highway.
- B.** No person may operate any vehicle as part of a funeral procession without having the headlights of such vehicle lighted.
- C.** No operator of a vehicle may drive between vehicles in a funeral procession which are properly identified while the procession is in motion, except when directed to do so by a police officer.

Chapter 16.70

MISCELLANEOUS REGULATIONS

Sections:

16.70.001	Purpose.
16.70.200	Pedestrians.
16.70.210	Must Use Crosswalks.
16.70.220	Must Cross at Right Angles.
16.70.230	To Obey Directions of School Traffic Patrol and Crossing Guard.
16.70.240	Bridge Railings.
16.70.300	Bicycles.
16.70.310	Persons Riding Bicycles to Obey Traffic Regulations.
16.70.320	Operating Rules.
16.70.330	Impounding Bicycles.
16.70.340	Renting Bicycles.
16.70.400	Other Transportation.
16.70.410	Roller Skates and Skateboards.
16.70.430	Train Switching Prohibited in Certain Areas
16.70.450	Off Street Parking Required for Trucks.
16.70.500	Traffic Regulations.
16.70.510	Trespassing - Leaving Pamphlet on Vehicle.
16.70.520	Hitching Onto Vehicle.
16.70.530	Central City Plan District Closed to Driving Lessons.
16.70.550	Vendor Traffic Regulations.
16.70.560	Traffic Regulations in Parks.
16.70.570	Inoperative Electric Traffic Control Signals.
16.70.600	Over Dimensional Vehicles.
16.70.610	General Prohibitions.
16.70.620	Exemptions.
16.70.630	Permits.
16.70.640	Limits of Authority to Issue Variance Permit.
16.70.650	Requirements, Conditions and Procedures for Issuance of Variance Permit; Duration; Cancellation.
16.70.660	Permit Must Be Carried and Displayed.
16.70.670	Movement of Building or Other Structure Excluded.
16.70.680	Liability for Damage to Streets or Other Public Property.
16.70.690	Designation of Streets for Vehicles of Excess Weight or Size.
16.70.700	Traffic Congestion Thoroughfares.
16.70.710	Purpose.
16.70.720	Posting Signs.

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16.70.730	Signs.
16.70.740	Acts Prohibited.
16.70.750	Penalty.
16.70.760	Subsequent Violation.
16.70.770	Notice of Towing For Subsequent Violations.
16.70.800	Visibility.
16.70.810	Street Obstructions and Dangerous Conditions.
16.70.900	Reckless Driving.

16.70.001 Purpose.

This Section provides traffic regulations in addition to those of the Oregon Revised Statutes that apply in the City of Portland.

16.70.200 Pedestrians.

16.70.210 Must Use Crosswalks.

No pedestrian may cross a street other than within a crosswalk if within 150 feet of a crosswalk.

16.70.220 Must Cross at Right Angles.

A pedestrian must cross a street at right angles unless crossing within a crosswalk.

16.70.230 To Obey Directions of School Traffic Patrol and Crossing Guard.

At intersections where a member of the school traffic patrol or crossing guard is stationed for the safety of school children, all pedestrians must obey the directions of such school traffic patrol member or crossing guard. It is unlawful for any pedestrian to cross at any intersection where such patrol member or crossing guard is stationed contrary to the direction of such school traffic patrol member or crossing guard.

16.70.240 Bridge Railings.

No pedestrians may sit, stand on, or lean their torso over a Willamette River bridge railing unless engaged in bridge maintenance work or otherwise authorized by an appropriate government agency.

16.70.300 Bicycles.

16.70.310 Persons Riding Bicycles to Obey Traffic Regulations.

Every person riding a bicycle upon a roadway is subject to state law and the provisions of this Title applicable to the driver of a vehicle, except state law and those provisions of this Title which by their very nature can have no application.

16.70.320 Operating Rules.

(Amended by Ord. No. 165594, July 8, 1992.) No person may:

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- A.** Leave a bicycle so that it obstructs vehicle or pedestrian traffic on a roadway, sidewalk, driveway, handicap access ramp, building entrance, or so that it prevents operation of a parking meter or newspaper rack;
- B.** Leave a bicycle secured to a fire hydrant or to a police or fire call box;
- C.** Leave a bicycle on private property without consent of the owner or legal tenant. Consent is implied on private commercial property;
- D.** Leave a bicycle on a street or other public property for more than 72 hours; or
- E.** Ride a bicycle on a sidewalk, unless avoiding a traffic hazard in the immediate area, within the area bounded by and including SW Jefferson, Front Avenue, NW Hoyt and 13th Avenue, except:
 - 1.** On sidewalks designated as bike lanes or paths;
 - 2.** On the ramps or approaches to any Willamette River Bridge; or
 - 3.** In the area bounded by the west property line of SW Ninth Avenue, the east property line of SW Park Avenue, the north property line of SW Jefferson and the south property line of SW Salmon Street.
 - 4.** For police or special officers operating a bicycle in the course and scope of their duties; or
 - 5.** For employees of the Association for Portland Progress and companies providing security services operating a bicycle in the course and scope of their duties. These employees must have in possession an identification card issued by the Chief of Police certifying the rider has completed a training course in the use of a bicycle for security patrol.

16.70.330 Impounding Bicycles.

- A.** A bicycle left on a street or other public property for more than 72 hours may be impounded.
- B.** A bicycle may be immediately impounded if:
 - 1.** It is parked in violation of this code and obstructs or impedes pedestrian or vehicular traffic; or
 - 2.** It is an immediate threat to the public welfare.

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- C.** The impounding agency must make reasonable efforts to notify the owner of the impoundment and a description of how and by what date the bicycle must be claimed.
- D.** A fee may be charged to the owner of an impounded bicycle. No impoundment fee will be charged to the owner of a stolen bicycle that has been impounded.
- E.** An impounded bicycle that remains unclaimed after 30 days may be disposed of in accordance with city procedures for disposal of abandoned or lost personal property.

16.70.340 Renting Bicycles.

No person may rent a bicycle to another person unless the bicycle is equipped as required by state law.

16.70.400 Other Transportation.

16.70.410 Roller Skates and Skateboards.

(Replaced by Ordinance No. 185596, effective September 5, 2012.)

- A.** No person may use roller skates, including in-line skates, skateboards, scooters, or other similar devices powered exclusively by human power upon any sidewalk within the area bounded by and including SW Jefferson, Naito Parkway, NW Hoyt and 13th Avenue. The middle and bisecting sidewalks in the Park Blocks are considered sidewalks for the purposes of this Subsection.
- B.** No person may use roller skates, including in-line skates, skateboards, scooters, or other similar devices powered exclusively by human power upon any street, roadway or sidewalk on
 - 1.** SW 5th or 6th Avenues between SW Lincoln and Burnside; and on
 - 2.** NW 5th or 6th Avenues between Burnside and Union Station.
- C.** No person may use roller skates, including in-line skates, skateboards, scooters, or other similar devices powered exclusively by human power upon any street, roadway or sidewalk between the hours of 10 p.m. and 7 a.m. on
 - 1.** SW Fairview Boulevard between SW Knights Boulevard and SW Kingston Avenue;
 - 2.** SW Kingston Avenue between SW Tichner Drive and the Washington Park entrance;

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3. SW Tichner Drive between SW Kingston Avenue and SW Marconi Avenue;
 4. SW Marconi Avenue;
 5. SW Park Place between SW Marconi Avenue and SW Wright Avenue;
 6. SW Lafayette Place;
 7. SW Hampshire Street between SW Lafayette Place and SW Champlain Drive;
 8. SW Champlain Drive between SW Hampshire Street and SW Rutland Terrace;
 9. SW Rutland Terrace; and
 10. West Burnside Street from Skyline Boulevard to SW Vista Avenue.
- D.** No person may use roller skates, including in-line skates, skateboards, scooters, or other similar devices powered exclusively by human power upon any street, roadway or sidewalk while attached in any manner to any motor vehicle on the roadway. In addition, a person shall not knowingly drive a motor vehicle that is towing a person riding same.
- E.** All persons using roller skates, including in-line skates, skateboards, scooters, or other similar devices powered exclusively by human power must while on a public street, traveling at less than the speed limit of the roadway shall yield to vehicles approaching from the rear by moving to the right curb or shoulder of the street.
- F.** During limited visibility conditions and between the hours of sunset and sunrise, all persons using roller skates, including in-line skates, skateboards, scooters, or other similar devices powered exclusively by human power must be equipped with and use lighting equipment that shows a white light visible from a distance of at least 500 feet to the front of the device.
- G.** During limited visibility conditions and between the hours of sunset and sunrise, all persons using roller skates, including in-line skates, skateboards, scooters, or other similar devices powered exclusively by human power must be equipped with and use lighting equipment that has a red reflector or lighting device or material of such size or characteristic and so mounted, carried or worn as to be

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visible from all distances up to 600 feet to the rear when directly in front of lawful lower beams of headlights on a motor vehicle.

- H.** The penalty for failing to follow the rules of Subsections A. - G. shall be a minimum fine of \$115.
- I.** All persons under 16 years of age shall wear protective headgear when using roller skates, including in-line skates, skateboards, scooters, or other similar devices powered exclusively by human power upon any street, sidewalk, or bridge. The penalty for failure to wear protective headgear as required in this subsection shall be a maximum fine of \$25.
- J.** Except for those provisions by their very nature can have no application, this subsection adopts the Oregon Motor Vehicle Code's rules of the road for vehicle drivers to regulate the use of roller skates, including in-line skates, skateboards, scooters, or other similar devices powered exclusively by human power upon a public highway in the City. Riders of such devices are subject to the provisions applicable to, and have the same rights and duties provided any driver of a vehicle by the Oregon Vehicle Code concerning operating on highways except when otherwise specifically provided in this Code.
 - 1.** The penalty for failing to follow the rules of the road incorporated by Subsection J. shall be a fine of \$250.
 - a.** First time offenders of this Code are eligible to participate in Share the Road or similar program in lieu of the fine.
- K.** This Section does not apply to bicycles as defined by Section 16.90.025 of this Code.

16.70.430 Train Switching Prohibited in Certain Areas.

- A.** On railroad tracks located in NW 12th Avenue between West Burnside and NW Hoyt Streets, and on railroad tracks located on NW Flanders Street, between NW 12th Avenue and NW Front Avenue, it is unlawful for any person to direct, cause, or permit switching movements of freight cars between the hours of 6 a.m. and 7 p.m.
- B.** No person may direct, cause, or permit any railroad equipment to be left or parked on the main line tracks of these streets.

16.70.450 Off-Street Parking Required for Trucks.

A person owning or controlling any truck or truck trailer must provide at his or her own expense complete off-street parking facilities for the storage of all such equipment.

16.70.500 Traffic Regulations.

16.70.510 Trespassing - Leaving Pamphlet On Vehicle.

(Amended by Ord. No. 165987, Nov. 12, 1992.)

- A. It is unlawful for any person to ride or trespass upon or within any motor vehicle without the consent of the owner or operator thereof.
- B. It is unlawful for any person to post, stick, or place upon or within any motor vehicle any card, notice, handbill, leaflet, pamphlet, survey, or similar matter without the consent of the owner or operator.
- C. The provisions of this Section do not apply to any card, notice, handbill, leaflet, pamphlet, survey, or similar matter placed upon or within such motor vehicle by authority of law, by an authorized officer of the City, County, or State or by a designee of the City Traffic Engineer.

16.70.520 Hitching Onto Vehicle.

- A. It is unlawful for any person riding upon any vehicle, sled, or other conveyance to hitch or hold on to any part of another vehicle or conveyance for the purpose of being propelled or drawn along any street or highway within the City.
- B. Nothing contained in this Section is deemed to prohibit the coupling of one or more motor vehicles or motor vehicle and trailer in the manner approved by ORS 818.

16.70.530 Central City Plan District Closed to Driving Lessons.

It is unlawful for any person to give or receive lessons or instructions in driving or operating any vehicle upon any street, except interstate freeways, in the Central City Plan District except for access directly to and from an institution or business located in the Central City Plan District. This Section does not apply to an applicant for a motor vehicle operator's license when accompanied by an examiner from the office of the Department of Motor Vehicles of Oregon.

16.70.550 Vendor Traffic Regulations.

(Amended by Ordinance Nos. 165594, 166575, and 176585, effective July 5, 2002.)

- A. It is unlawful for any:

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1. Vehicle, cart, or temporary stand used to conduct business to be left unattended for 30 or more minutes or parked or stored over night on any public grounds, street, or highway. See also: 14A.50.030, 14A.50.040, 14A.50.050, 16.20.150 D., 16.60.100 F., 17.25, 17.26.
 2. Vendor to conduct business in a roadway adjacent to or directly across from residential property for a period longer than 10 minutes within any block face. Such vendor must vacate said block face for a period of 2 hours upon expiration of the 10-minute limit.
- B. Whenever, in the judgement of the Bureau of Police, traffic is or will be congested in and around an area being used by a vendor, the Bureau of Police is hereby given authority to cause said vendors to move and remain out of the congested area.

16.70.560 Traffic Regulations in Parks.

(Amended by Ord. No. 165594, July 8, 1992.)

- A. Except as otherwise provided in this Section, the provisions of this Title regulating street traffic and parking apply to driving or parking a vehicle in a City park or golf course.
- B. With approval of the Commissioner In Charge, the Superintendent of Parks may restrict or prohibit traffic or types of traffic and parking in City parks and golf courses. Signs giving notice of any restriction or prohibition imposed under this Subsection shall be posted and maintained by the Superintendent in a conspicuous manner and place to inform the public. It is unlawful for any person to violate any restriction or prohibition imposed under this Subsection after notice thereof has been posted.
- C. The Bureau of Police has authority to enforce the provisions of this Section.
- D. The provisions of this Section do not apply to City authorized vehicles used in park or golf course service.

16.70.570 Inoperative Electric Traffic Control Signals.

An intersection with inoperative electric traffic control signals shall be treated as an uncontrolled intersection, unless other official traffic control devices have been erected at the intersection. This Section does not apply to freeway ramp metering signals operated by the Oregon Department of Transportation.

16.70.600 Over Dimensional Vehicles.

16.70.610 General Prohibitions.

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- A.** It is unlawful for any person or owner to drive, move, or to cause or permit to be driven or moved on any street in the City any vehicle or combination of vehicles that:
- 1.** Exceeds the weight or size limitations set forth in the Oregon Revised Statutes (ORS), Chapter 818;
 - 2.** Is not constructed or equipped as required by ORS 818;
 - 3.** Is dragging upon or over the surface of a street any log, pole, piling, or other thing;
 - 4.** Does not move exclusively on revolving wheels or rotating tracks in contact with the surface of the street;
 - 5.** Is so constructed or loaded so as to allow its contents to drop, sift, leak, or otherwise escape therefrom; or
 - 6.** Violates any other provisions of this Title.
- B.** Operation of any vehicle or combination of vehicles in violation of the provisions of this Chapter is prima facie evidence that the owner of the vehicle or combination caused or permitted the vehicle or combination to be so operated and the owner shall be liable for any penalties imposed pursuant to ORS 818.

16.70.620 Exemptions.

- A.** The provisions of this Chapter governing size and weight do not apply to:
- 1.** Any vehicle, combination of vehicles, article, machine, or other equipment in use by the Federal Government, the State of Oregon, or any county or city while in the immediate vicinity of and involved with the construction, maintenance, or repair of public highways;
 - 2.** Any vehicle in use by a mass transit district for the purposes authorized under ORS 267.010 to ORS 267.390, provided the size or weight of the vehicle is approved by the City for that route; or
 - 3.** Any vehicle, combination of vehicles, article, machine, or other equipment operated under a permit issued by the Traffic Engineer and in compliance with the conditions and restrictions thereof.
- B.** None of the size limits described in ORS 818, except the maximum limit of allowable extension beyond the last axle of a combination of vehicles, apply to

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agricultural equipment hauled, towed, or moved upon any street if the movement is incidental to the farming operations of the owner of the agricultural equipment.

16.70.630 Permits.

Under authority granted in Section 16.10.200, the Traffic Engineer may grant written permits for the operation over City streets, or sections thereof, of any vehicle or combination of vehicles, including any load thereon, having:

- A.** A gross weight;
- B.** A length;
- C.** A width;
- D.** A height; or
- E.** A maximum number of vehicles in combination; in excess of that authorized in ORS 818 or administratively imposed weight or size limits designated in accordance to 16.70.690.

16.70.640 Limits of Authority to Issue Variance Permit.

A permit may not be issued for any vehicle or load that can readily or reasonably be dismantled or disassembled to reduce weight or width. This does not apply to any vehicle, combination of vehicles, load, article, property, machine, or thing that is:

- A.** Used in the immediate vicinity of construction, maintenance, or repair of public highways; and
- B.** Of a length in excess of that permitted in ORS 818.

16.70.650 Requirements, Conditions and Procedures for Issuance of Variance Permit; Duration; Cancellation.

(Amended by Ordinance Nos. 176361 and 181217, effective September 14, 2007.)

- A.** In issuing a permit, the Traffic Engineer may:
 - 1.** Grant a permit that is valid for a single trip, a number of trips or an amount of time not to exceed one year.
 - 2.** Establish seasonal or other time limitations on a permit.
 - 3.** Require the applicant to furnish public liability or automobile insurance and property damage insurance as follows:

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- a.** General Liability insurance with a combined single limit of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage; or
 - b.** Automobile Liability insurance with a combined single limit of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage, including coverage for owned, hired or nonowned vehicles, as applicable; and
 - c.** The City of Portland, and its agents, officers, and employees are Additional Insured, but only with respect to operations occurring within the scope of the permit.
 - d.** There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30-days written notice from the Contractor or its insurer(s) to the City.
 - e.** As evidence of the insurance coverage required, the applicant shall furnish acceptable insurance certificates to the City prior to issuance of any permit. The certificate will specify that the City is additional insured and will include the 30-day cancellation clause. Insuring companies or entities are subject to City acceptance. The applicant shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.
- 4.** Require the applicant to furnish indemnity insurance or an indemnity bond in an amount fixed by the Traffic Engineer to:
 - a.** Reimburse the City of Portland for any damage to the highways or streets that may be caused under the permit; and
 - b.** Indemnify the members, officers, employees, and agents of the City of Portland from any claim that might arise from the granting of the permit and from the use of the highways under the permit.
- 5.** Require a demonstration by the applicant to establish that any vehicle, combination of vehicles, load, article, property, machine, or thing in operation under a permit would:
 - a.** Stay on the right side of the center line of the traveled way at all times; and
 - b.** Allow sufficient room in the opposing traffic lane for the safe movement of other vehicles.

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- B.** A permit must be in writing and must specify:
 - 1.** All highways or streets over which the permit is valid;
 - 2.** Any vehicle, combination of vehicles, load, article, property, machine, or thing allowed under the permit; and
 - 3.** Maximum dimensions and maximum weights allowed under the permit.
- C.** Under this section, the Traffic Engineer may not issue a permit that is valid for longer than 1 year.
- D.** An application for a permit issued under this section must specify:
 - 1.** The vehicle, combination of vehicles, load, article, property, machine, or thing for which the permit is requested;
 - 2.** The particular highways and streets for which the permit is sought; and
 - 3.** Whether the permit is sought for a single trip, a number of trips or continuous operation.
- E.** This section does not authorize:
 - 1.** Any vehicle, combination of vehicles, load, article, property, machine, or thing for which the permit is issued to be operated or moved contrary to any provisions of the vehicle code, except as specified in a permit; or
 - 2.** Any movement or operation of a vehicle, combination of vehicles, load, article, property, machine, or thing until a permit is issued.
 - 3.** Any vehicle, combination of vehicles, load, article, property, machine, or thing which is eligible for a permit under the State of Oregon Continuous Operation Variance Permit program as described in OAR 734.074.0010.
- F.** The City Traffic Engineer may be present during the movement. The presence of the City Traffic Engineer and any directions or suggestion made by him/her is not to be considered supervision of the movement and does not relieve the permit holder or the permit holder's insurers or sureties from liability for any damage done by the movement. If there are any of the permit's terms or conditions with which the movement does not comply, the City Traffic Engineer who is present at the movement may order it to be stopped.

G. Any permit may be canceled at any time by the City Traffic Engineer upon satisfactory proof that:

1. The permit holder has violated any of the terms of the permit;
2. The permit was obtained through misrepresentation in the application therefor; or
3. The public interest requires cancellation.

16.70.660 Permit Must Be Carried and Displayed.

A. The driver of any vehicle or combination of vehicles for which a variance permit has been issued commits the offense of failure to carry and display a variance permit if the driver does not:

1. Have the variance permit in immediate possession at all times when driving the vehicle or combination of vehicles upon a public highway or street; and
2. Display the variance permit upon demand of any police officer, department or county weighmaster, judicial officer, or the City Traffic Engineer.

B. Later producing a variance permit issued prior to and valid at the time of an offense by authority of this section is not a defense for a charge under this section.

16.70.670 Movement of Building or Other Structure Excluded.

The movement of buildings or other structures on or over the streets and other public right-of-ways of the City is excluded from the provisions of this Chapter. (See Chapter 17.48, Public Improvements.)

16.70.680 Liability for Damage to Streets or Other Public Property.

Any person moving any vehicle of excess weight or size on or over any street or other public right-of-way in the City is responsible for damage to pavement or other public improvement or property caused thereby.

16.70.690 Designation of Streets for Vehicles of Excess Weight or Size.

A. When in the judgement of the City Traffic Engineer any City street or section thereof is capable of carrying any vehicle or combination of vehicles having a gross weight or overall size in excess of that authorized in ORS 818, the City Traffic Engineer may report to the City Council so declaring that street and fixing

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the maximum gross weight, width, height, and/or length and types and classes of vehicles or combination of vehicles which may be operated thereon.

- B.** The provisions of any report accepted by the City Council pursuant to recommendation of the City Traffic Engineer under this Section may be changed or rescinded at any time and is subject to any order made pursuant to Section 16.10.200.
- C.** If a report submitted by the City Traffic Engineer under this Section is accepted by the City Council, a duplicate original thereof (and any amendment or revocation thereof) must be filed by the Auditor with the Secretary of State. After such resolution is adopted and filed, no permit is required for the operation upon such street or section thereof of a vehicle or combination of vehicles not exceeding the maximum gross weight and length fixed by the report for vehicles or combinations of vehicles of that type and class.

16.70.700 Traffic Congestion Thoroughfares.

16.70.701 Purpose.

The purpose of this Chapter is to prohibit the repeated driving of a motor vehicle along and across one portion of a congested public street, which constitutes a strict liability violation without any requirement of culpable mental state, all as described in this Chapter.

16.70.720 Posting Signs.

With respect to any traffic congestion thoroughfare, the Chief of the Bureau of Police or his/her designee is authorized to declare that portion of the street to be a traffic congestion thoroughfare and to cause signs, as described in this Chapter, to be posted notifying of that designation.

16.70.730 Signs.

The signs referred to in Section 16.70.720 will notify drivers that they are entering a traffic congestion thoroughfare; that repeated passage of a motor vehicle through or across the traffic congestion thoroughfare is a violation of City Code Section 16.70.740; and that for a subsequent violation, the vehicle will be towed.

16.70.740 Acts Prohibited.

Between the hours of 9 p.m. and 5 a.m. of the following morning, no vehicle may pass along or across a traffic congestion thoroughfare, designated as such by signs as described in Section 16.70.730, more than two times.

16.70.750 Penalty.

(Amended by Ordinance Nos. 165987 and 176394, effective April 17, 2002.) Violation of this Chapter is an infraction punishable by a fine not to exceed \$150.

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- A. Except as provided below, violation of this Chapter is an infraction punishable by a fine not to exceed \$150.
- B. Violation of Sections 16.20.470, 16.70.510 A, 16.70.210, 16.70.220 and 16.10.060, is punishable by a fine of not more than \$500, or by imprisonment not exceeding 10 days or both.

16.70.760 Subsequent Violation.

If a vehicle passes along or across a traffic congestion thoroughfare as designated by signs in violation of Section 16.70.740, any single subsequent drive-through of that traffic congestion thoroughfare by that vehicle within the same 9 p.m. to 5 a.m. time period constitutes a separate violation of Section 16.70.740, punishable as provided in section 16.70.750; and the vehicle may be towed and taken to a storage area designated by the City and may be held for not more than 24 hours, all at the expense of the owner or person entitled to possession.

16.70.770 Notice of Towing For Subsequent Violations.

Upon issuing a citation for a violation of Section 16.70.740, the officer will give the person to whom the citation is issued a written notice which will state:

NOTICE

You have been cited for violation of Code Section 16.70.740 for repeated passage of a motor vehicle on or across a traffic congestion thoroughfare.

If the vehicle you are driving is again driven along or across this traffic congestion thoroughfare before 5 a.m. this morning, this vehicle may be impounded and towed in accordance with City Code Section 16.70.760.

Chief of the Bureau of Police

16.70.780 Exemptions.

This Section does not apply to:

- A. Any publicly owned vehicle of any city, county, public district, state, or federal agency;
- B. Any vehicle licensed for public transportation; or
- C. Any other vehicle granted an exemption by the Chief of Police because passage of the vehicle along or across the traffic congestion thoroughfare is necessary for commercial or medical reasons.

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16.70.800 Visibility.

(Amended by Ordinance Nos. 165987, 173369 and 183397, effective January 8, 2010.)

- A.** It is the responsibility of the owner or occupant of any property to prevent any vegetation or street tree on the property or the abutting public right-of-way from partially or wholly obstructing the visibility of traffic control devices, the visibility of or for drivers, bicyclists, or pedestrians, or in any way presents a safety hazard.
- B.** The person who owns or occupies said property is liable to any person who is injured or otherwise suffers damage by reason of the failure to remove or prune such vegetation as required by Title 16 or any other Title of the City Code. Furthermore, said person is liable to the City of Portland for any judgement or expense incurred or paid by the City, by reason of said person's failure to satisfy the obligations imposed by this or any other Title of the City Code.
- C.** Any street tree removal or pruning required by this Title must be done in accordance with the provisions of Title 20.
- D.** Vegetation, including trees, in green street or other public stormwater management facilities, shall be trimmed only by the City or under the authorization of the Bureau of Environmental Services (BES).
- E.** Any vegetation or street tree not removed or pruned as required in this Title is hereby declared to be a public nuisance and may be summarily abated as provided in Title 29.
- F.** Whenever the provisions of this section conflict with those of any other section of this code, including but not limited to Titles 16, 17, 18, 20, and 33, the stricter provisions shall govern.

16.70.810 Street Obstructions and Dangerous Conditions.

(Added by Ordinance No. 176585, effective July 5, 2002.) No person, whether acting as private citizen, principal, employee or agent shall:

- A.** Between the hours of sunset and sunrise, place or allow to remain on any street any obstruction, other than a lawfully parked vehicle or any permitted structure, unless a clearly displayed warning light or lights are:
 - 1.** plainly visible for 200 feet in either direction parallel to the street and at least 25 feet in all other directions, and
 - 2.** placed on the edge or side of the obstruction nearest the center of the street.

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- B.** At any time, create a dangerous condition on any street without erecting and maintaining a distinctly visible barricade which provides a clear indication of the danger and directs people safely around it; and/or
- C.** Remove such a barricade from any street while the danger continues.

16.70.900 Reckless Driving.

(Added by Ordinance No. 173097, effective by February 10, 1999.)

- A.** A driver of a vehicle commits the crime of reckless driving within the City of Portland if the driver commits two or more of the following violations in a single series of acts in such a way as to endanger the safety of persons or property:
 - 1.** Unlawful or unsignaled lane change;
 - 2.** Unsafe passing on the left or right;
 - 3.** Passing in a no-passing zone;
 - 4.** Following too close;
 - 5.** Illegal backing;
 - 6.** Unlawful stop or deceleration;
 - 7.** Failure to signal;
 - 8.** Violation of maximum speed limit in an urban area; or
 - 9.** Taking other actions that a reasonable driver would know endanger the safety of persons or property in a congested urban driving environment such as the City of Portland.
- B.** Violation of this law shall constitute a Class A Misdemeanor as prescribed in State law.

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Chapter 16.90

DEFINITIONS

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16.90.010	Accessory Recreational Vehicle.
16.90.015	Alley.
16.90.020	Angle Loading.
16.90.025	Bicycle.
16.90.030	Bicycle Boulevard.
16.90.032	Bicycle Lane.
16.90.034	Bikeway, Shoulder.
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16.90.040	Bikeway, Signed Connection.
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16.90.140	Handicap Access Ramp.
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16.90.305	Roadway.
16.90.310	School Bus.
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16.90.350	Street or Highway.
16.90.351	Storage Container.
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16.90.380	Traffic Control Signal.
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16.90.435	Vendor.
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16.90.001 Generally.

The following words and phrases when used in this Title shall, for the purpose of this Title, have the meanings respectively ascribed to them in this Chapter, except in those instances where the context clearly indicates a different meaning. Definitions of words and phrases in the Oregon Revised Statutes may be applied unless defined differently in this Title or in those instances where the context clearly indicates a different meaning.

16.90.005 Abandoned Vehicle.

(Amended by Ordinance No. 179141, effective March 23, 2005.) A vehicle that remains in violation for more than 24 hours and one or more of the following conditions exist:

- A.** The vehicle does not have a lawfully affixed, unexpired registration plate, or fails to display current registration.
- B.** The vehicle appears to be inoperative or disabled.
- C.** The vehicle appears to be wrecked, partially dismantled or junked.

16.90.010 Accessory Recreational Vehicle.

See Recreational Vehicle.

16.90.015 Alley.

(Amended by Ordinance No. 177028, effective December 14, 2002.) A facility primarily intended to provide access to the rear or side of lots or buildings in urban areas and not intended for through vehicular movement.

16.90.020 Angle Loading.

When a vehicle is parked at an angle to traffic flow for the purpose of loading/unloading and extends into the public right-of-way anywhere outside of a legal parking area.

16.90.025 Bicycle.

A type of vehicle that:

- A. Is designed to be operated on the ground on wheels;
- B. Has a seat or saddle for use of the rider;
- C. Is designed to travel with not more than three wheels in contact with the ground;
- D. Is propelled exclusively by human power; and
- E. Has every wheel more than 14 inches in diameter or two tandem wheels either of which is more than 14 inches in diameter.

16.90.030 Bicycle Boulevard.

(Replaced by Ordinance No. 177028, effective December 14, 2002.) A roadway with low vehicle traffic volumes where the movement of bicycles is given priority.

16.90.032 Bicycle Lane.

(Added by Ordinance No. 177028, effective December 14, 2002.) The part of the street designated by official signs or markings for the movement of persons riding bicycles except as otherwise specifically provided by law.

16.90.034 Bikeway, Shoulder.

(Added by Ordinance No. 177028, effective December 14, 2002.) A street upon which the paved shoulder, separated by a four-inch stripe and no bicycle lane markings, is used for the movement of persons riding bicycles. Auto parking is also allowed on shoulders marked in this manner.

16.90.035 Bicycle Path.

(Repealed by Ordinance No. 177028, effective December 14, 2002.)

16.90.036 Bikeway, Extra Width Curb Lane.

(Added by Ordinance No. 177028, effective December 14, 2002.) A wider than normal curbside travel lane provided to give extra room for the movement of persons riding bicycles where there is insufficient space for a bicycle lane or shoulder bikeway.

16.90.038 Bikeway, Off-Street Path.

(Added by Ordinance No. 177028, effective December 14, 2002.) An off-street path for the movement of persons riding bicycles that is physically separated from motorized

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vehicular traffic by an open space or barrier and either within a street right-of-way, but not in the roadway, or within an independent right-of-way or dedicated easement.

16.90.040 Bikeway, Signed Connection.

(Replaced by Ordinance No 177028, effective December 14, 2002.) A bikeway upon which signing is placed to direct bicyclists to a destination or another bikeway.

16.90.045 Block Face.

The area between the line separating a public right-of-way from private property and the center line of a street or highway, and between the midpoint of two intersections.

16.90.050 Bureau of Transportation System Management.

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

16.90.055 Carpool Vehicle.

- A.** Any vehicle that is designed by its manufacturer to seat three or more people and is utilized to transport on a regular basis, three or more people including the driver, from a point of origin to a destination.
- B.** For the purpose of this Title of the City Code, carpool vehicle specifically means any vehicle described in A. above, which displays a carpool permit issued by the Tri-County Metropolitan Transportation District of Oregon.

16.90.060 Central City Plan District.

The Central City Plan District is defined in Title 33 of this code. For purposes of this Title, however, regulations that apply to the Central City Plan District apply to the whole street (up to the property line or extension of a property line to the corner of a property line across an intersection) of the streets whose center lines serve as boundaries to the Central City Plan District.

16.90.065 City Recognized Holidays.

City recognized holidays are:

- A.** New Year's Day;
- B.** Martin Luther King Jr.'s Birthday;
- C.** President's Day;
- D.** Memorial Day;
- E.** Fourth of July;

- F.** Labor Day;
- G.** Veteran's Day;
- H.** Thanksgiving Day; and
- I.** Christmas Day.

A day begins at 12:00:00 a.m. and ends at 11:59:59 p.m.

16.90.070 Compact Car.

Any vehicle which will fit within the space lines of a space designated for compact cars by official signs or markings.

16.90.075 Conduct Business.

The act of selling or attempting to sell services, or edible or nonedible items for immediate delivery.

16.90.080 Construction Zone.

The space adjacent to the curb and in immediate proximity to the premises where construction, alteration, remodeling, repairing, or similar work is in progress, and designated by official parking meter or sign hoods, signs, or markings.

16.90.085 Crosswalk.

Any portion of a roadway at an inter-section or elsewhere that is distinctly indicated for pedestrian crossing by lines or other markings on the surface of the roadway that conform in design to the standards established for crosswalks under ORS 810.200. Whenever marked cross- walks have been indicated, such cross- walks and no other shall be deemed lawful across such roadway at that intersection. Where no marked crosswalk exists, a crosswalk is that portion of the roadway described in the following:

- A.** Where sidewalks, shoulders or a combination thereof exists, a crosswalk is the portion of a roadway at an intersection, not more than 20 feet in width as measured from the prolongation of the lateral line of the roadway toward the prolongation of the adjacent property line, that is included within:
 - 1.** The connections of the lateral lines of the sidewalks, shoulders, or a combination thereof on opposite sides of the street or highway measured from the curbs or, in the absence of curbs, from the edges of the traveled roadway; or
 - 2.** The prolongation of the lateral lines of a sidewalk, shoulder, or both, to the sidewalk or shoulder on the opposite side of the street, if the prolongation would meet such sidewalk or shoulder.

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- B.** If there is neither sidewalk nor shoulder, a crosswalk is the portion of the roadway at an intersection, measuring not less than 6 feet in width, that would be included within the prolongation of the lateral lines of the sidewalk, shoulder or both on the opposite side of the street or highway if there were a sidewalk.

16.90.090 Curb.

Any raised margin defining the space in the street devoted to vehicular traffic.

16.90.095 Curb Line.

The curb line separates a street or highway into the area dedicated to vehicle traffic (roadway) and the area dedicated to pedestrian and nonmotor vehicle traffic (planting strip, sidewalk, etc.).

16.90.100 Driver.

The rider, driver, or leader of any animal or vehicle that is not self-propelled and the operator of any vehicle that is self-propelled.

16.90.105 Driveway.

- A.** A road or access, whether improved or unimproved, extending from a public right-of-way onto private or public lands or structures for the purpose of gaining vehicular access to such areas and reasonably designated at the property line so as to be an obvious opening for access. For purposes of enforcement, a driveway:
 - 1.** Extends from one curb return to the other;
 - 2.** If winged, includes the wings; or
 - 3.** If the street is unimproved, the driveway area falls between the projections of the edges of an improved driveway or the most established tire ruts of an unimproved driveway.
- B.** Such road or access will be enforced as a driveway unless closed by a structure or permanent closure device.

16.90.110 Drop Box.

A container in which trash or any other refuse material is temporarily stored or collected. For the purposes of Title 16, a drop box will be considered a vehicle in terms of parking provisions and restrictions.

16.90.115 Emergency Vehicles.

(Amended by Ordinance No. 180917, effective May 26, 2007.) Vehicles of Portland Fire & Rescue, police vehicles, emergency vehicles of municipal departments, and

ambulances while being used for emergency purposes and displaying lights as required by the Oregon Revised Statutes.

16.90.120 Fire Station.

Any building used for the purpose of housing fire apparatus of the City.

16.90.125 Fog Line or Edge Line.

The official 4-inch wide marking that defines the lateral lines of a roadway.

16.90.130 Gross Vehicle Weight Rating.

The value specified by the manufacturer as the maximum loaded weight of a single or a combination vehicle or the registration weight, whichever is greater.

16.90.135 Guest.

As used in a regulated parking zone sign, means a patron or visitor to the adjacent hotel.

16.90.140 Handicap Access Ramp.

An inclination, ramp-like structure, or any other such device designed to serve and provide ease of access from the sidewalk to the roadway or from the street to adjacent property for individuals using a mobility aid. If winged, it includes the winged area of the structure.

16.90.145 Hotel.

Any structure intended or designed for transient occupancy and which offers more than 25 percent of its rooms for dwelling, lodging or sleeping purposes for less than a 30 day period.

16.90.150 Improper Use.

Improper use occurs when a permit holder violates the provisions described on the permit application.

16.90.155 Intersection.

The area of a roadway created when two or more public roadways join together at any angle, as described in one of the following:

- A. If the roadways have curbs, the intersection is the area embraced within the prolongation or connection of the lateral curb lines.
- B. If the roadways do not have curbs, the intersection is the area embraced within the prolongation or connection of the lateral boundary lines of the roadways.
- C. The junction of an alley with a roadway does not constitute an intersection.

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- D.** Where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of the divided highway by an intersection highway is a separate intersection. In the event the intersection highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways is a separate intersection.

16.90.160 Light Rail Transit System.

A commuter transit mode consisting of steel-wheeled rail vehicles, powered electrically through overhead lines, operating predominately on exclusive right-of-way that need not be grade separated.

16.90.165 Light Rail Vehicle.

A component car in a light rail transit system.

16.90.170 Load/Unload.

To load or unload a vehicle means to be actively engaged in removing merchandise from or putting merchandise in a vehicle.

16.90.175 Local Authorities.

Every county, municipality, and other local board or body having authority to adopt local police regulations under the constitution and laws of this State.

16.90.180 Long-Term Parking Meter.

A parking meter with a designated time limit of more than 4 hours.

16.90.185 Mobile Construction Trailer.

A trailer that is used temporarily in conjunction with a construction site for office and other related purposes.

16.90.190 Motor Bus.

Every motor vehicle designed or used for carrying passengers and their personal baggage for compensation. The term “motor bus” does not mean or include taxicabs designed or constructed to accommodate and transport not more than five passengers, exclusive of the driver, and fitted with taximeters or using or having some other device, method, or system to indicate and determine the passenger fare paid for distance traveled.

16.90.195 Motor Home.

See Recreational Vehicle.

16.90.200 Motor Vehicle.

Every inanimate vehicle which is self-propelled.

16.90.205 Municipal Terminal.

Any property owned or operated by the Port of Portland for the provision of port services.

16.90.210 Official.

By authority of or recognized by law or code.

16.90.215 Official Vehicle.

Any government vehicle so identified by public registration plates.

16.90.220 Official/Reserved Zone.

(Amended by Ordinance No. 179141, effective March 23, 2005.) Any space adjacent to the curb or edge of the roadway, or on City of Portland owned or operated property, which is exclusively reserved for those vehicles which have been assigned the use of such space through official permits or other means of designation.

16.90.225 Operator.

Any person who is in actual physical control of a vehicle.

16.90.230 Parade.

Any group of persons and/or vehicles moving on a street or streets of the City under permit as herein provided in accordance with a plan or common purpose for a celebration, display, exhibition, show, or advertisement, whether for public, semi-public, or private purposes, but does not include funeral processions or advertising vehicles operating under the provisions of Title 7.

16.90.235 Park, Parking, or Parked.

The stopping or standing of any vehicle upon any street or highway within the City, whether such vehicle is occupied or not. It does not mean stopping or halting temporarily for less than 30 seconds to load/unload passengers, or in obedience to traffic regulations, signs, signals, or officers.

16.90.240 Parking Lane.

The area between the curb and not more than 8 feet from the curb or curb line or as shown by official street markings. The parking lane is generally intended for vehicle parking. Parking regulations may apply to the parking lane area according to the provisions of Title 16 of the Portland City Code.

16.90.245 Parking Meter.

(Amended by Ordinance Nos. 176394 and 179141, effective March 23, 2005.) A device placed at or near the curb adjacent to the street area, or on City of Portland owned or operated property authorized by the City and designed to register the duration of the parking time and the limit thereof, upon payment by a U.S. coin or a payment card. Parking meter includes a pay station.

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16.90.247 Payment Card.

(Added by Ordinance No. 176394, effective April 17, 2002.) A valid credit, debit or stored value card.

16.90.249 Space Reservation Device.

(Added by Ordinance No. 176394; amended by 179141, effective March 23, 2005.) A hood that is secured over a parking meter or a marker that is placed near the curb of the parking space, which contains administrative information on permit holder and regulations.

16.90.250 Pedestrian.

(Amended by Ordinance No. 177028, effective December 14, 2002.) A person afoot; a person operating a pushcart; a person riding on or pulling a coaster wagon, sled, scooter, tricycle, bicycle with wheels less than 14 inches in diameter, or a similar non-motorized vehicle; or on roller skates, skateboard, wheelchair, or a baby in a carriage.

16.90.255 Pedestrian Way.

(Amended by Ordinance No. 177028, effective December 14, 2002.) A facility intended for pedestrian movement.

16.90.260 Permanently Exhibit.

To display affixed to a vehicle so that the sign may not be removed from the vehicle without mechanical tools.

16.90.265 Person.

A natural person, firm, partnership, association, social or fraternal organization, corporation, trust, estate, receiver, syndicate, branch of government, or any group or combination acting as a unit.

16.90.270 Planting Strip.

The area between the curb or edge of the roadway and an improved sidewalk.

16.90.275 Private Road.

Every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

16.90.280 Public Right-of-Way.

(Repealed by Ordinance No. 177028, effective December 14, 2002.)

16.90.285 Rail Vehicles.

Any steel-wheeled vehicle(s) propelled on fixed steel rails, including, but not limited to: trolleys; light rail vehicles; and diesel- powered trains.

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16.90.290 Recreational Vehicle.

A vehicle which is designed for sport or recreational use, or which is designed for human occupancy on an intermittent basis. Recreational vehicle is divided into two categories as follows:

- A.** Motor Home. A motor vehicle designed for human occupancy on an intermittent basis. A camper is considered a motor home when it is on the back of a pick-up or truck.
- B.** Accessory Recreational Vehicle. A nonmotor vehicle designed for human occupancy on an intermittent basis such as vacation trailers and fifth-wheel trailers. A camper is considered an accessory recreational vehicle when it is not on the back of a pick-up or truck. Accessory recreational vehicle also includes vehicles designed for off-road use such as off-road vehicles, dune buggies, and recreational boats.

16.90.295 Regulated Parking Zone.

(Amended by Ordinance No. 179141, effective March 23, 2005.) A space adjacent to a curb or curb line, designated by official signs or markings, where special regulations for parking or stopping a vehicle apply in addition to the general parking regulations that apply to all parking areas in the public right-of-way, or on City of Portland owned or operated property.

16.90.300 Repair (a vehicle).

To perform work on the motor, mechanical, or body parts of a vehicle.

16.90.302 Right-of-Way.

(Added by Ordinance No. 177028, effective December 14, 2002.)

- A.** The area between property lines of a street, easement, tract or other area dedicated to the movement of vehicles, pedestrians and/or goods.
- B.** A public right-of-way is dedicated or deeded to the public for public use and under the control of a public agency.
- C.** A private right-of-way is in private ownership, for use by the owner and those having express or implied permission from the owner, but not by others.

16.90.305 Roadway.

(Amended by Ordinance No. 177028, effective December 14, 2002.) The portion of a street or highway improved for vehicle movement, including any parking lane. On an improved street, the area between the curbs or edge lines of a street.

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16.90.310 School Bus.

A motor bus owned or operated by authority of any lawfully recognized school district.

16.90.315 Service (a vehicle).

To perform routine maintenance such as replacing fluids or charging batteries. It does not include repairs to motor or body parts.

16.90.320 Short-Term Parking Meter.

A parking meter with a designated time limit of 4 hours or less.

16.90.325 Shoulder.

The portion of a public street or highway without curbs, whether paved or unpaved, contiguous to the roadway that is primarily for use by pedestrians, for the accommodation of stopped vehicles, for emergency use and for lateral support of base and surface courses.

16.90.330 Sidewalk.

The portion of the street between the curb or lateral lines of the roadway and the adjacent property lines, intended for use by pedestrians. An improved sidewalk is a pedestrian walkway with permanent surfacing in the sidewalk area of a street or highway.

16.90.335 Skateboard.

A board of any material, natural or synthetic, with wheels affixed to the underside, designed to be ridden by a person.

16.90.340 Sled.

Vehicles that do not move exclusively on revolving wheels in contact with the surface of the road or on fixed rails.

16.90.345 Stop, Stopping, or Stopped.

Any halting, even momentarily, of a vehicle, whether occupied or not, except to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal.

16.90.350 Street or Highway.

(Amended by Ordinance No. 177028, effective December 14, 2002.) The entire width of a right-of-way when any portion thereof is intended for motor vehicle movement or motor vehicle access to abutting property.

16.90.351 Storage Container.

(Added by Ordinance No. 179141, effective March 23, 2005.) A Storage Container in which any material is temporarily stored or collected. For the purposes of Title 16, a storage container will be considered a vehicle in terms of parking provisions and restrictions.

16.90.355 Taxicab.

Any motor vehicle which carries passengers for hire where the destination and route traveled may be controlled by a passenger and the fare is calculated on the basis of an initial fee, distance traveled, waiting time, or any combination thereof, and which is duly licensed by the City of Portland as a taxicab.

16.90.360 Tire.

The band of material used on the circumference of a wheel, on the outer face of a track or on a runner of a sled, which forms the tread that comes in contact with the surface of the road, or, if no band is used, then it means the tread or runner of a sled.

16.90.365 Traffic.

(Amended by Ordinance No. 177028, effective December 14, 2002.) Pedestrians, ridden or herded animals, and vehicles, either singly or together, while using any street or highway for purposes of movement or parking.

16.90.370 Traffic Congestion Thoroughfare.

Any portion of a street or highway within the City affected by traffic congestion caused in whole or in part by the repeated driving of the same motor vehicles along or across that portion of the thoroughfare.

16.90.375 Traffic Control Device.

- A. All signs, signals, markings, and devices consistent with this Title placed or operated by direction of the City Traffic Engineer for the purpose of guiding, directing, warning, or regulating traffic or parking.
- B. Any device that remotely controls by electrical, electronic, sound, or light signal the operation of any device identified in subsection (A) of this definition.

16.90.380 Traffic Control Signal.

Any device, whether manually, electrically, or mechanically operated, by which traffic is directed. An electric traffic control signal is considered inoperative when none of the signal control indications are illuminated.

16.90.385 Traffic Hazard.

(Amended by Ordinance No. 179141, effective March 23, 2005.) Any object, including vehicles, that impede the safe movement of vehicles in the public right-of-way or, on City of Portland owned or operated property.

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16.90.390 Traffic Lane.

(Amended by Ordinance No. 177028, effective December 14, 2002.) An area of a street or highway, designated by official signs or markings, as dedicated to the movement of one vehicle at a time.

16.90.392 Transit Mall and Auxiliary Vehicular Lanes.

(Added by Ordinance No. 182921, effective June 17, 2009.) The Transit Mall and Auxiliary Vehicular Lanes shall be designated in Section 16.50.110. An emergency is defined in Subsection 17.23.020 E.

16.90.395 Tri-Met Bus.

A motor bus owned or operated by the Tri-Metropolitan Transit District of Oregon.

16.90.400 Trolley or Streetcar.

(Amended by Ordinance No. 175564, effective May 9, 2001.) An electric or diesel powered, steel wheeled rail vehicle, operating on steel rails, used to transport passengers.

16.90.405 Truck.

(Amended by Ordinance No. 179141, effective March 23, 2005.) Every motor vehicle designed, used or maintained primarily for the transportation of property, goods or providing a service, tow truck with passenger plates, step vans, vehicle length or width or height greater than original manufacturer's vehicle dimensions, and meeting the description as defined by DMV registration as a truck, van or pickup.

16.90.410 Truck Trailer.

A vehicle which is not a recreational vehicle or utility trailer, is more than 16 feet in length, and is designed to be pulled by a motor vehicle.

16.90.415 Uncontrolled Intersection.

Any intersection with no official traffic control device to designate vehicular right-of-way.

16.90.420 Utility Trailer.

A vehicle which is used to carry property, refuse, or special equipment, is 16 feet or less in length and is designed to be pulled by a motor vehicle. Boat trailers are included as utility trailers no matter what their length.

16.90.421 Valid Receipt.

(Added by Ordinance No. 179141, effective March 23, 2005.) A parking meter receipt dispensed from a City of Portland Parking Meter device indicating the valid date, time purchased, expiration time, watermark, or any other identifications showing validity of receipt. The receipt issued is valid only in the designated meter district where purchased.

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16.90.425 Vehicle.

(Amended by Ordinance No. 177028, effective December 14, 2002.) Every device in, upon, or by which any person or property is or may be transported or drawn upon any street or highway. Bicycle is more specifically defined in Section 16.90.025.

16.90.430 Vehicle Alarm System.

Any device, equipment, assembly, or system designed, arranged, or intended to sound an alarm horn, siren, klaxon, or other sound emitting device to signal an entry or attempted entry into, or tampering with, a vehicle.

16.90.435 Vendor.

Any person who conducts business in the public right-of-way or any other public property.

16.90.440 Way.

(Added by Ordinance No. 177028, effective December 14, 2002.) A facility for the movement of pedestrians, vehicles or goods, the specific user or users being determined by modifying words, such as road, bicycle, pedestrian, etc. Path and lane are synonyms for way, and likewise may be given a more specific meaning through use of a specified user or specific definition. See: Roadway, Pedestrian Way, Traffic Lane, Bicycle Path, et. al.

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Chapter 17.32

**PUBLIC SEWER AND DRAINAGE SYSTEM
PERMITS, CONNECTIONS AND MAINTENANCE**

(Chapter replaced by Ordinance No. 183397;
amended by Ordinance No. 185694,
effective November 23, 2012.)

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17.32.005 Purpose.

(Amended by Ordinance No. 185694, effective November 23, 2012.) This Chapter protects the public sewer and drainage system by regulating the construction, modification, maintenance and removal of elements of those public systems and of the private systems that discharge to them.

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17.32.006 Definitions.

(Amended by Ordinance No. 185397, effective July 6, 2012.) As used in this Chapter, the following definitions apply:

- A. **“Building Sewer”** means the private property portion of the horizontal piping system that receives the discharge of building drains and extends to a public sewer, private sewer, private sewage disposal system, or other approved discharge point.
- B. **“Combined Sewer”** means a sewer designed to convey both sanitary sewage and stormwater.
- C. **“Commercial or Industrial Occupancy”** means any structure or facility wherein preparation, processing, treating, making, compounding, assembling, mixing, improving, or storing any product or any solid, liquid or gaseous material for commercial or industrial purposes occurs, or wherein cleaning, processing or treating of tanks, vats, drums, cylinders or any other container used in transportation or storage of any solid, liquid or gaseous material for commercial or industrial purpose occurs;
- D. **“Common Private Sewer System (also called Party Sewer)”** means that portion of a building sewer that:
 - 1. Is not owned by the City of Portland
 - 2. Is used for draining more than one building under different ownership; and
 - 3. Conveys the discharge to a sewer service lateral, public sewer, private sewage disposal system, or other point of disposal.

Common private sewers are found on private property and in private and public rights-of-way, including easements.
- E. **“Connection”** means the connection of all sanitary waste and drainage disposal lines from all development on a property to the public sewer and drainage system.
- F. **“Director”** means the Director of the Bureau of Environmental Services or the Director’s designee.
- G. **“Discharge Point.”** means the connection point or destination for a discharge leaving a site.
- H. **“Drainage”** means the flow of waters across public and private properties.

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- I. “Drainage Improvements”** means management facilities or modifications to drainage patterns to address safety issues, increase capacity, or improve water flows.
- J. “Public Right of Way”** means the area within the confines of a dedicated public street, an easement owned by the City, or other area dedicated for public use for streets or public utility facilities.
- K. “Public Sewer Easement”** is a grant of the right by a property owner to the City to use land for placement and maintenance of public sewer facilities.

17.32.007 Administrative Rules and Procedures.
(Repealed by Ordinance No. 185397, effective July 6, 2012.)

17.32.010 Permit Required.

- A.** It is unlawful for any person to take the following actions without first obtaining the appropriate permit and paying the fees as prescribed in Chapters 17.24 and 17.32:
 - 1.** Dig up, break into, excavate, disturb, dig under, or undermine any public street or public sewer easement for the purpose of laying or working upon any sewer, pipe, culvert, or sewer or drain appurtenance or improvement of any kind;
 - 2.** Make connection with, obstruct or interfere with the sewer system or existing drainage;
 - 3.** Cut or break into the public sewer system;
 - 4.** Connect the blowoff or exhaust pipe of any boiler, steam engine or other pressurized facility with the public sewer system; or
 - 5.** Direct water, from any source, on private property to run onto any public sidewalk, street or right of way.
- B.** In the case of leakage or breakage in any sewer pipe, drain or conduit requiring emergency action, any otherwise authorized person may commence repairs on the same without first obtaining a permit provided that:
 - 1.** The authorized person immediately notifies the Chief Engineer and the City Engineer; and

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2. The authorized person files an application for a permit with the Chief Engineer, complies with any permit conditions thereon, and pays the fees required in Chapters 17.24 and 17.32; and
 3. The work is performed in compliance with the City Engineer's requirements for traffic control and protection of the public.
- C. Repair of nonconforming sewers located in public right of way is prohibited unless the Chief Engineer determines that it is in the public interest to allow the nonconforming system to operate.
- D. The Bureau of Transportation, without permit but with the approval of the Chief Engineer, may construct and attach to the public sewer system stormwater inlets, leads, and other such facilities as are needed to provide stormwater drainage for public streets.
- E. The Chief Engineer will establish a permitting program by Administrative Rule which shall include requirements for application submittal, permit issuance, inspection, warranty, insurance and bond requirements shall be described in Administrative Rules.

17.32.015 Permit Fees.

(Amended by Ordinance No. 183965, effective July 30, 2010.)

- A. Sewer Connection Permits. Sewer permit fees shall recover the cost of all City reviews including all applicable overhead charges. Overhead rates shall be computed annually by the Director and kept on file with the City Auditor. If a larger fee is required elsewhere in this Title for any class of permit, the larger fee shall apply; otherwise, the fees established by general ordinance shall be paid for permits unless the Council, by Ordinance or Resolution, has granted a specific permit for a different fee.
- B. Public Sewer or Drainage Improvement Permits. The City shall recover the true costs of engineering and superintendence services in connection with public sewer or drainage improvement projects based on City records of time, materials, services, overhead and indirect costs incurred to provide the services. The Bureau shall recover the costs of engineering and superintendence for all public sewer or drainage improvements, whether performed by contract in the name of the City, by private contract between a permittee and a contractor, or directly by the permittee.
- C. All fees shall be paid prior to receiving a permit and commencing work.

17.32.020 Application for Connection Work Permit.

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

- A.** Any person who desires a connection work permit as required by Section 17.32.010 shall apply in writing to the Director and pay the permit fee prescribed in Section 17.32.015. The application shall include the name of the street in which work is to be done, or if not working in a named street, a description of the proposed or existing easement or right of way, the purpose of the work, the location and potentially affected components of the public sewer system, the location of any affected drainage, and the location of the building or lot, if any, to be connected by the work.
- 1.** If the application is for a permit to connect any occupancy other than a commercial or industrial occupancy with any component of the public sewer system or drainage improvement, it shall specify the location and the area to be drained, together with such other information as the Chief Engineer may require.
 - 2.** If the application is for a permit to connect a commercial or industrial occupancy with any component of the public sewer system or drainage improvement, it shall contain a description of the business, a plat of the property, plans and specifications for any special installations, a description and time schedule of the character and quantity of waters and wastes to be discharged through the connection, and any further information required by the Chief Engineer. No permit shall be issued for connection from a commercial or industrial occupancy until the Chief Engineer approves the application and determines that the connection as described in the application will comply with the provisions of this Title.
- B.** The Chief Engineer may refuse issuance of connection permits to any person until the requirements of permits previously issued are complied with. This authority shall include, but not be limited to, denial of a permit when the applicant is delinquent in payment of fees or City charges for work performed for the applicant by the City or when the applicant has failed to complete work on any previously issued permit or permits.

17.32.021 Connection from Properties Outside the City Limits.

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

- A.** Connection with the public sewer system or a drainage improvement from properties outside the City limits shall be allowed at the sole discretion of the City, and at the location and on such conditions as the Chief Engineer shall find appropriate for proper functioning and maintenance of City sewer service. No connection from property outside the City limits shall be permitted which, in the

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opinion of the Chief Engineer, may overload or otherwise compromise any component of the public sewer system or any drainage improvement, or which shall require any capital investment or expenditure by the City. Connection of properties outside the City's boundaries is subject to the requirements and limitations of the City's adopted urban services policy.

- B.** Any person desiring to connect a property outside the City limits to the public sewer system or any drainage improvement under the provisions of this Title shall enter into such agreement as may be required by the Director.
- C.** Application for a permit to connect shall be made in writing by the owner or other person having a recorded equitable interest in the property for which the connection is desired. Before a permit can be issued, all fees and special charges as required in Chapter 17.36 shall be paid and any permits that may be required by road authorities for street or highway opening and use shall be obtained.

17.32.022 Public Rights of Way for Public Sewer and Drainage Improvements.

All components of the public sewer and drainage system shall be located within public rights of way, including easements. The width of public rights of way shall be adequate to allow reasonable access for inspection, maintenance, repair and replacement, using standard construction methods. The minimum width for public easements shall be 15 feet. The Director may require enlargement of the easement as is reasonably necessary considering topographic conditions, the design of a improvement or other relevant factors.

17.32.050 Issuance of a Connection Work Permit.

Upon receipt of the completed application, proper and satisfactory bond, and payment of any applicable fees, the Chief Engineer may issue the requested permit, unless there are reasons of public interest to the contrary. The permit may include restrictions or conditions as deemed necessary by the Chief Engineer.

17.32.055 Maintenance of Sewer and Drainage Systems.

(Replaced by Ordinance No. 185694, effective November 23, 2012.) Sewer system maintenance obligations including inspection, rehabilitation, routine cleaning and repair are based on ownership of the system:

- A.** Private Systems. A sewer or drainage system that was not constructed by the City, built under a public works permit, or otherwise accepted pursuant to Subsections B.1 or B.2 must be maintained by the parties served by the system, regardless of whether the system is located within a public right-of-way.
 - 1.** If any portion of an existing sewer or drainage system extends into a public right-of-way, the property owner must obtain a permit pursuant to Chapter 17.24 before beginning work within the right-of-way.

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2. For a sewer or drainage system located in a public right-of-way that is under either private or unclear ownership, the Chief Engineer may grant or deny a permit to repair, upgrade, or replace the system as provided by Section 17.32.130. Such a system may only remain in the public right-of-way at the discretion of the Chief Engineer.
 3. Incidental, inadvertent, or emergency City maintenance of private sewer or drainage systems or systems with unclear ownership does not obligate the City to perform future maintenance, imply acceptance of the system, or confer ownership of the system on the City.
- B. Public Systems.** A sewer or drainage system constructed by the City, constructed under a public works permit, or accepted by the City pursuant to Subsections B.1. or B.2. will be maintained by the City unless otherwise specified by written agreement with the City.
1. **Acceptance of Systems with Unclear Ownership.** The Chief Engineer may agree to conduct future maintenance of a sewer or drainage systems located in a public right-of-way or City utility easement where the ownership is unclear if, in the judgment of the Chief Engineer, the public will benefit thereby and:
 - a. The system conveys only domestic sanitary or stormwater flows from residential property; or
 - b. The system has been specifically modified through City permit or by the City to accept stormwater flows from City rights-of-way or other City-controlled property.
 - c. Acceptance of a system under this Section does not include or imply acceptance by the City of any maintenance responsibility, cost, liability or damage that arises from conditions or use of the system before acceptance by the City.
 2. **Adoption of Private Systems in the Public Right-of-Way.** The Chief Engineer may agree to take ownership of a private sewer system or drainage improvement in the public right-of-way as provided by administrative rule. At the discretion of the Chief Engineer, a system meeting the following general criteria may be adopted:
 - a. All the properties connected to the system are participating in the City's Nonconforming Sewer Conversion Program pursuant to Chapter 17.33;

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- b.** The sewer system conveys only domestic sanitary or stormwater flows from residential property;
 - c.** The owners of all properties connected to the system provide the City with detailed information about the design, location, and condition of the system, and the properties connected to it as specified by administrative rule. Property owners must release rights for use of the line to the City for sewer systems to be adopted;
 - d.** The owners of all the properties connected to the system relinquish all claims to the system; and
 - e.** All branch fees assessed by the City are paid or financed.
- 3.** A system accepted under Subsection B.1 or adopted under Subsection B.2 will be added to the City maintenance roles as of the date of acknowledgment by the Chief Engineer.
- 4.** The City's responsibility for maintenance of any sewer or drainage system, branch or connection point is subject to the City's annual budget appropriation and shall be limited to the level of service dictated by the City Council's discretionary budget decision. The City assumes no responsibility for activities requiring a level of maintenance in excess of the level for which funds have been appropriated.

C. Nuisance Abatement.

- 1.** The Chief Engineer may determine that a sewer or drainage located in a public right-of-way that is under either private or unclear ownership constitutes a public nuisance if it:
 - a.** Impairs or threatens to impair the operation, maintenance or installation of any street or public utility;
 - b.** Is so deteriorated that its flows infiltrate or threaten to infiltrate any public utility or impact or threaten to impact the support structures of any street or public utilities; or
 - c.** Otherwise creates a public health or safety hazard.

2. Summary abatement of the nuisance is authorized when the Chief Engineer determines it is necessary to take immediate action to meet the purposes of this Title.
3. Notice to the responsible party before summary abatement is not required. Following summary abatement, the Chief Engineer shall notify all owners identified in this Chapter or Chapter 25.09 as having maintenance or repair responsibilities. An error in the name of the property owner or address listed in the county assessment and taxation records shall not affect the sufficiency of the notice.
4. The City will bill each property that the City determines caused or contributed to the nuisance to recover the costs of abatement. Civil penalties of up to \$500 may be levied for failure to abate a nuisance. If the amount due is not paid in full within 30 days of the date of notice, the City may place a lien against the property.

See Figure 13 for an example visual representation of ownership situations.

17.32.060 Failure to Restore and Maintain Street Area.

It is unlawful for any owner or resident who obtains a sewer construction or connection work permit and is exempt from furnishing the bond required by this Chapter, to fail or refuse to immediately remove all surplus sand, earth, rubbish, and other material and immediately replace in a condition satisfactory to the City Engineer the portion of the street disturbed, dug up or undermined, or to fail or refuse to keep that portion of the street in good repair at the permittee's own expense for the period of two years from the date of the completion of the work.

17.32.075 Enforcement.

- A. Enforcement. Persons who fail to comply with the provisions of this chapter and the BES Public Works Enforcement Rules adopted hereunder are subject to enforcement actions by the Director.
- B. Site Inspection. City representatives may inspect public facilities and their associated private connections to determine compliance with this Chapter.
- C. Conditions for entry. Authorized City representative shall present appropriate credentials at the time of entry and request permission to enter. If permission cannot be obtained the City official may obtain an administrative search warrant to gain entry. To the extent practicable, entry shall be made at reasonable times during normal operating or business hours.
- D. Violations. A violation shall have occurred when:

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1. Any requirement of this Chapter or administrative rules adopted hereunder has not been met;
 2. There has been lack of compliance with a written directive or timeline of the Director made under authority of this Chapter;
 3. Any condition of a permit issued under the authority of this Chapter or administrative rules is not met within a specified time; or
 4. A public sewer or drainage improvement has been damaged or modified without authorization.
- E. Remedies and Enforcement Mechanisms.** In enforcing any of the requirements of this Chapter or administrative rules, the Director, or a duly authorized representative, may:
1. Issue a notice of violation and compliance order to the applicable property owner. A compliance order may include but is not limited to requirements to:
 - a. repair modified or damaged improvements;
 - b. obtain a permit for required repair activities;
 - c. immediately abate threats to the environment or public health and safety;
 - d. compensate City crews for expenditures already incurred in abating abate threats to the environment or public health and safety.
 2. Summarily abate nuisances that constitute an imminent environmental or public health and safety threat. Efforts will be made to offer the owner opportunities to abate these imminent danger situations when practicable however, the City may immediately abate nuisances when deemed necessary;
 3. Institute an action before the Code Hearings Officer either to compel repair of impacted systems or to impose a lien for costs incurred by the City to abate a nuisance;
 4. Institute an action in a court of competent jurisdiction; or

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- 5.** Take such other action as the Director, in the exercise of his or her discretion, deems appropriate.
- F.** Civil Penalties. Violations of this Chapter or administrative rules adopted hereunder may result in assessment of civil penalties in an amount up to \$500 per day per violation.
Civil penalties collected under this chapter shall be deposited with the City Treasurer and credited to the Sewage Disposal Fund. Penalties and costs are payable upon receipt of the final order imposing penalties and costs. Penalties and costs under this chapter are a debt owing to the City and may be collected in the same manner as any other debt. Penalties shall accrue interest and any other applicable charges until the penalty is paid in full. The City may initiate appropriate legal action in any court of competent jurisdiction to enforce the provisions of any written settlement or final order of the Code Hearings Officer.
- G.** Appeal of an Enforcement Action. Upon receipt of a final determination of an enforcement action, a person may appeal the determination to the Code Hearings Officer in accordance with the procedures set out in Chapter 22.10 of the Portland City Code.
- 1.** The following decisions are appealable to the Code Hearings Officer:
- a.** The final determination of violation.
 - b.** The amount of civil penalty.
 - c.** The required remediation action.
 - d.** The timeframe for corrective action.
 - e.** Termination of service or permit.
- 2.** The following decisions are not appealable to the Code Hearings Officer:
- a.** Refusal to accept an improvement into the public maintenance system.
 - b.** Refusal to grant permits for modification of a public improvement.
 - c.** Specification of the required route of service to connect with a public improvement.
- H.** Cost Recovery. The Director may recover:

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1. All reasonable costs incurred by the City that are attributable to or associated with violations of this Chapter, including but not limited to the costs of administration, investigation, sampling and monitoring, legal or enforcement activities, damage to or contamination of the sanitary, combined, and separate storm sewer systems as well as all other public drainage improvements that convey, manage or dispose of stormwater flows.
2. All costs associated with fines and civil penalties assessed, damage and summary abatement charges, or any other obligation instituted against the City as a result of activities not in compliance with this Chapter or associated administrative rules.

Liens may be imposed on the property or properties subject to cost recovery in accordance with the provisions of Chapter 22.06.

17.32.080 Separation of Storm and Sanitary Sewer Lines on Private Property.

(Amended by Ordinance No. 185397, effective July 6, 2012.) Sanitary sewage from private property shall be separately conveyed to the property line and connected through individual laterals for discharge into a public sewer. Drainage from private property, whether from the roof of a building, the surface of a structure, footings of a structure or any other surface or subsurface drainage shall be conveyed separately from sanitary sewage. If separate public storm and sanitary sewers are available, the Chief Engineer shall require separate connections for the separate storm and sanitary lines from the private property. If separate storm and sanitary sewers are not available, but a combination sewer is available, the Chief Engineer may institute the following actions based on engineering needs:

- A. Require separate connections for the separate sewage lines from the property to the same combination sewer;
- B. Permit joining of the separate lines at the curb line closest to the property line or edge of an easement for single discharge into the combination public sewer; or
- C. Require onsite infiltration of surface or subsurface drainage to minimize or eliminate the need for offsite discharge.

17.32.090 Connections to Public Sanitary and Storm Sewers.

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

- A. Except as otherwise allowed by the City, it is unlawful for any person to allow or cause a connection that will result in the discharge of sanitary sewage into a public sewer that has been designated by the Chief Engineer to be used solely for storm drainage.

- B.** Except as otherwise allowed by the City, it is unlawful for any person to allow or cause a connection that will result in the discharge of storm drainage, collected groundwater, uncontaminated water used for refrigerating or cooling purposes, or steam condensation into a public sewer designated by the Chief Engineer to be used solely for sanitary sewage.

17.32.095 Sewer Extension Assessments and Reimbursement.

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

- A.** When a public sewer is extended past or to properties, all property owners benefiting from the sewer extension shall be assessed a share of the anticipated cost of the extension based on the following two revenue generation methods:
 - 1.** Local Improvement Districts as described in Chapter 17.08; or
 - 2.** Other charges as specified in Section 17.36.120.
- B.** When properties that will be served by the sewer extension do not meet the cost share criteria of the programs above, and do not contribute toward the cost of the sewer, the property owner or developer paying for the sewer extension shall be reimbursed by the City for part of the cost of such extension in accordance with Subsections 1. and 2.
 - 1.** The amount of reimbursement for a sewer extension shall be limited to the amount of revenue that would be received from the line and branch charge (required in Section 17.36.060) if, upon acceptance of the sewer by the City, all properties adjacent to and capable of receiving gravity service were to connect. The reimbursement shall not exceed the cost of an equal length of 8-inch-diameter sewer line, as determined by the Chief Engineer.
 - 2.** The reimbursement for any project shall not exceed 50 percent of the amount budgeted by the City in any fiscal year. The total reimbursement in any fiscal year shall not exceed the amount budgeted for that purpose in that year, however funds may be committed against the next year's budgeted amount.

17.32.100 Reimbursement for Installation of Sewer Backflow Devices in Existing Buildings on Combination Sewer Lines.

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

- A.** A building owner may submit an application for partial reimbursement of the cost for installation of a sewer backwater device on the sewer line, in floor drains, sinks, laundry trays, basins, automatic washers, or other fixtures in the basement

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with exposed traps.

- B.** To be eligible, the building, dwelling or structure must be connected to the City combined sewer system and have experienced sewer backups or be in an area vulnerable to sewer backups, as determined by the Director.
- C.** Installation of said device or devices shall be pursuant to Title 25, Plumbing Regulations, or the Code of the City of Portland, including, but not limited to, Chapter 25.05, Permits.
- D.** Payment to the property owner of the City's share of the expense shall be made upon the Bureau of Development Services' final inspection and the owner's submittal of the plumber's billing for the work.
- E.** By participation in the cost of installation, the City does not guarantee or in any manner warrant the device or devices, nor does the City give any warranty that the device will prevent future flooding, and the City will not assume any responsibility for damages incurred as a result of the flooding subsequent to installation of any device or devices. The owner shall be required to look only to such warranty or guarantee as may be secured from the manufacturer of the device or devices and/or the contractor.
- F.** As of July 1, 1996, the building owner shall pay the first \$100 of the cost of such installation, the City shall pay the next \$1,500 of such costs, and the building owner shall pay any amount in excess of \$1,600.
- G.** All devices installed pursuant to this Section shall be owned by the building owner, who shall assume all duties and costs of maintenance, repair and replacement.

17.32.110 Application for Permit to Construct a Public Sewer or Drainage Improvement.

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

- A.** All persons desiring to construct a public sewer or drainage improvement shall obtain a permit prior to beginning work. The permit application shall contain the following information:
 - 1.** A description of the proposed improvement.
 - 2.** Locations and names of proposed streets where improvements will be made, location of any off-street improvements, and the name of the proposed plat.

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3. A standard acknowledgement of the standard permit conditions described in Section 17.32.140.
4. Any other information the Chief Engineer deems appropriate.

The permit shall be issued after the sewer or drainage improvement plans have been approved by the Chief Engineer.

B. All persons wishing to construct a public sewer or drainage improvement in advance of plat recording of a subdivision or planned unit development may be issued a permit by the Chief Engineer only after:

1. The sewer or drainage improvement plans have been approved by the Chief Engineer;
2. The final plat, with or without required signatures affixed, has been submitted to the Bureau Development Services;
3. The Bureau of Development Services have given written assurances that subdivision or planned unit development approval conditions have been or will be met;
4. All easements outside the subdivision or planned unit development have been obtained, and
5. The applicant has complied with Section 17.32.170 of this Code.

17.32.120 Deposit Required.

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

- A.** When the applicant chooses to utilize City design services, the permit application shall include payment of a deposit in an amount to be determined by the Director as described in administrative rules. All deposits must be made before any City design work begins.
- B.** The City shall retain the amount of the deposit as compensation for the preparation of design and plans or for review efforts if:
 1. A permit application or issued permit has had no action or communication for one year from the previous contact; or
 2. A permit is not issued for the proposed improvement within one year from the time the design and plans are reviewed and completed.

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- C. If a permit is issued for the proposed improvement within one year from the time the design and plans are completed, the amount of the required deposit shall be applied to the cost of the permit fee for such improvements.

17.32.130 Refusal of Public Sewer or Drainage Improvement Permit.

- A. The Chief Engineer may refuse to issue a permit if:
 - 1. In the judgment of the Chief Engineer, the proposed improvement is not suitable in the circumstances or will not be uniform with existing or proposed public sewer or drainage improvements in the immediate vicinity.
 - 2. The application is not modified as the Chief Engineer deems necessary.
 - 3. The City Engineer has not issued a street opening permit if the public sewer or drainage improvement is or will be located within a public right of way or area to be designated as a public right of way.
 - 4. The application is to repair, replace or upgrade an existing private sewer or drainage system that is nonconforming with public standards. The Chief Engineer may allow continued use of a nonconforming system if the Chief Engineer determines that it is in the public interest.
- B. The Chief Engineer shall have the authority to refuse issuance of public sewer or drainage improvement permits to any person until the requirements of permits previously issued are complied with. This authority shall include, but not be limited to, denial of a permit when the applicant is delinquent in payment of fees or City charges for work performed for the applicant by the City or when the applicant has failed to complete work on any previously issued permit or permits.

17.32.140 Contents of Permit.

- A. Any permit issued for the construction of a public sewer or drainage improvement may contain conditions that shall be binding upon the permittee and current and subsequent property owners. Such conditions may include:
 - 1. Full payment of permit fees.
 - 2. Prior filing of a performance bond, cash, or other financial guarantee in lieu thereof in an amount not to exceed the design engineer's estimate for construction and engineering, insurance.
 - 3. Specifics about the kind of work and the time in which the same is to be

completed.

4. Such other requirements as the Chief Engineer finds appropriate in the public interest.

B. All permits to construct a public sewer or drainage improvement shall include the following standard conditions in addition to any other condition the Chief Engineer deems necessary:

1. The resulting public sewer shall be located in a public easement or public right of way and shall come under public control upon plat and easement recording with the County.
2. City personnel may enter upon the particular private property for the purpose of testing, inspection and surveying if required, during the course of construction of the public sewer or drainage improvements.
3. City inspection personnel may reject or require correction of work that is not in accordance with the approved plans and standard specifications and would prevent future acceptance of the improvements.
4. The plat and easements must be recorded with the County prior to final acceptance of the public sewer improvements.
5. The permittee shall hold the City of Portland harmless against any liability that may occur during construction prior to dedication of the right of way or recording of the easement, and the permittee assumes all risk of loss that may arise in the event the City or any other public agency subsequently requires changes in or additions to plans or refuses to approve all or any part of the permittee's improvements.
6. Any drainage improvements made on private property shall be permanently maintained at the expense of the private property owner as a condition of the drainage improvement permit.
7. The permittee shall, at the permittee's own expense, maintain the public sewer or drainage improvements for a period of 24 months following the letter of completion by the Chief Engineer, as assurance against defective workmanship or materials employed and to assure the improvement is properly operating and being maintained as designed. BES may extend the warranty period for any repairs, alterations or rehabilitations that need to occur during the original warranty period.
8. The issuance of a permit in no way waives any requirements by the City or

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any other public agency that may be associated with the development of a plat or Planned Unit Development

17.32.170 Work Done Under Permit.

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

- A.** All work done under and in pursuance of a permit shall be under the authorization of the Chief Engineer, who shall determine the details of the improvement and whose orders in regard to the improvement and the execution of the same shall be obeyed by the applicant for the permit and by the persons doing the work.
- B.** The Chief Engineer may establish standards for particular types or classes of work to be performed by contractors or by persons permitted to construct facilities in streets, easements, or other public property. Any person constructing the improvement shall comply with such standards unless otherwise specifically authorized by the Chief Engineer to deviate from those standards.
 - 1.** All discharges must be routed to a discharge point approved by the Director. Approval of discharge points must meet the following standards:
 - a.** The discharge must be conveyed along a route of service approved by the Director.
 - b.** The discharge point must comply with the following standards and specifications:
 - (1)** Sanitary, wastewater or other discharges to the sanitary or combined system must comply with the Sewer and Drainage Facilities Design Manual.
 - (2)** Stormwater or other discharges to the City's storm and drainage system must comply with the Stormwater Management Manual.
- C.** The Chief Engineer shall refuse to accept work that is not in full compliance with the plans, specifications, permit or other contract documents. If the work is refused by the Chief Engineer, it shall not be accepted unless corrected to conform to plans and specifications.

17.32.180 Original Documents Become the Property of the City.

Any plans, specifications, survey notes or other original documents as required by the Chief Engineer that were prepared for or produced during the design or construction of a public sewer or drainage improvement become the property of the City and shall be

delivered to the Chief Engineer before acceptance of the improvement by the Chief Engineer.

17.32.190 Acceptance of Completed Improvement by Chief Engineer of the Bureau of Environmental Services.

- A.** Notice of Construction Completion. During the course of construction and before issuance of a letter of completion from the BES Chief Engineer or a certificate of completion from the Bureau of Transportation for joint projects, the BES Chief Engineer shall inspect the sewer or drainage improvement and determine if the various kinds of work performed are in compliance with the plans, specifications and allowances of the permit and meet City standards for quality of workmanship. The Chief Engineer shall check the improvement for alignment, proper computation of quantities, and conformance with the established grade. Once this acceptance is garnered, the maintenance and warranty period will commence.
- B.** Certificate of Completion of the Maintenance and Warranty Period. The purpose of the warranty period is to assure the public improvement is operating as designed and is in a well-maintained condition upon conveyance to the City. All of the work required during the warranty period must be completed to the satisfaction of the Chief Engineer prior to completion certificate issuance. The Chief Engineer, or in the case of joint permits the Transportation permit manager, shall issue a warranty completion certificate accepting the improvement.
- C.** Council Acceptance. Council may directly accept improvement if it conforms to Code provisions and proper grades filed by the Chief Engineer.

17.32.200 Permit-Related Records.

The Bureau of Environmental Services shall keep a record of improvements under permit, permit issuance under this Chapter, permit conditions, and the date of acceptance, if made.

17.32.210 Removal of Public Sewer or Drainage Improvement.

In the event the Chief Engineer or the City Council does not accept an improvement made pursuant to the improvement permit within one year after completion, the permittee shall remove the improvement and restore the public area to at least its prior condition or to the extent directed by the BES Chief Engineer or City Engineer, at the permittee's expense.

Chapter 17.33

REQUIRED PUBLIC SEWER CONNECTION

(Chapter replaced by Ordinance No. 183397,
effective January 8, 2010.)

Sections:

17.33.005	Intent.
17.33.020	Definitions.
17.33.030	Sewer Connection Mandated.
17.33.040	Mandated Sewer System Connection Charges.
17.33.050	Converting Nonconforming Sanitary Sewer Connections.
17.33.060	Required Sanitary Sewer Conversion Charges.
17.33.070	Deferrals of Required Sewer Connections.
17.33.075	Financial Assistance for Required Sewer Connection.
17.33.080	Declaration of Nuisance.
17.33.090	Abatement by Owner.
17.33.100	Connection Enforcement.
17.33.110	Actions before the City Code Hearings Officer.
17.33.130	Notice Sufficiency.
17.33.150	Severability.

17.33.005 Intent.

- A.** The intent of this Chapter is to:
- 1.** Facilitate timely connection of individual properties to the public sewer system when a public sanitary sewer is available;
 - 2.** Facilitate the conversion of nonconforming private sewer systems to individual property connections along the route of service approved by the City; and
 - 3.** Provide for financial assistance to property owners required to make a new sewer connection.
- B.** The Bureau of Environmental Services (BES) shall identify the most appropriate means to construct public sewer improvements to facilitate sanitary sewer connections along approved routes of service based on factors that protect public health and safety, and minimize the financial impacts on the City's sanitary sewer utility and utility ratepayers. BES shall establish the criteria used to make system

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improvement decisions in administrative rules. Unless otherwise established, BES is responsible for administering the provisions of this Chapter.

17.33.010 Administrative Rules and Procedures.

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

17.33.020 Definitions.

(Amended by Ordinance No. 185397, effective July 6, 2012.) For the purpose of this Chapter, the following definitions and applicable definitions of Section 17.32.006 shall apply:

- A. “Available Public Sewer”** means a public sewer that is within 100 feet or one-half block, whichever is less, of property to be served, without crossing another property to make the new connection, or such other conditions of availability as are established by administrative rule. In cases of onsite conveyance or disposal system failure, sewer shall be deemed available if within 300 feet.
- B. “Branch Sewer”** means the public portion of the horizontal piping system that connect from the plumbing system of a building or buildings to a public sewer.
- C. “Common Private Sewer System (also called Party Sewer)”** means that portion of a building sewer that:
 - 1.** Is not owned by the City of Portland;
 - 2.** Is used for draining more than one building under different ownership; and
 - 3.** Conveys the discharge to a sewer service lateral, public sewer, private sewage disposal system, or other point of disposal.

Common private sewers are found on private property and in private and public rights-of-way, including easements.

- D. “Connection”** means the connection of all sanitary waste and drainage disposal lines from all development on a property to the public sewer and drainage system.
- E. “Director”** means the Director of the Bureau of Environmental Services or the Director’s designee.
- F. “Immediately Available Public Sewer”** means a public sewer to which a property can connect without further extension of the public system.
- G. “Nonconforming Sewer”** means a private sanitary sewer that is:

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1. Not on the same public or private property as the structure or structures being served by the sewer; and
2. Not located within a recorded sewer easement or subject to a recorded covenant for easement regarding use of the sewer and meeting the standards for easements specified in administrative rules.

H. “Onsite Sewage Disposal System” means a cesspool or the combination of a septic tank or other treatment unit and effluent sewer and absorption improvement

See Figure 13 at the end of this Title for graphical representation of these definitions.

17.33.030 Sewer Connection Mandated.

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

- A. Applicability.** Properties having development that generates or may generate sanitary waste must decommission onsite sewage disposal systems and connect to the public sewer when:
1. The development is not completely connected to a public sewer system;
 2. A public sewer is immediately available without the need for further sewer extension; and
 3. A sewer branch has been provided to curb closest to the property line or property line.
- B. Timing.** Properties that meet these criteria must be connected to a public sewer within three years of when notice being sent to the property owner or legal title holder of the immediate availability of the public sewer system, the requirement to connect, and the time limit for connection. Four additional notices of the connection requirement will be sent at least 360, 180, 90 and 30 days prior to the date of the connection deadline.
- C. Location.** All connections shall be made along a route of service approved by the Director.
- D.** Any construction for which a building permit is required under the terms of Title 24 of this Code and which meets the requirements of Subsection A. above, shall connect to the public sewer system prior to the issuance of a final inspection report or Certificate of Occupancy by the authorized City agency.
- E.** Proof of the sewer connection shall be by documents of the City, by proof provided by the property owner, or development of physical evidence or

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inspection. The sufficiency or adequacy of any proof presented shall be left to the sole discretion of the Director.

- F.** Three (3) years from notification of the requirement to connect, a property that has not connected becomes connection delinquent and is subject to proceedings to compel connection to the public sewer system.
- G.** When property subject to the requirement imposed by this Section is sold and has less than 180 days remaining in the three-year connection period referred to above is sold, the new owner may enter into an agreement with the City to extend the time to connect to the public sewer system for 180 days from the date of the sale of the property. In the event a new owner elects to enter into an agreement, said election shall constitute a waiver of the right to the administrative review provided for in Section 17.33.100. As used herein, the term “sale” includes every disposition or transfer including the transfer of equitable title or legal title to real property.

17.33.040 Mandated Sewer Service Connection Charges.

(Amended by Ordinance No. 185397, effective July 6, 2012.) A property owner must pay or finance sanitary sewer system development charge and, if not previously assessed, sewer line and branch charges collectively known as sewer connection charges described in Chapter 17.36 prior to the issuance of sewer connection permits. Property owners may elect to pre-pay sewer connection charges no more than 5 years before availability of public sewer.

Only one agreement per property may be entered into under the terms of this subsection. As used herein, the term “sale” includes every disposition or transfer including the transfer of equitable title or legal title to real property.

17.33.050 Converting Nonconforming Sanitary Sewer Connections.

(Amended by Ordinance No. 185694, effective November 23, 2012.)

- A. Applicability.** A property using a nonconforming sewer must convert to a conforming sewer connection when a public sewer is available. The new connection must be made along a route of service approved by the Director. In addition, when a public sewer is extended into an area, the City may request that property owners in the area who are not required to connect nevertheless, volunteer to participate in the Nonconforming Sewer Conversion Program regardless of their distance from the new sewer.
- B. Exemption.** The Director may exempt properties with nonconforming sewer connections from the requirement to convert to a conforming sewer connection if:

1. The Director determines that conversion of a nonconforming connection to a conforming connection would have detrimental effects on public health or safety or the environment; or
 2. Other circumstances exist justifying exemption as identified in BES administrative rules.
- C. **Timing.** The City requires property owners to convert or abandon a nonconforming sanitary sewer connection within 180 days of the date on the notice of sewer availability. All individual sewer connections shall be made in conformance with the Sewer and Drainage Facilities Design Manual. The City will provide written notice to all affected property owners at 180, 90, and 30 days prior to the conversion deadline. The Director may choose to delay enforcement of this deadline for a property where a connection would be unreasonably technically difficult, a public sewer is not immediately available or substantial financial hardship would result.

17.33.060 Required Sanitary Sewer Conversion Charges.

(Amended by Ordinance No. 185694, effective November 23, 2012.) Property owners must pay the sanitary sewer conversion charges as required by Chapter 17.36 at the time the City provides a new sewer connection or when the property owner requests a permit for a new conforming sewer connection. A property owner can elect to pay or finance conversion charges and connection costs as required in Chapter 17.36 and associated program administrative rules. Council adopts sanitary sewer conversion charges annually as part of the BES rate ordinance.

- A. **Timing.** Property owners must pay or finance sewer conversion charges prior to the issuance of permits required by Chapter 17.32. BES will assess sewer conversion charges based on the sewer conversion rates in effect at the time of connection.
- B. **Relationship to Special Assessments for Local Improvement Districts.** BES will apply the following conditions to the calculation of special assessments for local improvement districts organized for the purposes of this Section:
1. The estimated special assessment roll will be limited to the amount of the sanitary sewer conversion charges as established in the annual BES rate ordinance.
 2. In the event that a benefited property owner paid or financed branch fees or sanitary sewer conversion charges prior to the preparation of the estimated special assessment roll as provided in this Section, BES will establish a zero assessment for the benefited property.

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3. BES will pay to the LID Construction Fund the difference between the final total costs of each local improvement district organized for the purposes of this Section, and the sum of estimated assessments that were established at the formation of the district.
4. To the greatest extent practicable BES will refund property assessments in the event that the total actual costs of the local improvement district are less than the sum of sanitary sewer conversion charges calculated for the benefited properties, taking into account the following:
 - a. BES will apportion the difference to each affected property in proportion to the property's share of the sum of sanitary sewer conversion charges paid, financed or incorporated into the local improvement district special assessment roll.
 - b. The final assessment roll will reflect the apportionment based on the actual project costs.
 - c. Where a property owner paid or financed the sanitary sewer conversion charge prior to the notice of estimated assessment, BES will determine the most administratively efficient method to refund or credit the apportioned difference allocated to the property. Any refund or credit will be provided to the current equitable title holder of the property at the time the Council adopts the final assessment roll for the local improvement district.

17.33.070 Deferrals of Required Sewer Connections.

(Amended by Ordinance No. 185694, effective November 23, 2012.) A deferral of the requirement to connect to a public sewer may not exceed five years, although it may be renewed based on a re-evaluation of eligibility, and it does not transfer with the sale or transfer of property. The property remains subject to the requirements of this Chapter following termination of the connection deferral. Eligibility criteria vary for the Mandatory Sewer Connection and the Nonconforming Sewer Conversion programs. Deferral requests will be considered on the following, as described more fully in program administrative rules:

- A. **Mandatory Connection.** Deferrals may be granted for the following:
 1. Applicant-based criteria. These include financial, medical or other hardship criteria related to the property owner; and
 2. Property-related criteria. These are based on hardship conditions related to the property and the work required to complete the sewer connection.

- B. Nonconforming Sewer Conversion.** The Director may defer conversion to conforming sewer connections according to criteria established in administrative rule.

17.33.075 Financial Assistance for Required Sewer Connection.

(Amended by Ordinance No. 185397, effective July 6, 2012.) The City shall provide financial assistance in the form of loans for both Mandated Sewer Connection and Nonconforming Sewer Conversion programs to eligible property owners based on administrative rules and procedures adopted by the Director. The Director shall offer a variety of loan instruments to meet specific property owner needs. Applicants may request financing assistance for the following costs:

- A.** Sewer connection work performed on private property to decommission existing onsite conveyance and disposal systems and make new approved sewer connections.
- B.** Connection fees charged by the City as described in Section 17.36.040.

17.33.080 Declaration of Nuisance.

Any property not connected to a public sewer system as required by Section 17.33.030, Section 17.33.050, or Subsection 17.32.055.C. is hereby declared a nuisance and subject to abatement or correction as provided for in Section 17.33.100. The Director is authorized to take steps necessary to abate such a nuisance, including authority to order remediation or to expend City funds to abate the nuisance. In the latter case, the Director is further authorized to charge the responsible parties for all costs of the abatement effort. The Director shall establish the procedures and forms to be used to notify property owners about sewer system availability and connection delinquencies. Costs of nuisance abatement may be assessed as a lien against property as provided in this Code.

17.33.090 Abatement by Owner.

The owner of a connection delinquent property shall have at least 30 days from the date of the Notice to Remove Nuisance to file documentation of the removal or abatement of the nuisance or to file a written request for an administrative review of the nuisance abatement requirement. Following notification of the administrative review and determination by the Director, the property owner shall have 10 days to file a written request for an appeals hearing by the Code Hearings Officer as set forth by Title 22 of this Code.

17.33.100 Connection Enforcement.

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

- A.** The City shall attempt to resolve issues with affected property owners within BES to the extent possible. The following enforcement steps shall be used:

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- 1.** Administrative Review. Affected property owners shall be offered the opportunity for administrative review with the applicable BES program manager to determine if agreement can be reached concerning the timing and actions to achieve a conforming connection to the public sewer. If an affected property owner does not pursue an administrative review, BES shall issue its final determination setting forth the requirements and deadline to connect and finance or pay for fees. Failure of the property owner to meet this deadline shall be deemed a violation of this Chapter.
- 2.** Final Determination. The BES final determination shall be the substantive decision for City program code compliance proceedings before the City Code Hearings Officer pursuant to Title 22 of the City Code. BES shall submit information addressing the following facts:
 - a.** The subject property has one or more on-site structures with plumbing facilities that require sanitary waste disposal pursuant to State Plumbing Code or related City Code.
 - b.** The subject property is not fully connected or has a nonconforming connection to the City sewer system.
 - c.** The subject property has direct access via an intended route of service to a branch, or other component of the City sewer system abutting a property line or a permanent easement acquired for the benefit of the property.
 - d.** The deadlines described in the sewer availability notice, notice of connection deferral and/or the Notice to Remove Nuisance have expired without full compliance with the sewer connection requirement.
 - e.** The property owner does not have a current sewer connection deferral.
- B.** If the nuisance described in the notice has not been removed or information is not provided establishing that such nuisance does not exist, the City may apply for an order authorizing the City to abate the nuisance, consistent with the terms and requirements of the Code Hearings Officer and the administrative rules associated with this Chapter. The Code Hearings Officer shall have discretion to modify connection dates, required actions by property owners, and types and timing of City abatement activities.
 - 1.** The City shall maintain an accurate record of all expenses incurred, including an overhead charge of 26 percent, an administration fee for each

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occurrence as specified in the administrative rules, sewer user charges and permit fees, which shall be assessed as a lien on the property in accordance with the provisions of Chapter 22.06.

2. It shall be unlawful for any person to attempt to obstruct, impede, or interfere with any officer, employee, contractor, agent, or authorized representative of the City whenever such officer, employee, contractor, agent, or authorized representative of the City is engaged in the work of connecting a property to the public sewer or removing or abandoning an existing sewage disposal system under the authority of an order of the Code Hearings Officer.
 3. Neither the City nor any of its officers, employees, contractors, agents, or authorized representatives shall be liable for any damage to the real property or any improvements or personal property due to the non-negligent enforcement or administration of this Chapter.
- C. Except as provided elsewhere in this Title or when the public welfare is endangered; BES may at its discretion withhold any service that is provided by BES from the owner(s) (or the owner's agent) of connection delinquent property. This may include but is not limited to refusal to accept application for permits for development on property of the said owner(s) other than the connection delinquent property. Withholding of other services may continue until the connection delinquency has been corrected.
- D. The City may seek, in any court of competent jurisdiction, a judgment against the person or property failing to connect to a sewer in accordance with the provisions of this Chapter. In any such action, the measure of damages shall be the costs for abatement by the City, administrative costs, permit fees, overhead costs, penalties, and connection charges as determined by the Director or Code Hearings Officer.

17.33.110 Actions before the City Code Hearings Officer.

(Amended by Ordinance No. 185694, effective November 23, 2012.)

- A. **Code Compliance Hearings.** Property owner not in compliance with the Mandatory Sewer Connection and the Nonconforming Sewer Conversion Program requirements will be summoned to code compliance hearing before the City Code Hearings Officer per Title 22.
- B. **Property Owner-Initiated Appeals.** Property owners may initiate appeals to the Code Hearings Officer on the following issues:
1. **Conversion Charges.** The property owner may appeal the amount of the charges and the methodology used to determine them.

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2. Deadline for Connection or Resolution. Unless a sewer is immediately available, the property owner may appeal the 180-day deadline based on extenuating circumstances.

17.33.130 Notice Sufficiency.

For purposes of this Chapter, notice shall be deemed to have been received upon the mailing of said notice by first class mail or upon delivery of the notice in person. An error in the name of the owner or agent of the owner or the use of a name other than that of the true owner or agent for the property shall not render the notice void.

17.33.150 Severability.

The provisions of this Chapter are severable, and it is the intention to confer the whole or any part of the powers herein provided for. If any word, definition, clause, section or provision of this Chapter shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of this Chapter shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein. In the event a definition is held to be invalid or is severed, the defined word or term shall be deemed to have the meaning given to that word or term under Oregon law if Oregon law contains such a definition. If there is no established definition of the word or term under Oregon law, the word or term shall have its ordinary dictionary meaning. It is hereby declared to be the Council's express legislative intent that this Chapter would have been adopted had such an unconstitutional or otherwise invalid provision not been included herein.

Chapter 17.36

SEWER USER CHARGES

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

Sections:

- 17.36.010 Definitions.
- 17.36.040 Sewer System Connection and Adoption Charges.
- 17.36.050 Partial and Full Exemptions of Sanitary and Stormwater System Development Charges for Affordable Housing Developments.
- 17.36.060 Agreements with Governmental Agencies for Sanitary Sewer and Stormwater Management Services.
- 17.36.070 User Charges.
- 17.36.075 Fees for Adoption of Nonconforming Sewer Lines.
- 17.36.080 Special Provisions.
- 17.36.090 Meters.
- 17.36.100 Clean River Rewards.
- 17.36.110 Extra-Strength Wastewater Charges.
- 17.36.120 Other Charges.
- 17.36.130 Computing and Billing.
- 17.36.140 Certain Installations Unlawful.
- 17.36.150 Identification of Inspectors.
- 17.36.160 Collection of Charges and Fees.
- 17.36.170 Deposit and Application.
- 17.36.180 Adjustment of Bills.
- 17.36.190 Appeal.

17.36.010 Definitions.

(Amended by Ordinance No. 184989, effective December 9, 2011.) For the purpose of this Chapter, the following definitions shall apply:

- A. "Available Sewer" is a collector, trunk, or other major public sanitary sewer located in a dedicated street or easement adjacent to, or within a property, and designed or intended to provide direct service to the property. For the purposes of this Chapter, a sewer shall not be considered available to a property if an extension of the public sewer is required before a branch can be constructed to the property.

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- B.** "Biochemical Oxygen Demand (BOD)" is the quantity of oxygen utilized in the biochemical oxidation of organic matter over a period of five days at a temperature of 20 Celsius (as approved in Guidelines Establishing Test Procedures for the Analysis of Pollutants, contained in 40 CFR 136 and amendments thereto, as published in the Federal Register). This definition applies to the phrase and its abbreviation.
- C.** "Branch" is a public sewer service lateral as defined in Chapter 17.32 of this Code.
- D.** "Branch Charge" is a connection charge that reimburses the City for the costs of designing and constructing public sewer service laterals.
- E.** "Brownfield" is real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.
- F.** "Bureau" is the Bureau of Environmental Services unless otherwise stated in this Chapter.
- G.** "Composite sample" is a series of individual discrete samples taken at selected intervals based on either an increment of flow or time. The samples are mixed together to approximate the average composition of discharge to the public sewer system. A composite for one day must consist of a pool of samples, collected over the period of expected discharge during the production day. Where special conditions warrant, the Director may designate an alternative procedure that is acceptable.
- H.** "Connection Charge" is a charge that the City collects at/or prior to the time a property connects to the public sewer system. Connection charges may include a line charge, branch charge, sanitary sewer system development charge and stormwater system development charge. A property may be subject to one or more of these charges depending on the connections made and the means used to provide public sewer and stormwater management services to the property.
- I.** "Director" is the Director of the Bureau of Environmental Services or the Director's designated representative.
- J.** "Dwelling unit" is any housing unit with sanitary and kitchen facilities either designed or used to accommodate one or more residents, including detached residences, multiple housing units, floating homes, mobile homes and mobile home spaces. This does not include commercial (transient) housing units such as hotel and motel units; overnight trailer or recreational vehicle spaces; or housing

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units in institutional care facilities. A single dwelling unit shall be any dwelling unit, as defined above, in a building containing no other dwelling units. This includes units in planned developments, and care facilities classed as a single-family unit by the City.

- K.** “Extra Strength Charge” is the additional charge to wastewater dischargers who have constituent discharges at concentrations above levels normally expected in domestic wastewater, as determined by this Title and general ordinance.
- L.** “Frontage” is the length of public right-of-way adjacent to a property, measured in feet.
- M.** “Groundwater” is subsurface water that occurs in soils and geological formations that are fully saturated. Groundwater fluctuates seasonally and includes perched groundwater. Groundwater related discharges include, but are not limited to, subsurface water from site remediation and investigations, well development, Brownfield development, discharges from footing and foundation drains, rainwater infiltration into excavations and subsurface water associated with construction or property management dewatering activities.
- N.** “Impervious Area” is the area of a property which does not allow rainwater to percolate naturally into the ground. Examples include a roof and paved area, such as a driveway, parking area or walkway. The City classifies as impervious areas for billing purposes set forth in this Chapter areas of property that are covered by porous pavement, eco-roofs, rain gardens or other types of impervious area replacement techniques used for stormwater management. Impervious areas for billing purposes do not include public rights-of-way, outdoor recreation areas that are available to the general public without condition or restriction, and areas covered by compacted soils and compacted gravels.
- O.** “ITE Manual” is the manual entitled “An Institute of Transportation Engineers Informational Report – Trip Generation”, used by the City to determine transportation system development charges.
- P.** “Line Charge” is a connection charge that reimburses the City for the costs of designing and constructing sanitary sewer lines that serve connecting properties.
- Q.** "Multiple dwelling unit" is any dwelling unit, as defined above, in a building containing more than one dwelling unit. This includes the dwelling units in commercial buildings containing more than one dwelling unit, houseboats, mobile homes and mobile home spaces where more than one unit exists.

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- R.** “Net New Impervious Area” is the greater of zero and the difference between existing impervious area on a property, and any increase in impervious area that results from a proposed use(s) of the property.
- S.** “Net New Vehicular Trips” is the greater of zero and the difference between the vehicular trips generated by the existing use of a property, and any increased number of the vehicular trips generated from a proposed use(s) of the property.
- T.** "Perched Groundwater" is a zone of saturation in a formation that is discontinuous from the water table and the unsaturated zones surrounding this formation. The formation exists as a discrete saturated zone that may be ephemeral (in direct response to precipitation in the immediate vicinity) or recharged by percolation from nearby surface water or other perched water zones.
- U.** “Public Sewer System” is defined as provided in Chapter 17.32 of this Code.
- V.** “Ratepayer” is a person who has the right to possession of a property, and who causes or permits the discharge of sanitary sewage from property in their possession into the public sewer system, or whose use of property directly or indirectly benefits from stormwater management services provided by the City.
- W.** “Reimbursable City Stormwater Facilities” are stormwater management facilities that are financed by the City.
- X.** "Rolling Average" is the average of the 10 most recent monthly averages of valid city- and/or self-monitoring events for the purpose of calculating an extra-strength sewage charge rate unless another period is approved by the Director.
- Y.** “Sanitary Sewage” includes, but is not limited to, domestic wastewater, industrial/commercial process wastewater or contaminated stormwater which is discharged to the public sewer system by permit or approval of the Director.
- Z.** “Sanitary System Development Charge” is a connection charge for new or increased demand of the public sewer system. The charge reimburses the City for an equitable portion of the costs of major sewer facilities, such as wastewater treatment facilities, pump stations and interceptor sewers.
- AA.** “Slugload” is any discharge that is non-routine or episodic in nature, such as accidental spills, non-customary batch discharges or other non-standard discharges.
- BB.** “Seed”. A population of microorganisms capable of oxidizing biodegradable organic matter that is added to a wastewater sample as part of the analysis of

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biochemical oxygen demand (BOD). Approved seed shall be prepared primary effluent from the City's Columbia Boulevard Waste Water Treatment Plant.

- CC.** "Stormwater Management Facilities" include, but are not limited to, facilities that collect, convey, detain, retain, treat or dispose of stormwater runoff.
- DD.** "Stormwater Management Services Rate" is the rate used for calculating user charges for stormwater management services. The rate may also be referred to as the "impervious area" rate or "drainage service charge" or the "drainage/stormwater management user service charge".
- EE.** "Stormwater Management Services" are services and actions required to collect, convey, detain, retain, treat or dispose of stormwater runoff, such as services that manage stormwater runoff from public streets, mitigate flooding, prevent erosion, improve water quality of stormwater runoff, collect and convey stormwater runoff from private properties when runoff exceeds the capacity of private facilities to manage stormwater onsite, mitigate impacts to natural habitats caused by stormwater runoff, and protect properties and natural habitats from hazardous soils and materials that are discharged from private properties and public rights-of-way.
- FF.** "Stormwater System Development Charge" is a connection charge that reimburses the City for the design and construction of stormwater management facilities. The charge ensures that new and expanded uses of property pay an equitable portion of the costs of public stormwater management facilities such as collection and conveyance facilities, detention and disposal facilities, and water pollution reduction facilities.
- GG.** "Temporary Connection". A connection to the sanitary sewer system is deemed temporary if the duration of the connection is less than three years and connection and disconnection occur only once. However, for purposes of this definition and determining the applicability of sewer system connection charges, connections to the sanitary sewer system made for the purpose of servicing an environmental remediation activity of less than three years will not be considered a temporary connection unless approved by the Director. In granting a temporary connection the Director shall, at a minimum, consider the nature of the remediation site and type of City sewer(s) available for connection.
- HH.** "Temporary Structure". A structure is deemed temporary if it is a separate and distinct entity from all other structures and it is created and removed in its entirety, including impervious area associated with the structure, within a continuous period of three years or less.

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- II.** "Total Suspended Solids (TSS)" is the total suspended matter that either floats on the surface or is in suspension in water or wastewater and that is removable by laboratory filtering (as approved in Guidelines Establishing Test Procedures for the Analysis of Pollutants, contained in 40 CFR 136 and amendments thereto, as published in the Federal Register). This definition applies to the phrase and its abbreviation.
- JJ.** "Transportation SDC Study" is the methodology report entitled "Update of Transportation System Development Charges Rate Study", most recently adopted by Council.
- KK.** "User Charge" is a charge paid by a ratepayer for sanitary or stormwater management services.
- LL.** "Willamette River/Portland Harbor Superfund" is a program to remove pesticides and petroleum from sediments along a nine-mile segment of the Lower Willamette River. The City's portion of the program costs are paid from dedicated user charges that bear the name of the program.

17.36.020 Administrative Rules, Procedures and Forms.
(Repealed by Ordinance No. 185397, effective July 6, 2012.)

17.36.040 Sewer System Connection and Adoption Charges.
(Amended by Ordinance Nos. 182389 and 185694, effective November 23, 2012.) The following charges are for connection to and use of the public sewer and drainage system and for adoption of private systems by the City. Charges are calculated based on rates established, annually, by general ordinance, and are collected upon issuance of a building permit, or where a building permit is not required, upon issuance of a sewer connection permit.

- A.** Sewer System Connection Charges.
 - 1.** Sanitary System Development Charge
 - a.** The methodology for calculating the charge is set forth in the document Sanitary and Stormwater System Development Charge Methodology, adopted annually by general ordinance.
 - b.** A person desiring to connect a building property to a sanitary or combined sewer, or to increase the sewer usage by alteration, expansion, improvement, or conversion of a building already connected to the sewer, or to increase flow to a sanitary or combined sewer by causing contaminated stormwater or

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groundwater to enter the sewer, must pay sanitary system development charges.

- c.** The charge is calculated based on the number of Equivalent Dwelling Units (EDUs). EDUs for nonresidential uses will be calculated from Plumbing Fixture Units (PFUs), taken from the Oregon Plumbing Specialty Code in effect at the time of the permit application. EDUs for groundwater or other permitted discharges to sanitary or combined sewer are calculated based on estimated discharge volume, and are subject to review as described in this Chapter.
- d.** Industrial wastewater. Persons with industrial wastewater discharges are subject to review of sewer usage within two years of occupancy. EDUs are calculated from the highest six-month average of metered usage over that period. The user of record is responsible for EDUs in excess of those paid at the issuance of the permit.
- e.** Credit for prior sewer connection. For buildings on sites that were previously connected to the sewer system or that had buildings previously connected to a sanitary sewer, full credit for sanitary system development charges is allowed for each equivalent dwelling unit purchased under this Subsection that existed prior to demolition or disconnection.
- f.** Credit for prior sewer user charge payments. When a person desires to connect a building to a sanitary sewer, where sanitary sewer user charges have been paid for the building for several years, a credit of \$21 per equivalent dwelling unit for each year of such prior user charge payments from 1949 to 1991 is applied toward the sanitary system development charge. No credit is allowed for buildings that were demolished or disconnected prior to July 1, 1971.
- g.** Temporary structures and temporary connections are not subject to the sanitary system development charge. However sanitary system development charges, including penalties and interest charges, become due and payable from structures or users that originally were exempted from sanitary system development charges as a temporary structures or temporary connections, but are not removed within three years as provided in the definition of temporary structures and temporary connections. Temporary

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structures and temporary connections are not exempt from paying sewer user fees, including extra strength charges.

- h.** Prepayment. A person may elect to pre-pay sanitary system development charges by providing a letter of intent to the Bureau of Environmental Services, which includes the parcel description and address if applicable, and the estimated number of EDUs (equivalent dwelling units) to be paid. The Bureau may grant a refund at any time for excess EDU's paid (refunds will be based on rates in effect at the time of prepayment and without interest), and charge for any outstanding EDU's (calculated by the Bureau of Environmental Services) at the time of the building permit, at the rate in effect at that time. After September 15, 1988, the Bureau will not accept prepayment for a connection to be performed more than five years from the date of prepayment.

2. Line Charge.

- a.** The Bureau collects a line charge prior to the issuance of a permit to connect a property to the public sewer system.
- b.** The Bureau collects the charge when the property to be connected has not been assessed for direct service or its equivalent.
- c.** The Bureau calculates the line charge as follows:
 - (1)** Residential Property. The charge is based on the square footage of the property. For properties zoned residential and used predominately for residential purposes, the square footage used for calculating the line charge is limited to the lot area within 100 feet of rights of way or easement where sewer has been constructed or is planned for sewer construction. Such street or easement line is considered as continuing 100 feet beyond the end of the main line sewer or beyond where the sewer turns away from the property. The minimum line charge is based on a minimum assumed lot size of 1,200 square feet. When an adjacent, developed lot, as defined in Title 33 of this Code, is under same ownership and used in conjunction with a neighboring, developed lot that is connecting to the sewer, the adjacent lot is charged a line charge for its frontage as described above. This condition includes but is not limited to improved parking lots, and lots with garages or landscaping.

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- (2)** **Non-Residential Property.** For non-residential property, the square footage used for calculating the line charge is limited to the lot area within 300 feet of rights of way or easement where sewer has been constructed or is planned for sewer construction. Such street or easement line is considered as continuing 300 feet beyond the end of the main line sewer or beyond where the sewer turns away from the property. The minimum line charge is based on a minimum lot size of 3,600 square feet.
- d.** When a sewer is constructed that can not provide gravity service, the line charge is reduced by 50 percent if the property has gravity service to the first floor only and must install a pump for the basement and 75 percent of the line charge is reduced if no gravity service is available for the first floor and the property must install a pump. The adjustment may not exceed the costs associated with the installation of a pump system. The ratepayer may appeal this determination to the Director if the pump costs exceed the line charge adjustment.
- 3.** **Branch charge.**

 - a.** BES collects a branch charge prior to the issuance of a permit to connect a property to the public sewer system.
 - b.** BES collects a charge for a branch that the City has extended from the public sewer if the property has not been assessed for the branch or its equivalent.
 - c.** BES collects additional charges for additional branches that were requested at the time of sewer design or construction but not used at the time of initial connection. The charges are collected prior to subsequent connection to the public sewer system.
 - d.** BES collects a branch charge for City adoption of private nonconforming sewer lines located within the public right-of-way as provided under Subsection 17.32.055 B.2.
- 4.** **Sewer Conversion Charges.** A property owner must pay the sanitary sewer conversion charges according to the following two categories and as determined by administrative rule at the time the City provides a new sewer connection or when the property owner requests a permit for a new conforming sewer connection.

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- a.** Residential Conversion Charges. Single-family, duplex, three-plex, or four-plex properties are assessed the residential sewer conversion charge, which is the branch rate in place at the time of connection.
 - b.** Commercial Conversion Charges. All multifamily (not listed in Subsection 17.36.040 A.4.b.), commercial, mixed-use, industrial, and institutional properties are assessed the commercial conversion charge. Commercial conversion charges are assessed according to project complexity as described in administrative rule and are calculated to recover costs for City sewer extension projects that serve the property. The commercial conversion charge replaces line, branch, system development and connection charges in this context.
- 5.** Bond in lieu of payment. When the equivalent dwelling units for a proposed connection (or change) cannot be determined in advance, or when the user or applicant does not agree with the Director's determination, but only when the occupancy is not adequately defined by the City, the Director may accept a cash or surety bond in an amount determined by him or her, and posted by the owner in lieu of immediate payment of the charge. A reasonable time after the connection (or change) is made, but not more than 2-1/2 years, the Director, using water consumption records or other evidence, determines the number of equivalent dwelling units and the amount of the system development charges payable. Upon notice, the user must pay the system development charges required. If the user does not pay the charges within 60 days, the bond is forfeited upon certificate by the Director, and approval by the Commissioner-in-Charge.
- 6.** Sampling manhole charge. When a property is subject to an extra strength charge, as described in this Chapter of the Code and as determined by the Director, at the user's request the City may install a sampling manhole on the branch, providing the user agrees to pay all direct and indirect costs of installing the manhole.
- 7.** Deferral of connection charges. Users who qualify to defer sewer assessment charges but who want to connect to the system can defer payment of connection charges until such date as the Director may specify as authorized by ordinance. The charge in effect at the time of connection is applied at time of payment. Deferred connection charges are delinquent when not paid after a period of 90 days from the date due and bear interest and penalties as set forth in this Chapter. Users may convert the deferral to

an installment payment loan. The Director may establish rules, procedures and forms to govern the administration of the deferral program.

B. Stormwater System Development Charge.

- 1.** The stormwater system development charge consists of two parts: an on-site charge, reflecting use of public facilities handling stormwater flows from individual properties; and an off-site charge, reflecting use of system facilities handling stormwater flows from rights of way. The following charges are calculated based on rates established, annually, by general ordinance:
 - a.** The on-site charge is calculated by multiplying the net new impervious area by a rate per thousand square feet of impervious area. In the case of groundwater flows directed into stormwater facilities, the charge is calculated based on the amount of impervious area necessary to produce an equivalent flow given average rainfall.
 - b.** The off-site charge is calculated in two parts: local access, and use of arterial streets.
 - (1)** The local access portion of the off-site charge is calculated by multiplying the length of the property's frontage by a frontage rate per foot. For properties on which there is existing development, and for which a stormwater system development charge has previously been paid, the local access portion is assumed to have been paid.
 - (2)** The arterials portion of the off-site charge is calculated by multiplying net new vehicular trips by a rate per vehicular trip. Vehicular trips for a particular development are determined by the Transportation SDC Study, the ITE Manual, or an alternative study acceptable to the Bureau of Transportation for purposes of the transportation system development charge.
- 2.** Credits. Credits are granted against the on-site portion of the stormwater system development charge in one of the following two cases:
 - a.** Credits of up to 100 percent of the on-site portion of the stormwater system development charge are granted for areas draining, either in whole or in part, directly to the Willamette or Columbia Rivers, or to the Columbia Slough, provided that the

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discharge for which the credit is sought does not pass through reimbursable City stormwater facilities, and that the discharge meets all applicable water quality standards. Those applying for this credit must provide adequate documentation to demonstrate that the stormwater for which the credit is being sought flows from the site to those receiving bodies without passing through reimbursable City stormwater facilities. Development using stormwater facilities built under a public works permit, which convey stormwater runoff directly to one of the receiving bodies listed above without passing through other City stormwater facilities, are eligible for the up to 100% credit against the onsite charge.

- b.** A 100 percent credit is granted for areas draining to facilities providing effective on-site retention for a 100 year storm event with a safety factor of two, defined as a rainfall intensity of 8.28" per hour per square foot of impervious area. Those applying for this credit must provide adequate documentation to demonstrate this additional retention capacity, including testing of infiltration facilities, and that on-site flows are directed to these facilities.
 - c.** No credits are granted against the off-site portion of the stormwater system development charge.
- 3.** The stormwater system development charge is collected upon issuance of a building or connection permit. If desired, the applicant may pay these charges directly to the Bureau of Environmental Services after applying for, but before receiving a building permit. When the new building takes the place of a structure or impervious area that has existed in the last seven years, or does not add more than 500 square feet, or is a temporary structure, no development charge will apply. However, development charges, including penalties and interest charges, become due and payable from structures that originally were exempted from development charges as a temporary structure but are not removed within three years as provided in the definition of temporary structures. Temporary structures are not exempt from paying draining service charges.

17.36.050 Partial and Full Exemptions of Sanitary and Stormwater System Development Charges for Affordable Housing Developments.

(Replaced by Ordinance No. 183448, effective July 1, 2010.) The purpose of this Section is to reduce the costs of developing permanent affordable housing by waiving sanitary and stormwater 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. Affordable

housing is exempt from sanitary and stormwater system development charges pursuant to Section 30.01.095.

17.36.060 Agreements with Governmental Agencies for Sanitary Sewer and Stormwater Management Services.

The Director is authorized to enter into agreements for and on behalf of the City with any special service district or governmental agency authorized to contract on behalf of property outside the City but within the district or agency. The agreements may provide for payments to the City by the districts or agency, in lieu of payments by individual property owners or occupants. Bonds or other securities may be waived by the Director in agreements provided for in this Section. All other provisions of this Title applicable to sewer system connection charges, user charges or to agreements with individual property owners remain in full force and effect.

17.36.070 User Charges.

Sewer user service charges, as authorized by the Charter, are established and made effective as follows:

- A.** Sanitary Sewer Services. Except as otherwise provided by this Title, the City calculates and collects user charges for sanitary sewer services from ratepayers who cause or permit the discharge of sanitary sewage from a property in their possession into the public sewer system. The charges begin upon connection to the public sewer system. Charges for sanitary sewer services may include sanitary sewer volume charges, account service charges and penalties for non-payment or late-payment of sewer charges and other charges as provided for in this Chapter. The City calculates the following charges based on rates established, annually, by general ordinance:
 - 1.** Dwelling units. Charges for dwelling units are based on the volume of sewage discharge to the sanitary sewer system. The Bureau may elect to use the water meter consumption as the calculation for the sanitary sewage discharge. To avoid including irrigation water usage in this calculation, the Bureau will establish a procedure that allows for irrigation credit. When a water meter reading is not available, a sanitary sewer discharge estimate shall be made based on the ratepayer class of characteristics as determined by the Director.
 - 2.** Commercial, industrial and all occupancies other than residential. The City calculates charges for commercial, industrial and all occupancies other than residential based on the amount of incoming water volume as measured by the City water meter or information from the water district serving the property or by a Bureau approved meter that measures actual discharge volume. Discharge meters must meet the current standards for such meters as described by the Director. To establish reduced charges or

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credit for water not subject to sewer charges, ratepayers must comply with the requirements of this Chapter. If a sewer customer does not have a City meter or water district meter measuring the supply of water to the property, the private water supply must be metered in accordance with this Chapter. In areas served by separated storm and sanitary sewer systems, the City may accept the discharge of contaminated stormwater into the sanitary sewer. The discharge volumes will be based upon the impervious area producing the contaminated stormwater and the average rainfall or a discharge meter. The discharge will be charged based on sanitary sewer volume rates.

3. Combined dwelling units and other. Where dwelling units and other occupancies are combined on the same water supply, the City calculates charges for sanitary sewer service in the same manner as those for commercial, industrial and all occupancies other than residential.

B. Stormwater Management Services. Except as otherwise provided by this Title, the City calculates and collects user charges for stormwater management services based on rates established, annually by general ordinance. Ratepayers who receive a direct or indirect benefit from City stormwater management services are subject to the user charge. The ratepayer identified on the City utility billing account is assumed to be the user of stormwater management services and responsible for the user charge. If the property is not subject to other City utility charges, the Director will determine the ratepayer responsible for the user charge.

1. Billing Components. The user charge consists of the following components:
 - a. Stormwater On-Site. The user charge rate for the on-site component is 35% of the stormwater management services rate.
 - b. Stormwater Off-Site. The user charge rate for the off-site component is 65% of the stormwater management services rate.
2. Basis for charge. User charges are calculated based on the user's proportionate share of stormwater management services. For administrative purposes, the user's proportionate share is assumed to be perfectly correlated with the amount of impervious area on the user's site. Unless the Bureau measures actual site characteristics, impervious area is assumed to be the average impervious area for the user's class as shown in the most recent rate study.

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3. Dwelling units. The City uses the following class averages of impervious areas for calculating user charges for dwelling units located on a single property or tax lot:
 - a. One and Two Dwelling Units - 2,400 square feet
 - b. Three Dwelling Units - 3,000 square feet
 - c. Four Dwelling Units - 4,000 square feet
 - d. Five or More Dwelling Units – Measured impervious area
 4. Properties other than dwelling units. The City calculates the ratepayer's proportionate share of stormwater drainage system services based on the amount of impervious area on the site.
 5. Drainage Districts. The City calculates and collects payments for stormwater management services from Multnomah Drainage District No. 1, Peninsula Drainage District No. 1, and Peninsula Drainage District No. 2 under an Intergovernmental Agreement. The district charges are made in lieu of user charges for properties located within the boundaries of the districts.
- C. Willamette River/Portland Harbor Superfund. The City calculates and collects user charges for the Willamette River/Portland Harbor Superfund Program based on rates established, annually, by general ordinance. Ratepayers who receive a direct or indirect benefit from the public sewer system and City stormwater management services are subject to the user charge. The ratepayer identified on the City utility billing account is assumed to be the beneficiary of the program and responsible for the user charge. If the property is not subject to other City utility charges, the Director determines the ratepayer responsible for the user charge.
1. Billing Components. The user charge appears as a single item on the City utility bill, and is the sum of two rate calculations:
 - a. Sanitary Volume. This portion of the user charge is calculated in the same manner as the user charge for sanitary sewer services, based on a Willamette River/Portland Harbor Superfund Sanitary Volume rate.
 - b. Impervious Area. This portion of the user charge is calculated in the same manner as the user charge for stormwater management services, based a Willamette River/Portland Harbor Superfund Impervious Area rate.

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D. Service outside the City:

1. The City charges for the use of sanitary sewer and stormwater management services from properties outside the City based on rates established, annually, by general ordinance.
2. Business, industrial, commercial, and all other non-residential services outside the City:
 - a. The Director may require, and is authorized to enter into agreements for and on behalf of the City, permitting connection and providing sanitary sewer or stormwater management services to commercial and industrial properties outside the City when he/she finds such service feasible and appropriate. The Director may conduct such investigations as deemed necessary in connection with the application of any non-residential occupancy to connect with the public sewer system or stormwater management facility. The Director must approve the design and location of all sewers or stormwater management facilities prior to their connection. The City requires street opening permits from the appropriate authority in the jurisdiction wherein the sanitary sewer or stormwater management facility is located.
 - b. The Director may require the owner, tenant or lease holder to post a cash or surety bond in the sum of not over \$4,000, as one of the conditions for entering into an agreement allowing connection from commercial or industrial property outside the City. The bond shall be deposited with the City Treasurer and shall be declared forfeited upon certificate by the Director, approved by the Commissioner-in-Charge, in case of delinquency of more than 30 days in the payment of the sewer user service charge.
3. Determination of which property is outside the City. The Director determines whether any residential or business, industrial, commercial, institutional or other property is inside or outside of the City limits. For purposes of this Section, the property is outside of the City limits where 66.7 percent or more of the assessed valuation of the property is recorded in the records of the County Assessor as lying beyond the City limits.

17.36.075 Fees for Adoption of Nonconforming Sewer Lines.

(Added by Ordinance No. 185694, effective November 23, 2012.) The owners of a property connected to the public sewer via a nonconforming sewer line in a public right-of-way may request that the City adopt the nonconforming line under Subsection

17.32.055 B.2. and associated administrative rules. Adoption fees will be assessed as provided by Subsection 17.36.040 A.3.d. unless the nonconforming line meets City standards as described in administrative rule.

17.36.080 Special Provisions.

- A.** Establishing reduced charges or credit for water not subject to sewer user charges. Prior to any use of water that may be subject to reduced or special charges, and prior to installation of any meter for the purpose of obtaining reduced sewer charges, the owner must submit a written credit request for approval by the Director. A request for such credit must include a mechanical plan showing the proposed meter location, access route to the meter, the water supply or source, the cooling or other water using equipment, and the discharge point. At no time may a reduced charge or credit be given retroactively (prior to the date of approval); no reduced sewer rate or charge may be given until the Director has approved the request and the meter location plans and installation. Any meter or method, used for calculation of a reduced rate or credit, is subject to the administrative or special meter charge for each such meter or method as established, annually, by general ordinance. All meters used to obtain a reduced sewer user charge must conform to the provisions of this Chapter.
- 1.** Clean water to sanitary or combined sewer charges. The Bureau calculates these charges based on the commercial sewer volume rate when uncontaminated groundwater or other uncontaminated water, such as that used for refrigerating or cooling purposes or condensed from steam and put to no other use, is discharged to a public sanitary or combined sewer under City control.
 - 2.** Clean water to storm only charges. The Bureau calculates these charges based on the commercial clean water to storm sewer volume rate when uncontaminated groundwater or other uncontaminated water, such as that used for refrigerating or cooling purposes or condensed from steam and put to no other use, is discharged to a public separated storm sewer and not connected to a combined sanitary system under City control.
 - 3.** Discharges from publicly owned drinking fountains. The Bureau calculates these charges based on the drinking fountain volume rate and the volume of water that is discharged from publicly owned drinking fountains to a sanitary or combined sewer. Discharges from publicly owned drinking fountains to a public separated storm sewer are charged a volume rate for commercial clean water discharged to a storm sewer.
 - 4.** Water not subject to sewer charges. The Bureau may exempt from user charges water that is used in a manufactured product such as ice, canned

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goods or beverages; or for water lost by evaporation or used in irrigation on a written request for such credit. After approval by the Director, the owner or other person in control of the premises, must install meters or provide other means of determining the quantity of water so used to the satisfaction of the Bureau.

5. When clean water discharged to a public sewer system is not from a separate metered supply, the owner or other person in control of the premises, after approval by the Director, must install meters or provide other means of determining the quantity of water so used to the satisfaction of the Bureau.

B. Conditions for revoking reduced charges or credits.

1. Failure to repair a defective meter within 30 days after notice by the City that the meter is defective revokes the applicability of Paragraphs 1. and 2. of Subsection A. above. In such cases, user charges, at the regular rate, must be paid on the full amount of water passing through the supply meter during these 30 days. The regular sewer rate continues in effect until such time as the owner or person in charge of the premises formally notifies the Director that the meter has been repaired. At no time may a reduced charge or credit be allowed retroactively, or for a period in which the meter is defective.
2. Failure to report quantities of water subject to reduced charge or credit for two consecutive months revokes the applicability of Paragraphs 1. and 2. of Subsection A above. In such cases, user charges, at the regular rate, must be paid on the full amount of water passing through the supply meter during these 60 days. The regular sewer rate continues in effect until such time as the owner or person in charge of the premises formally notifies the Director that the reports will continue. At no time may a reduced charge or credit be allowed retroactively, or for a period in which no reports were submitted.

- #### **C. Meters required.**
- Where private meters are used to determine the amount of water reaching the sewer, the owner or person in charge of the premises must give City employees the right of access at all reasonable times for the purpose of reading, inspecting or testing the meter. The owner is responsible for purchasing, installing, maintaining, and calibrating the private meter and must comply with all provisions in this Title. Failure of the owner, his lessee, or others acting under him to maintain the meter in good working order constitutes a violation of this Chapter and during the period of the meter's non-operation and pending the proper repair and reinstallation of the meter, the account may be billed on the

basis of three times the normal water usage or in such an amount as deemed proper by the Director.

1. In cases where water is supplied solely from a private source or sources such as wells, springs, rivers or creeks, or forms a partial supply in addition to that furnished by the water system of the City, the private supply must be metered and any meters so used must conform to the provisions of this Chapter. Residential properties may elect to be billed based on the characteristics of this class of user as determined by the Director.
 2. Discharge meters. Where there are several water supplies or various uses of water that would be eligible for credit or charges under the various Sections of this Chapter, upon approval of the Director, a discharge meter may be installed in lieu of several submeters or other measurement methodology.
- D.** Estimating wastewater discharges. User charges as provided in this Chapter are applicable to all wastewater discharges to the City sewer system regardless of the source. In unusual circumstances where the wastewater is not from a fixed location, such as ships, barges, houseboats and other movable facilities or dwelling units, a method of determining the volume provided by the user may be used if approved by the Director. Otherwise, the Director estimates the volume of water to which user charges apply and this determination is final. The rate of charge is the same as though the water originated from a local, public or private source.
- E.** Where the user charges established by Code or general ordinance, are inappropriate for the service provided, the Director may establish the appropriate charges based on the unit costs developed in the most recent rate study. The new charge so established must be filed with the Council Clerk and may be reviewed by the Council on the motion of any member of the Council.

17.36.090 Meters.

Meters that are used under the provisions of this Chapter must conform to the conditions set forth in this Section, and must be approved by the Director as to type, maintenance, calibration schedule, size and location before installation.

- A.** All meters must register in cubic feet.
- B.** Meters installed on water systems supplied from private or public sources and used to measure cooling, irrigation, evaporation or product water for the purpose of obtaining reduced sewer charges must be connected in such a manner as to

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register only that portion of the water supply used for that purpose, and not used for sanitary purposes.

- C.** Meters placed below the ground or pavement surface must have the top of the meter not more than 8 inches below the surface and must be enclosed in a standard water meter box and cover as used by the Portland Water Bureau. Meters located above the ground or floor level must not be more than 3-1/2 feet above the ground or floor level.
- D.** All meters must be located in an area that is accessible at all times; the meter must be so located that no locked door or gate shall be encountered by a City employee when inspecting the meter. Meters must not be located adjacent to dangerous machinery or structural hazard; the extent of such hazards shall be determined by the Director.
- E.** For purposes of calculating user charges, owners of meters must implement a program to ensure meter accuracy. The program should consider the manufacturer's periodic maintenance and calibration requirements. All maintenance and calibration records must be retained and available for review by City personnel.

17.36.100 Clean River Rewards.

- A.** Objectives. The objectives of the Clean River Rewards are to increase ratepayer control over stormwater management charges and to advance City environmental goals. The City achieves these objectives by providing economic incentives, technical assistance, and environmental education to ratepayers who control and manage the quality and quantity of stormwater runoff on their private property.
- B.** Authority. The Director is authorized to establish and administer Clean River Rewards, and promulgate administrative rules to implement the program. The rule must contain the following elements:

 - 1.** definitions for all terms and concepts that are unique to Clean River Rewards, unless otherwise referenced in City Code;
 - 2.** criteria to be used by the City to determine eligibility for Clean River Rewards;
 - 3.** methods for calculating the amount of incentives and discounts to be awarded to eligible registrants;
 - 4.** procedures for verifying the validity and accuracy of incentives and discounts, and enforcing administrative rules; and

5. procedures for review and reconsideration of Bureau decisions upon request of ratepayers.

17.36.110 Extra-Strength Wastewater Charges.

(Replaced by Ordinance No. 184989, effective December 9, 2011.)

- A. Wastewater discharged to a City sewer, either directly or indirectly, is subject to the extra-strength sewage charge if the discharge has a biochemical oxygen demand or a total suspended solids concentration in excess of concentrations determined by the Director. The Director may establish concentrations of other pollutants which are to be subject to extra-strength sewage charges, and for the period until the next rate study, the rates to be charged for exceeding those allowed concentrations, as established, annually, by general ordinance. Payment of the extra-strength sewage charge does not relieve the discharger of responsibility for all other applicable provisions of Chapter 17.34 Sanitary Wastewater Discharges.
 1. Concentration. Pollutants in excess of the allowable concentrations, specified in this Title, and by general ordinance, are subject to the extra-strength sewage charge rate (in dollars per 100 cubic feet) for the period throughout the time interval between sample periods or as defined by the Director.
 2. Volume. The volume used to bill the extra-strength charge must be the total metered water supply to the premises. However, where the industrial wastewater is discharged separately from domestic sanitary wastes or cooling waters, and the industrial user provides a meter or other acceptable method of determining the quantity of water not subject to the extra-strength sewage charge, then an appropriate allowance for such other uses must be made. For multiple tenant buildings with shared water service, extra-strength sewer charges shall be apportioned by class of individual tenant with an estimated volume as a portion of the total sewer bill.
- B. Methodologies for calculating extra-strength sewage charge rates.
 1. Rolling Average. The average concentration of daily representative samples taken over a representative period of 5 days is used to begin an extra strength sewage charge rate for a rolling average, except when another period is specified by the Director. Samples are taken at an approved sampling manhole or other appropriate location, as determined by the Director, so that samples will be representative.

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- a.** Self-monitoring. The Director may authorize a user to submit monitoring data in support of extra-strength sewage charge rate calculations. Samples of wastewater being discharged into the sewer system must be representative of the discharge.

 - (1)** Self monitoring reports. Self-monitoring reports must include sufficient information, for purposes of calculating the rolling average for Extra Strength Sewer Charges.
 - (2)** Analytical procedures. All analytical data submitted for calculating extra-strength sewage charge rates must be in accordance with procedures approved in Guidelines Establishing Test Procedures for the Analysis of Pollutants, contained in 40 CFR 136 and amendments thereto as published in the Federal Register.
 - (3)** Laboratories analyzing for BOD must use approved seed in their analysis. Laboratory reports must indicate the use of approved City seed in order for the data to be used in extra-strength sewage charge rate calculation. The Director may require that the City be provided with a split of any independent sample collected by the user for the purpose of extra-strength sewage charge rate calculation.
- b.** Additional sample requests; fees. Any user subject to rolling average monitoring may request the City to collect samples in excess of the prescribed criteria. Requests for the City to collect additional samples must be submitted in writing and accompanied by full payment, in accordance with the re-sampling fees established, annually, by general ordinance.

 - (1)** Split samples. The Director may allow samples collected by the City for the purpose of determining an extra-strength sewage charge rate be split with the user, as provided for in administrative rule.
- c.** Slugloads. The Director may allow the slugload provision as defined in Chapter 17.34 of this Code for purposes of Extra Strength Sewer Charges if the following conditions are met:

 - (1)** The discharge is non-representative of the industrial discharge due to it being a defined and unique event;

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- (2) The slugload was reported to the City within 24 hours of the incident;
 - (3) The sample result from the slugload exceeds 3 times the established standard deviation. Once the Director allows the slugload provision, the City will follow the standard procedure for slugload as defined in Chapter 17.34 of this Code. The sample results will be used for calculating a single Extra Strength Sewer Charge based on the duration of the slugload and the concentrations of the results. The results will not be used for purposes of calculating the rolling average for Extra Strength Charges. The number of Extra Strength Sewer Charges slugloads may not exceed two per calendar year.
 - 2. Extra Strength Class averages. The Director may establish through administrative rule a rate structure for users be billed extra-strength sewer charges based on the average discharge concentration of their business class. Businesses subject to class average extra-strength sewage charges shall be eligible for rate reductions based on the verifiable implementation of approved best management practices, using criteria to be established by administrative rule.
 - 3. Other charge computations. If unusual effluent conditions make calculation by the rolling average or the extra strength class average method difficult or impossible, the Bureau may implement another method of sampling and computation acceptable to the Director, and based on the rates established, annually, by general ordinance. The Director has the right to establish custom rates based on site specific conditions per the criteria in administrative rule.
- C. Billing. Extra-strength sewage charges are either included with the City utility bill or are billed separately by the City Auditor. Extra-strength sewage charges are enforceable and collectable in the same manner as water and sewer user charges. If such charges are not paid pursuant to Title 21 of this Code, such nonpayment is cause for termination of water and/or sewer services.
- D. Minimal charges; suspension. The Director may establish a minimum limit for periodic extra-strength charges using the rolling average method. The billing for all accounts whose periodic extra-strength sewage charges are below this minimum limit will be suspended or changed to the class average method until such time as they are found to be higher.

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- E.** Adjustments. The Director may sample sewage strength as outlined in this Section and adjust charges where applicable at any time in accordance with the most recent analysis.

17.36.120 Other Charges.

Building plan review fees. The Bureau collects fees for the review of building plans and land use proposals to ensure compliance with requirements for sewage disposal, stormwater management, and for determining routes of service. Fees are established annually, by general ordinance, and paid at the time the plans or proposals are submitted for review to the City.

17.36.130 Computing and Billing.

In cases where City utility bills apply, the user charges, provided in this Chapter, are computed monthly, bimonthly, or quarterly, and billed to the responsible party described in Code Section 21.16.030 Billing Responsibility at the same time as the user charges for water service and added thereto; or otherwise, as may be authorized by the Council. When billed with the utility bill, user charges are due and payable on the dates and at the places provided for the payment of user charges for water service. The City may prorate user charges for a portion of a utility billing period based on the effective date of the sanitary sewer or stormwater management service.

17.36.140 Certain Installations Unlawful.

It is unlawful to so install, change, bypass, adjust, or alter any metering device or any piping arrangement connected therewith as to show the quantity of water reaching the public sewer under City control to be less than actual quantity.

17.36.0150 Identification of Inspectors.

Each City employee going upon private premises for the purpose of reading, inspecting or testing any metering device installed under the provisions of this Title, must wear, in a conspicuous place, upon the exterior of his or her clothing a readily discernible badge identifying the employee as a sewer user service inspector. Each City employee, when acting as a sewer user service inspector, must also carry credentials from the Bureau of his or her employment, which he or she must show upon demand of any owner or person in charge of the premises entered.

17.36.160 Collection of Charges and Fees.

(Replaced by Ordinance No. 185694, effective November 23, 2012.)

- A.** All charges and fees for services provided directly by the City remain the responsibility of the person benefiting or using said service at that premises or any former premises where services were supplied. If the premises are not in use, all charges and fees, not including fees incurred by a prior tenant other than the owner, are the responsibility of the owner as the person with the right to possession of the premises. A property owner or his agent may become obligated

for charges and fees for furnishing such services to the person benefiting from services by accepting responsibility for payment or by agreement with the City. Where a ratepayer or property owner has a delinquent bill for one premises, this delinquency is a charge against the ratepayer or property owner for sewer service obtained at any other premises serviced by the City for the same ratepayer or owner.

- B.** The Director, with approval of the Commissioner-in-Charge, may discontinue sanitary sewer service by disconnecting and plugging the sewer service line to properties whose delinquent user charges exceed \$10,000 for a period of 90 days or more. Ratepayers and property owners will be notified in writing of the City's intent to disconnect the sewer not less than 30 days prior to disconnection. Payment of the delinquent amount, including outstanding user charges, accrued interest and collection costs, and all costs associated with disconnecting and reconnecting the sewer line, must be received by the City before the property may be reconnected to the sewer. The delinquent amount remains the responsibility of the ratepayer. In the event a ratepayer who is not the owner terminates their lease and moves from a disconnected property before reconnection has occurred, the City will reconnect the property and collect the cost as well as all delinquent amounts from the ratepayer who originally incurred the charges.
- C.** Sewer charges assessed under this Chapter are a personal obligation of the ratepayer and will become due, and be collected monthly, bimonthly, or quarterly, coincident with user charges for water service. For ratepayers who do not receive water service from the City, user charges will be computed and billed monthly, bimonthly, or quarterly. Any bill for a user charge, whether included with user charges for water service or otherwise, is delinquent and subject to collection charges if not paid in accordance with the collection schedule published in the annual rate ordinances. Nonpayment of delinquent user charges will result in water shutoff pursuant to Title 21 of this Code when the premises are furnished water service by the City.

17.36.170 Deposit and Application.

An application, deposit, or both, for sanitary sewer or stormwater management services may be required from all new ratepayers, ratepayers whose service has been shut off for nonpayment, or persons with unsatisfactory credit who are requesting services. Unsatisfactory credit is defined as shut off for nonpayment of water or sewer charges within the past year. Failure to provide either the application, deposit, or both within the due date specified by the City may result in discontinuance of service.

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17.36.180 Adjustment of Bills.

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

- A.** When the Bureau determines that a billing error has occurred, the Bureau may authorize an adjustment as provided by Subsection 17.36.180 C. below for the period of the error, but not to exceed three years from the date the error is identified unless the Bureau allows an exception in response to an appeal under Section 17.38.190.
- B.** Except as set forth in this Subsection, a ratepayer's eligibility for an adjustment will end six months after the date a final bill was issued for the subject account. The Director make authorize an adjustment to the ratepayer of a closed utility account, more than six months after the issuance of the account's final bill, based on the following criteria:

 - 1.** The Bureau finds that the ratepayer was billed for sanitary sewer services for a property that was not connected to the City's sewer system; and
 - 2.** The error is discovered after the six month deadline for adjustments to a final bill; and
 - 3.** The request is made in writing by the ratepayer of record at the time the billing error occurred; and
 - 4.** The adjustment is limited to the sanitary sewer user charge; and
 - 5.** The Director finds that the adjustment is necessary to protect the financial condition of the sanitary sewer utility.
- C.** Adjustments will be in the form of credits or additional charges to active utility accounts. The City may not issue refunds for billing adjustments unless approved by the Director. Refunds are chargeable to the Sewer System Operating Fund.
- D.** Ratepayers who receive a back billing or a delayed billing will be offered the opportunity to pay the balance due over a set period based on current City collection policies.

17.36.190 Appeal.

(Amended by Ordinance No. 184989, effective December 9, 2011.) If a property owner or owner's agent does not agree that the calculation of connection or user charges was administered as set forth in this Section, he or she may appeal to the Director for an administrative review. The owner or owner's agent must file a written appeal to the Director prior to payment or within 10 days of payment of the charge. The owner or owner's agent has an opportunity to present evidence in the course of the review. The

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Bureau provides the owner or owner's agent a decision in writing within 10 days of the receipt of appeal request. Upon receipt of the statement, the Bureau of Environmental Services shall schedule the matter for review by the Director or his or her designated representative. The user shall receive a decision in writing within 30 days of the receipt of appeals request. A person aggrieved by any decision or determination of the administrative review process may appeal the decision to the Code Hearings Officer as provided in Chapter 22.10 of the Code of the City

- A.** Appeals to specific programs. The following specific programs have distinct appeal and administrative review processes as established in program administrative rules found on Portland Policy Documents (PPD):
- 1.** Extra Strength Program (PPD item ENB 4.25)
 - 2.** Clean River Rewards Program (PPD item ENB 4.16)
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Chapter 24.10

**ADMINISTRATION AND
ENFORCEMENT**

Sections:

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24.10.030	Scope.
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24.10.050	Organization.
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24.10.085	Structural Engineering Advisory Committee.
24.10.090	Pre-application and Pre-construction Meetings.
24.10.095	Commercial and Industrial Minor Structural Labels.
24.10.100	Fees.

24.10.010 Title.

This Title shall be known as the “Building Regulations,” and may be so cited and pleaded and is referred to herein as “this Title.”

24.10.020 Purpose.

(Amended by Ordinance No. 163908, effective Feb. 27, 1991.) The purpose of this Title is to provide minimum performance standards to safeguard the health, safety, welfare, comfort, and security of the residents of this City who are occupants and users of buildings, and will provide for the use of modern methods, devices, materials, techniques, and practicable maximum energy conservation by regulating and controlling the design, construction, quality of materials, use, and occupancy, location and maintenance of all buildings, structures and land within this jurisdiction.

24.10.030 Scope.

(Amended by Ordinance Nos. 163237, 163908, 165678 and 176783, effective August 30, 2002.) The provisions of this Title shall apply to the construction, alteration, moving, demolition, repair, and use of any building, structure or land, and to any land clearing or grading within the City. Exceptions are work in the public right-of-way as approved by the City Engineer; publicly constructed sanitary and storm sewer systems and facilities approved by the BES Chief Engineer; and public utility towers and poles, mechanical equipment not specifically regulated in this Code.

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24.10.040 Codes.

(Amended by Ordinance Nos. 158651, 162695, 163908, 164950, 166111, 166436, 169312, 169905, 172737, 174891, 177414, 177433, 178745, 179125, 181359, 182370, 184140, 185545 and 185798, effective December 12, 2012.)

- A.** Structural Specialty Code. The provisions of the State of Oregon Structural Specialty Code 2010 Edition, as published by the International Code Council and known as the International Building Code 2009 Edition and amended by the Building Codes Division of the Oregon Department of Consumer and Business Services, including Appendix L and the provisions of Section 903.2.8.1, are hereby adopted by reference. The Structural Specialty Code is on file in the Development Services Center of the City of Portland.
- B.** Compliance with recognized standards. Where requirements of this Title do not provide necessary regulation or are not fully detailed with regard to processes, methods, specifications, equipment testing, and maintenance, standards of design, performance, and installation, and other pertinent criteria, the applicable standards and recommendation of the National Fire Protection Association, as set forth in its National Fire Code, current Edition, Volumes 1 through 16 shall apply, a copy of which is on file in the City Auditor's Office. Said volumes and all subsequent editions are hereby incorporated in this Title by reference.
- C.** Application of other titles. Nothing in this Title is intended to permit the establishment or conversion of any structure or use of any land in any zone which is not in accordance with the applicable sections of Title 25 (Plumbing Regulations), Title 26 (Electrical Regulations), Title 27 (Heating and Ventilating Regulations), Title 33 (Planning and Zoning Regulations).
- D.** Residential code. The provisions of the State of Oregon, Residential Specialty Code, 2011 Edition, as published by the International Code Council, and known as the International Residential Code, 2009 Edition, and amended by the Building Codes Division of the Oregon Department of Consumer and Business Services, including the appendices and standards adopted by the State of Oregon, is hereby adopted by reference. The Residential Specialty Code is on file in the Development Services Center of the City of Portland.
- E.** Energy Efficiency Specialty Code. The provisions of the State of Oregon Energy Efficiency Specialty Code 2010 Edition, as published by the International Code Council and known as the International Energy Conservation Code, 2009 Edition and amended by the Building Codes Division of the Oregon Department of Consumer and Business Services, are hereby adopted by reference. The Energy Efficiency Specialty Code is on file in the Development Services Center of the City of Portland.

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24.10.050 Organization.

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

- A.** Bureau of Development Services. The Bureau of Development Services shall be under the jurisdiction of the Director designated by the appointing authority.
- B.** Director to enforce Title. General. The Director is hereby authorized and directed to enforce all provisions of this Title. For such purpose he shall have the powers of a law enforcement officer.
- C.** Deputies. The Director may appoint officers, inspectors, and assistants and other employees. He may also deputize employees as may be necessary to carry out the duties of the Bureau of Development Services.
- D.** Right of Entry. Whenever an inspection is necessary to enforce any of the provisions of this Title, or whenever the Director or his duly authorized representative has reasonable cause to believe that there exists in any building or upon any premises any condition which makes such building or premises substandard as defined within this Title, or upon presentation of a lawfully issued warrant, the Director may enter such building or premises at all reasonable times to inspect or to perform any imposed duty and shall have recourse to every remedy provided by law to secure entry.

24.10.060 Enforcement.

(Amended by Ordinance Nos. 168340 and 176955, effective October 9, 2002.)

- A.** All permitted work shall be subject to inspection by the Director, and certain work shall have continuous inspection by special inspectors as specified in Section 24.20.
- B.** The Director, upon notification from the permit holder or his agent, shall either approve of those portions of the construction requiring inspection or shall notify the permit holder, or his agent, in writing, wherein the same fails to comply with the provisions of this Title.
- C.** Whenever any work related to construction, for which a permit is required from the Bureau of Development Services, is being done contrary to the provisions of the Code of the City of Portland, the Director may order the work stopped by notice in writing served on any persons engaged in the doing or causing of such work and any such persons shall forthwith stop such work until authorized by the Director to proceed.

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- D.** It is unlawful for any person, firm, or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy, or maintain any building or structure in the City, or cause the same to be done, contrary to or in violation of any of the provisions of this Title.
- E.** If an unoccupied structure or structure under construction is open or unattended, the Director may enter to determine if a hazardous condition exists. If such a condition exists, he shall notify the owner of the condition and order the structure immediately secured against the entry of unauthorized persons.
- F.** In the event the property owner, permit holder or his agent fails or neglects to carry out any requirement, or fails to correct any noted violation of this Title, the Director may gain compliance by any of the remedies outlined in Title 3.30.015 of the Code of the City of Portland.

24.10.070 Application for Permits.

(Amended by Ordinance. Nos. 162100, 163908, 165678, 169905, 171773, 174880, 176783, 176955 and 180330, effective August 18, 2006.)

- A.** Permits required. No person, firm, or corporation shall erect, construct, enlarge, alter, repair, move, improve, remove, convert, change occupancy group of, or demolish any building or structure, or to do any clearing or grading, or cause any of the same to be done without first obtaining a building permit, or where appropriate a minor structural label as outlined in Section 24.10.095. Building permits and fees for work on private property are waived whenever the work appears on plans and specifications, approved by the City Engineer or BES Chief Engineer. This work shall be limited to the construction of streets, public sewers, public stormwater management facilities, driveways, retaining walls, fences, walkways, parking pads, steps, and tree, shrub, and brush removal.
- B.** For exempted work see Chapter 1 of the Structural Specialty Code.
- C.** Plans and specifications. Plans, engineering diagrams, and other data shall be submitted in three sets with each application, and shall comply with the requirements of Chapter 1 of the Structural Specialty Code. If a structural design is required, computations, stress diagrams, computer data, and such additional data as required by the Director, sufficient to show the correctness of the plans and compliance with the structural provisions of this Title shall be submitted. The above data shall include a brief summary of all basic assumptions, design methods, structural systems, loading, lateral bracing systems, and a table of contents of the computations. Computer calculations submitted as substantiation of the design shall include a copy of the program users manual for each program, definition, sketches, index of data runs, and properly identified input and output listings. For other than nationally recognized programs, the correctness of the

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program shall be substantiated in a manner acceptable to the Director. When required by the Director, or when required under ORS 672 (State Engineering Law) or ORS 671 (State Architectural Law), plans shall be prepared and certified by an architect or registered professional engineer licensed to practice in the State of Oregon.

- D.** Parking lots. Parking lots shall not require a separate building permit when they are clearly shown on plans submitted and their valuation is included on the application for the principal building permit.
- E.** Compliance with Section 17.88.010 (Street Access) of this Code is required prior to issuance of this permit.
- F.** Plans for other than one and two family dwelling repairs, remodels, or additions shall be approved by the Fire Marshal prior to approval by the Director.
- G.** Issuance of permits. Issuance of permits shall be in accordance with Chapter 1 of the Structural Specialty Code provided that plans for all commercial buildings and any off-street parking area where the parking of three or more cars is to be established shall be approved by the City Engineer and the City Traffic Engineer before a building permit may be issued.
- H.** Charge for partial permits. When complete plans and specifications are not available, the Director may issue partial permits to assist in the commencement of the work, provided that a partial permit charge is paid to the bureau. The number of partial permits issued shall not exceed six on any individual project, except that in special circumstances the Director may allow this number to be exceeded.
- I.** Retention of plans.
 - 1. Plans and specifications for all buildings, or their photographic image, shall be retained permanently in the files of the Bureau of Development Services as follows:
 - a.** Plans and specifications for work which does not concern or affect the structural stability of a building and which does not affect a change of occupancy may be destroyed after 5 years from date of building permit for same;
 - 2. Plans and specifications for one or two family dwellings, and/or buildings accessory thereto may be destroyed after 5 years from date of building permit for same.

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- J.** A separate permit, known as a development permit, shall be required for a site development, changes in use, or other work performed in compliance with Title 33, Chapter 33.700, Administration, which is not otherwise included with the permit described in Subsection A. of this Section. Reviews and approval of site plans or other documents shall be obtained from the Bureau of Development Services prior to issuance of the permit.
- K.** Life of Permit Limited. If no inspection approval has taken place within six months after permit issuance, the permit shall become void, and no further work shall be done at the premises until a new permit has been secured and a new fee paid. Each time an inspection approval is granted, the permit shall be deemed to be automatically extended for six months, until final approval is granted. The Building Official may extend a permit for one period of six months upon finding that the permittee was unable to commence or continue work for reasons beyond his or her control. Extension requests shall be in writing and shall be received by the Director before the permit expiration date. If an inspection approval has not been granted within this extended time period, the permit shall be void. A permit that has been expired for six months or less may be renewed provided no changes have been made in the original plans and specifications for such work. No permit may be renewed if it has been expired for more than six months. A permit may be renewed only once. If an inspection approval has not been granted within the time period of permit renewal the permit shall be void. The renewal fee shall be one half the amount required for a new building permit.

24.10.080 Board of Appeals.

(Amended by Ordinance Nos. 174719 and 176955, effective October 9, 2002.)

- A.** In order to determine the suitability of alternate materials and methods of construction and to provide for reasonable interpretation of the provisions of this Title, there has been created a Board of Appeal, consisting of three members appointed by the Mayor. The Board members must be qualified by experience and training to make decisions on matters pertaining to building construction. All persons shall be appointed for a term of 3 years. At least one member of the Board shall be a competent builder who has engaged in the building business in the City for at least two years immediately preceding his appointment, and at least one member of the Board shall be a competent architect who has practiced his profession for at least 3 years. The Director shall be an ex officio member and shall act as Secretary of the Board.
- B.** No member may act on or hear a case in which he has an interest. If such a case comes before the Board, the member's alternate shall attend or the Mayor shall appoint a substitute.

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- C.** Meeting of the Board of Appeal. Meetings of the Board of Appeal shall be held at the call of the Chairman or upon notice from the Commissioner In Charge of the Bureau of Development Services of any special appeal.
- D.** Removal from office. Any member of the Board of Appeal may be removed from office by the Mayor for due cause, such as malfeasance in office, incapacity, or neglect of duty.
- E.** The Mayor shall appoint a qualified alternate for each member, who shall attend meetings and vote when the member is unavailable.
- F.** Appeals to Board. Any person who may have been ordered by the Bureau of Development Services to incur an expense for the alteration, repair, or construction of any building or any person whose application for a permit may have been refused by the Bureau of Development Services may appeal to the Board of Appeal by serving written notice upon the Bureau of Development Services. The notice or a certified copy thereof, shall be transmitted at once to the Board of Appeal. After service of notice upon the persons interested, a hearing shall be held; and the Board may, by a majority vote, affirm, annul, or modify the action of the Bureau of Development Services; provided, however, in any matter relating to or involving fire prevention, fire safety measures, or building construction requirements for safety, any modification of a strict application of this Title shall be made only on condition that substantially equivalent degree of safety is provided generally conforming to national standards concerning fire prevention, fire safety measures, and building construction requirements for safety. The decision of the Board shall have full force and effect. A certified copy of the decision shall be delivered to the appellant.
- G.** Powers of the Board of Appeal. Where unquestionably and clearly, practical difficulties, unnecessary hardship or consequences, inconsistent with the general purposes of this Title may result from the literal interpretation and enforcement thereof, the Board of Appeals may grant adjustment of variances in a specific case with such conditions and safeguards as it may determine, in harmony with the general purpose, intent, and spirit of this Title, so that the public safety and welfare shall be secured and substantial justice shall be done, upon unanimous vote of the Board. If interpretation of the provisions of this Title is required, decisions thereon may be determined by a majority vote of the Board. Any person aggrieved by the final decision of the Appeals Board as to the application of any provision of this Specialty Code may, within 30 days after the date of the decision, appeal to the appropriate State Specialty Advisory Board. The appellant shall submit the appeal fee with his request for appeal. The decision of the Appeals Board shall be subject to review and final determination by the appropriate State Specialty Advisory Board authorized pursuant to OAR Chapter 8.4, as to technical and scientific determinations related to the application of this

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Title. All required fees are stated in the Fee Schedule adopted by City Council. Fees will be updated annually or on an as needed basis. The approved Fee Schedule will be available at the Development Services Center.

24.10.085 Structural Engineering Advisory Committee.

(Added by Ordinance No. 162056, effective June 22, 1989.)

- A.** There is hereby created a Structural Engineering Advisory Committee. Such board members shall be appointed by the Mayor and shall consist of three members and three alternates licensed in Oregon to practice structural engineering.
Members shall serve 3-year terms and may be appointed to consecutive terms. In addition, the Director, or designee, shall be an ex-officio member of the board.
- B.** Any member of the board may be removed from office by the Mayor for malfeasance in office or neglect of duty at any time during his or her tenure.
- C.** The board shall elect a chairperson, adopt rules of procedure, and set the time and place for regular meetings. Written minutes of all meetings shall be made and kept subject to the requirements and limitations of ORS 192.400 to ORS 192.500.
- D.** It shall be the duty of the board to advise the Director and/or the Appeals Board in structural matters relative to reasonable interpretation and to alternate materials and methods of construction.
- E.** Any action of the board shall be in an advisory capacity to the City. Subsequent action taken by the City as a result of advice from the boards shall be the sole responsibility of the City.

24.10.087 Alternative Technology Advisory Committee

(Added by Ordinance No. 182217, effective October 24, 2008.)

- A. Purpose.** It shall be the duty of the Alternative Technology Advisory Committee to advise the Bureau of Development Services on new or innovative sustainable building technologies and products.
- B. Membership.** The Alternative Technology Advisory Committee shall consist of a minimum of three members. The committee members will be appointed by the Director of the Bureau of Development Services. The committee shall consist of design professionals, construction contractors, and persons associated with a university with an engineering school. In addition, two designees from the Bureau of Development Services familiar with building code review shall be ex-officio members of the committee.
- C. Appointment and Terms.**

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1. Appointment to the Alternative Technology Advisory Committee shall be for a three-year term. Committee members may be appointed to no more than two consecutive, complete terms. If a position is vacated during a term, it shall be filled for the unexpired term.
 2. Any member of the committee may be removed from the committee by the Director of the Bureau of Development Services for any reason deemed appropriate by the Director.
 3. The committee shall elect a chairperson, adopt rules of procedure, and set the time and place for regular meetings. Written minutes of all meetings shall be kept.
- D. Compensation.** Alternative Technology Advisory Committee members shall serve without compensation.
- E. Other.** The Alternative Technology Advisory Committee serves only in an advisory capacity to the City. Subsequent action taken by the City as a result of the committee's advice shall be the sole responsibility of the City.

24.10.090 Pre-application and Pre-construction Meetings.

(Amended by Ordinance No. 162100, effective Aug. 1, 1989). Where major construction projects involve coordination between City bureaus and the design/ construction teams, the Director may hold a pre-application or pre- construction meeting with representatives of the interested parties as an aid to the enforcement of this Title.

24.10.095 Commercial and Industrial Minor Structural Labels.

(Added by Ordinance No. 171773, effective November 19, 1997.)

- A. General.** Oregon Revised Statutes Chapter 455.190 establishes special alternative inspections programs for commercial and industrial installations for other than new construction. One of these programs is the Minor Label Program. Implementation rules are found in Oregon Administrative Rules 918-100-000 through 918-100-060. The Bureau will operate the Minor Structural Label Program in accordance with the Oregon Administrative Rules. The Minor Structural Label Program utilizes minor labels in lieu of regular building permits. Random inspections are made to ensure compliance of minor work.
- B. Requirements.** Commercial and Industrial Minor Structural Labels may be used in all occupancies (including commercial, industrial, apartment and multi-family installations) except one and two family dwellings. Labels are sold in groups of ten. Labels expire six months from date of purchase and are not refundable. No more than one minor structural label may be used on any single project. A single

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project is defined as not more than one minor label used per calendar month for each address, suite or tenant space.

C. Work Allowed. The following work may be done under a Minor Structural Label:

1. Alteration, replacement or repair of up to 100 linear feet of nonbearing, non-fire resistive walls and partitions not part of the building shell, an exit or an exit passageway;
2. Window and door replacements or relocations not part of an exit or exit passageway and fit within existing openings. Replacement windows and doors shall comply with the requirements of the current State of Oregon codes, including but not limited to safety glazing requirements;
3. Lightweight interior awnings under 100 pounds total weight;
4. Removal and replacement of acoustical ceiling tiles in nonfire-rated ceilings of less than 1,000 square feet (replacement of supporting grid is not included);
5. Minor roofing repairs not exceeding ten percent of the roofing area.

24.10.100 Fees

24.10.101 General.

(Amended by Ordinance No. 176955, effective October 9, 2002.) The following fees are required to be paid to the Director of the Bureau of Development Services, shall be as set forth in this Chapter.

24.10.102 Building Permit and Plan Check/Process Fee.

(Replaced by Ordinance No. 174719, effective August 21, 2000.)

- A. All required fees are stated in the Fee Schedule adopted by City Council. Fees will be updated annually or on an as needed basis. The approved Fee Schedule will be available at the Development Services Center.
- B. A plan checking fee is payable when the plans and application are accepted by the Director for examination and shall not be refundable. A permit fee shall be paid to the Director before a building permit is issued.
- C. Permit and plan check fees will, as a general rule, be refunded when the services covered by the fee have not commenced, and the permit or plan review fees were paid incorrectly due to an error on the part of the City. When a permit applicant

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requests a refund, but the City was not at fault in accepting payment, fees shall be retained to cover the cost of plan review or inspections actually performed and 20 percent of the amount remaining. State surcharge fees are only refundable when a permit was issued in error. Requests for refunds must be made within 6 months of payment or permit issuance, whichever is later. Refunds are to be made to the same person or firm who paid the fee within 3 months of the request. Exceptions to the above requirements may be made by the Director or designee.

24.10.103 Requested Inspection Fees.

(Repealed by Ordinance No. 174719, effective August 21, 2000.)

24.10.104 Fee for Appeal.

(Repealed by Ordinance No. 174719, effective August 21, 2000.)

24.10.106 Home Occupation Permit.

(Repealed by Ordinance No. 174719, effective August 21, 2000.)

24.10.107 Appeal Fee for Historical Building Review Board.

(Repealed by Ordinance No. 174719, effective August 21, 2000.)

24.10.108 Street Use Fees.

(Repealed by Ordinance No. 174719, effective August 21, 2000.)

24.10.109 Grading Permit Fees.

(Repealed by Ordinance No. 174719, effective August 21, 2000.)

24.10.110 Excavation and Grading Plan Check Fees.

(Repealed by Ordinance No. 174719, effective August 21, 2000.)

24.10.111 Dangerous Building Abatement Processing Fee.

(Repealed by Ordinance No. 167088, effective Dec. 3, 1993.)

24.10.112 Product Approval Fee.

(Repealed by Ordinance No. 174719, effective August 21, 2000.)

24.10.113 Circus Tent Fee.

(Repealed by Ordinance No. 174719, effective August 21, 2000.)

24.10.114 Welder Certification Fee.

(Repealed by Ordinance No. 165486, effective July 1, 1992.)

24.10.115 Reproduction Fees.

(Repealed by Ordinance No. 174719, effective August 21, 2000.)

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- 24.10.116 Fee for Examination of Filed Plans.**
(Repealed by Ordinance No. 174719, effective August 21, 2000.)
- 24.10.117 Approved Fabricators Certification Fee.**
(Repealed by Ordinance No. 174719, effective August 21, 2000.)
- 24.10.118 Special Inspection Certification Fee.**
(Repealed by Ordinance No. 174719, effective August 21, 2000.)
- 24.10.119 Approved Testing Agency Certification Fee.**
(Repealed by Ordinance No. 174719, effective August 21, 2000.)
- 24.10.122 Certificate of Occupancy.**
(Repealed by Ordinance No. 174719, effective August 21, 2000.)
- 24.10.123 Temporary Certificate of Occupancy.**
(Repealed by Ordinance No. 174719, effective August 21, 2000.)
- 24.10.124 Zoning Inspection Fee.**
(Repealed by Ordinance No. 174719, effective August 21, 2000.)
- 24.10.125 Inspections Outside of Normal Business Hours.**
(Repealed by Ordinance No. 174719, effective August 21, 2000.)
- 24.10.126 Reinspection Fee.**
(Repealed by Ordinance No. 174719, effective August 21, 2000.)
- 24.10.127 Additional Plan Review Fee.**
(Repealed by Ordinance No. 174719, effective August 21, 2000.)
- 24.10.128 Address Assignment Fee.**
(Repealed by Ordinance No. 174719, effective August 21, 2000.)
- 24.10.130 Clearing Permit Fee.**
(Repealed by Ordinance No. 174719, effective August 21, 2000.)
- 24.10.131 Clearing With Tree Cutting Permit Fee.**
(Repealed by Ordinance No. 174719, effective August 21, 2000.).
- 24.10.132 Pre-Permit Site Inspection for Properties in Environmental Zones.**
(Repealed by Ordinance No. 174719, effective August 21, 2000.)
- 24.10.133 Manufactured Dwelling Installation Fees.**
(Repealed by Ordinance No. 174719, effective August 21, 2000.)

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24.10.134 Manufactured Dwelling Park.

(Repealed by Ordinance No. 174719, effective August 21, 2000.)

24.10.135 Recreational Park.

(Repealed by Ordinance No. 174719, effective August 21, 2000.)

24.10.136 Park Trailer Installation Fees.

(Repealed by Ordinance No. 174719, effective August 21, 2000.)

24.10.137 Minor Structural Labels.

(Repealed by Ordinance No. 174719, effective August 21, 2000.)

24.10.138 Master Permit/Facilities Permit Program Fees.

(Repealed by Ordinance No. 174719, effective August 21, 2000.)

24.10.139 On-site Permanent Stormwater Control Facilities Inspection Fee.

(Repealed by Ordinance No. 174719, effective August 21, 2000.)

24.10.140 Tree Preservation and Planting Plan Check and Inspection Fee.

(Repealed by Ordinance No. 174719, effective August 21, 2000.)

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Chapter 24.15

DEFINITIONS

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24.15.020	Abandoned Structure.
24.15.030	Agreement/Contract to Repair Work.
24.15.040	Approved Testing Agency.
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24.15.050	Building.
24.15.060	Dangerous Structure.
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24.15.070	Director.
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24.15.200	Structure.
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24.15.240	Unsecured.
24.15.250	Value/Valuation.
24.15.260	Warehousing.

24.15.010 General.

For the purpose of this Title, certain terms, phrases, words, and their derivatives shall be construed as specified herein. Words used in the singular include the plural and the plural the singular. Words used in the masculine gender include the feminine and the feminine the masculine. Terms, words, phrases, and their derivatives used, but not specifically defined in this Chapter, either shall have the meaning defined in this Title, or if not herein defined, shall have the meanings commonly accepted in the community.

24.15.020 Abandoned Structure.

An abandoned structure is a structure that has been vacant for a period in excess of 6 months or any period less than 6 months when a vacant structure or portion thereof constitutes an attractive nuisance or hazard to the public.

24.15.030 Agreement/Contract to Repair/Work.

An agreement or contract to repair/work is a written agreement in which an owner of a structure agrees to carry out repair/work on any abandoned, unsafe, dangerous structure, or structure between a specified commencement and completion date.

24.15.040 Approved Testing Agency.

An approved testing agency is an established and recognized agency regularly engaged in conducting testing and furnishing inspection services.

24.15.045 Boarded.

Added by Ordinance No. 162525; amended by 164318 and 168901, effective June 7, 1995.) Secured against entry by apparatus which is visible off the premises and is not both lawful and customary to install on occupied structures.

24.15.050 Building.

A building is a structure used or intended for sheltering any use or occupancy.

24.15.060 Dangerous Structure.

(Amended by Ordinance No. 168626, effective Apr. 22, 1995.) Any structure which has any or all of the conditions or defects hereinafter described, to the extent that life, health, property, or safety of the public or its occupants are endangered, shall be deemed to be a dangerous structure and such condition or defects shall be abated pursuant to Sections 24.55.250 and 24.55.300 of this Chapter.

- A.** Whenever the stress in any materials, member, or portion thereof, due to all dead and live loads, is more than 1-1/2 times the working stress or stresses allowed in the Oregon Structural Specialty Code and Fire and Life Safety Code for new buildings of similar structure, purpose, or location.
- B.** Whenever any portion thereof has been damaged by fire, earthquake, wind, flood, or by any other cause, to such an extent that the structural strength or stability

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thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Oregon State Structural Specialty Code and Fire and Life Safety Code for new buildings of similar structure, purpose, or location.

- C.** Whenever any portion or member of appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.
- D.** Whenever any portion of a building, or any member, appurtenance, or ornamentation of the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of one-half of that specified in the Oregon Structural Specialty Code and Fire and Life Safety Code for new buildings of similar structures, purpose, or location without exceeding the working stresses permitted in the Oregon State Structural Specialty Code and Fire and Life Safety Code for such buildings.
- E.** Whenever any portion thereof has wrecked, warped, buckled, or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.
- F.** Whenever the building or structure, or any portion thereof, because of

 - 1. dilapidation, deterioration, or decay;
 - 2. faulty construction;
 - 3. the removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building;
 - 4. the deterioration, decay, or inadequacy of its foundation; or
 - 5. any other cause, is likely to partially or completely collapse.
- G.** Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.
- H.** Whenever the exterior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base.
- I.** Whenever the building or structure exclusive of the foundation, shows 33 percent or more damage or deterioration of its supporting member or members, or 50

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percent damage or deterioration of its non-supporting members, enclosing, or outside wall coverings.

- J.** Whenever the building or structure has been so damaged by fire, wind, earthquake or flood or any other cause, or has become so dilapidated or deteriorated as to become (i) an attractive nuisance, or (ii) a harbor for vagrants or criminals.
- K.** Whenever any building or structure has been constructed, exists, or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this City, as specified in the Oregon State Structural Specialty Code and Fire and Life Safety Code or any law or ordinance of this State or City relating to the condition, location, or structure or buildings.
- L.** Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any non-supporting part, member, or portion, less than 50 percent, or in any supporting part, member, or portion less than 66 percent of the
 - 1.** strength,
 - 2.** fire-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height, and occupancy in the same location. This subsection does not apply to strength required to resist seismic loads. For application of seismic requirements see Chapter 24.85.
- M.** Whenever any building or structure, because of dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections, or heating apparatus, or other cause, is a fire hazard.
- N.** Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence.
- O.** Whenever any portion of a building or structure remains on a site for more than 30 days after the demolition or destruction of the building or structure.

24.15.065 Derelict Commercial Building.

(Added by Ordinance No. 162525; amended by 164318 and 168901, effective June 7, 1995.) Any building or structure:

- A.** In which there are no dwelling units, and

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- B.** Which is not an accessory building to a building in which there are dwelling units, and
- C.** Which building, structure or a portion thereof is unoccupied; and
- D.** Which meets any of the following criteria:
 - 1.** Has been ordered vacated by the Director pursuant to 24.55.250 F; or
 - 2.** Has been issued a correction notice by the Director pursuant to 24.55.250 A.; or
 - 3.** Is unsecured; or
 - 4.** Is boarded; or
 - 5.** Has been posted for violation of Section 18.03.050 more than once in any two year period; or
 - 6.** Has, while vacant, had a nuisance abated by the City pursuant to Sections 18.03.010 or 18.03.030.

24.15.070 Director.

(Amended by Ordinance No. 176955, effective October 9, 2002.) Director shall mean the Director of the Bureau of Development Services or a duly authorized representative of the Director.

24.15.075 Dwelling Unit.

(Added by Ordinance No. 168901, effective June 7, 1995.) One or more habitable rooms which are occupied by or designed or intended to be occupied by one person, or by a family or group of housemates living together as a single housekeeping unit.

24.15.080 Exterior Property Area.

Exterior property area is the open space on the premises and on adjoining property under the control of the owner or operator of such premises.

24.15.090 Hearings Officer.

Hearings Officer is the office of the Code Enforcement Hearings Officer created pursuant to Section 22.02.010 of the City Code.

24.15.100 Imminently Dangerous.

Imminently dangerous means any condition posing a direct and immediate threat to human life, health, or safety.

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24.15.110 Inspections Manager.

(Amended by Ordinance No. 176955, effective October 9, 2002.) The Inspections Manager is the Director's duly authorized representative responsible for the administration of the Inspections Division of the Bureau of Development Services.

24.15.115 Master Permit/Facilities Permit Program.

(Added by Ordinance No. 172431; amended by Ordinance No. 173973, effective January 1, 2000.) The Master Permit/Facilities Permit program is a special alternative inspection program authorized under Oregon Revised Statute 455.190. This program is available to commercial/industrial building owners and building management companies to streamline the approval of maintenance/repair and tenant improvement work on their private facilities.

24.15.120 Owner.

Owner is any person, agent, firm, or corporation having a legal or equitable interest in a property.

24.15.130 Repair.

Repair is the reconstruction or renewal of any part of an existing structure for the purpose of its maintenance.

24.15.140 Residential Structure.

Residential structure means any building or other improvements designed or intended to be used for residential purposes.

24.15.150 Requested Inspection.

Requested inspection means any additional inspection which is not part of the City's regular or mandated inspection program.

24.15.160 Service Station Site.

(Amended by Ordinance No. 169905, effective Apr. 1, 1996.) A service station site shall mean premises improved as a Group S, Division 3, occupancy for use as automobile or truck service stations used for supplying fuel, oil, minor accessories, and trailers, excluding body and fender repair for passenger automobiles, trucks, and truck trailers at retail direct to the customer.

24.15.170 Substandard.

Substandard means in violation of any of the minimum requirements as set out in this Title.

24.15.180 Special Inspector.

Definition to be added.

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24.15.190 Subject Structure.

(Amended by Ordinance No. 176955, effective October 9, 2002.) A subject structure is any abandoned, unsafe, or dangerous structure upon which the Bureau of Development Services has commenced abatement proceedings.

24.15.200 Structure.

A structure is that which is built or constructed, an edifice or building of any kind, or any piece or work artificially built up or composed of parts joined together in some definite manner.

24.15.210 Swimming Pool.

(Repealed by Ordinance No. 180330, effective August 18, 2006.)

24.15.215 Tree Cutting.

(Added by Ordinance No. 168340, effective Dec. 7, 1994.) Tree cutting means the removal, felling or destruction of 50% or more of a tree, but does not include trimming branches for tree maintenance purposes.

24.15.220 Unoccupied.

(Added by Ordinance No. 162525; amended by 168901, effective June 6, 1970.) Not being used for a lawful occupancy.

24.15.230 Unsafe.

Means:

- A.** Any structure which is structurally unsafe or not provided with adequate egress, or which constitutes a fire hazard or is otherwise dangerous to human life.
- B.** Unsafe use is any use of structures constituting a hazard to health, safety, or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage, or abandonment.
- C.** Unsafe appendages are parapet walls, cornices, spires, towers, tanks, statuary, or other appendages or structural members which are supported by, attached to, or part of a building, and which are in a deteriorated condition or otherwise unable to sustain the design loads which are specified in the Oregon State Structural Specialty and Fire and Life Safety Code.

24.15.240 Unsecured.

(Added by Ordinance No. 162525, amended by 168901, June 7, 1995.) Any building or structure in which doors, windows, or apertures are open or broken so as to allow access by unauthorized persons.

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24.15.250 Value/Valuation.

Value or valuation of a structure or building shall be the estimated cost to replace the structure or building in kind, based on either the building valuation data reported in the latest issue of the ICBO Building Standards Journal or by any alternate method approved by the Director to give an accurate assessment of building replacement costs.

24.15.260 Warehousing.

Warehousing means securing a structure against vandalism, deterioration, and unauthorized entry pending its return to active use or occupancy.

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Chapter 24.20

SPECIAL INSPECTIONS

(Chapter substituted by Ordinance No.
160581, effective Apr. 18, 1988.)

Sections:

- 24.20.010 General.
- 24.20.020 Advisory Board for Special Inspections.
- 24.20.030 Qualification and Certification of Special Inspectors.
- 24.20.040 Revocation or Suspension of Certification of Special Inspectors.
- 24.20.050 Selection of the Special Inspectors.
- 24.20.060 General Duties of the Special Inspector.

24.20.010 General.

(Amended by Ordinance No. 169905, effective Apr. 1, 1996.)

- A. In addition to the inspections required under Section 108 of the Structural Specialty Code, the owner or the owner's agent shall employ a Special Inspector during construction of the types of work specified in Section 1701 of the Structural Specialty Code or for cases specifically required by the Director.
- B. The Director shall have the authority to adopt and enforce written rules concerning the conduct and administration of special inspections in the City of Portland.

24.20.020 Advisory Board for Special Inspections.

(Amended by Ordinance Nos. 161315 and 176955, effective October 9, 2002.)

- A. There is hereby created an Advisory Board for Special Inspections. Such Board members shall be appointed by the Mayor and shall consist of two members and two alternates licensed to practice structural engineering in the State of Oregon, one member and one alternate licensed to practice architecture in the State of Oregon, one member and one alternate representing a testing laboratory and one member and one alternate who are Class A Special Inspectors. In addition, the Director of the Bureau of Development Services, or his or her designee, shall be an ex-officio member of the Advisory Board for Special Inspections. Members shall serve three-year terms and may be appointed to consecutive terms.

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- B.** Any member of the Board may be removed from office by the Mayor for malfeasance in office or neglect of duty at any time during his or her tenure.
- C.** The duties of the Board shall include:
 - 1.** Assist the Director with reviewing the applications for examination of the Special Inspectors;
 - 2.** Assist the Director with the administration of the Special Inspector examinations;
 - 3.** Reviewing the Special Inspections Program of the Bureau of Development Services on a periodic basis for the purpose of recommending procedural improvements to the Director.
- D.** The Board shall elect a chairperson, adopt rules of procedure and set the time and place for meetings. Written minutes of all meetings and results of all examinations shall be made and kept subject to the requirements and limitations of ORS 192.410 to ORS 92.500.
- E.** A simple majority vote of a quorum present at any meeting shall decide any matter coming before the Board.
- F.** The Board may appoint representatives of affected industries or specialists in specific fields to serve in an advisory capacity.
- G.** At the end of each fiscal year, a report of work performed shall be sent to the City Council.

24.20.030 Qualifications and Certification of Special Inspectors.

(Amended by Ordinance Nos. 161315 and 176955, effective October 9, 2002.) Special Inspections shall be either denominated "Class A," "Class B - Trainee," or "Class C" Special Inspectors.

- A.** "Class A" Special Inspectors. As minimum evidence for qualification of certification as a Special Inspector, an applicant shall successfully complete a written and oral examination prescribed by the Director as well as providing evidence sufficient to show that the Applicant has met one of the following experience prerequisites:
 - 1.** At least 3 years of experience in construction inspection, testing or design work, of such nature or character as the Director may by rule provide; or

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2. Successful completion of a training program of such nature or character as the Director may by rule provide. Application for examination for certification as a Class A Special Inspector shall be made by submission of a completed form furnished by the Director and payment of the certification fee. A separate application shall be submitted for each category of certification desired. When satisfied as to their experience and after satisfactory completion of the examination, the Director shall issue certificates to Class A Special Inspectors. Such certificates will be valid for one year from the date of issuance. Class A Special Inspectors must apply for renewal within 30 days following expiration of an existing certificate.
- B.** “Class B - Trainee” Special Inspectors. As minimum evidence of qualification for certification as a Special Inspector, an applicant shall successfully complete a written examination prescribed by the Director as well as participate in a training program of such nature or character as the Director may by rule provide. A “Class B - Trainee” Special Inspector shall work under the supervision of an inspection agency approved by the Director. Upon successful completion of the training program and an oral interview prescribed by the Director, the special Inspector may submit an application to be certified as a “Class A” Special Inspector.
- C.** “Class C” Special Inspectors. Upon approval of the Director, the Oregon registered professional engineer or architect of record and persons under their direct supervision may provide the required special inspection as otherwise provided by this Chapter. The duties and responsibilities for a “Class C” Special Inspector are the same as a “Class A” and “Class B - Trainee” Special Inspector, and the name(s) of any such person(s) performing inspections shall appear on the permit documents.
- D.** The Bureau of Development Services will maintain a current list of “Class A” and “Class B - Trainee” Special Inspectors available for public inspection.

24.20.040 Revocation or Suspension of Certification of Special Inspectors.

(Amended by Ordinance No. 161315, effective Nov. 19, 1988.)

- A.** The Director may revoke, suspend or refuse to renew the certification of a Class A or Class B - Trainee Special Inspector or may revoke or suspend the approval of a Class C Special Inspector, if the Director determines that the Special Inspector:
1. Willfully failed to perform any duties of a Special Inspector; or
 2. Incompletely or ineffectively performed any duties of a Special Inspector.

- B.** If the Director believes that an inspector has failed, incompletely or ineffectively performed their duties, the Director shall hold a hearing on the matter. The Director will give notice of this hearing to the inspector charged with the violation by mailing to them, at least 10 days prior to the time set for a hearing, a list of the allegations, as well as the time, date and place set for the hearing, when the inspector shall have an opportunity to be heard and present matter in their defense. Not later than 10 days thereafter, the Director shall issue a decision along with the type of action, if any, that is to be taken.
- C.** An inspector adversely affected by the Director's determination may have review pursuant to ORS 34.010 to 34.100.

24.20.050 Selection of the Special Inspectors.

(Amended by Ordinance No. 176955, effective October 9, 2002.) With the approval of the Director, Special Inspectors and approved inspection and/or testing agencies shall be chosen and paid by the owner, and will report to the licensed architect or engineer whose signature and seal appear on the design drawings and to the Bureau of Development Services. No changes of Special Inspectors or inspection/testing agency approved by the Director shall be made without obtaining approval of the responsible architect/engineer and the Director.

24.20.060 General Duties of the Special Inspector.

- A.** The Special Inspector shall observe the work assigned for conformance with the approved permit documents.
- B.** The Special Inspector shall furnish inspection reports to the Director, the engineer and architect of record, the contractor and other designated individuals. All discrepancies shall be brought to the immediate attention of the contractor for correction, then, if uncorrected, to the Director.
- C.** The Special Inspector shall submit a final signed summary report stating whether the work requiring special inspection was, to the best of his/her knowledge, in conformance with the approved plans and specifications and the applicable workmanship provisions in the State Building Code.

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Chapter 24.25

MOVING OF BUILDINGS

Sections:

- 24.25.010 General.
- 24.25.020 Permit Information Required.
- 24.25.030 Direction of City Engineer.
- 24.25.040 Housing Code Inspection Report Required.

24.25.010 General.

No building shall be moved from one location to another until permits have been obtained.

24.25.020 Permit Information Required.

The applicant shall file with the Director an application for a permit to move the structure, it shall be signed by the owner or his authorized agent, and shall contain a description of the building to be moved, the location where it is to be moved, and the use and occupancy proposed, in addition to the information required by Section 24.10.070 of this Title regarding foundation or other work at the final location.

24.25.030 Direction of City Engineer.

(Amended by Ordinance No. 169905, effective Apr. 1, 1996.) No building shall be moved across or along any street until the route to be followed and the time allowed for moving has been submitted to the City Engineer and approved by him. Moving shall be under the direction of the City Engineer. For the regulations covering the use of public streets see Chapter 33 of the Structural Specialty Code.

24.25.040 Housing Code Inspection Report Required.

The Director shall inspect any residential building that is proposed to be moved, to ensure its compliance with the provision of Title 29 of the Code of the City of Portland.

Chapter 24.30

HOME OCCUPATIONS

Sections:

- 24.30.010 Permits Required.
- 24.30.020 Compliance with Planning and Zoning Regulations.
- 24.30.030 Fees for Home Occupations.

24.30.010 Permits Required.

A permit shall be required to establish a home occupation. The permit shall be renewed every 2 years to maintain said home occupation.

24.30.020 Compliance with Planning and Zoning Regulations.

All home occupations shall comply with the provisions of Title 33 of the Code of the City of Portland.

24.30.030 Fees for Home Occupations.

The fee for a home occupation permit shall be as provided in Section 24.10 of this Title.

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Chapter 24.35

HISTORICAL BUILDINGS

Sections:

- 24.35.010 Historical Review Board.
- 24.35.020 Special Approval.

24.35.010 Historical Review Board.

(Amended by Ordinance Nos. 174719 and 176955, effective October 9, 2002.) The Historical Building Review Board shall consist of the members of the Board of Appeal referred to in Section 24.10.080 plus the Chairman of the Portland Historical Landmarks Commission, or his designee with the power to waive any provision of the combined State Building Code.

Any person who may have been ordered by the Bureau of Development Services to incur an expense for the alteration or repair of any building defined as an historical building under Chapter 41 of the State Building Code, 1982 Edition, or any person whose application for a permit to alter or repair an historical building may have been refused by the Director may appeal to the Historical Building Review Board by serving written notice upon the Bureau of Development Services. The notice, or certified copy thereof, shall be transmitted at once to the Historical Building Review Board. After service of notice upon the persons interested, a hearing shall be held; and the Board may by unanimous vote, waive the provisions of the combined State Building Code, if, in their opinion, such historic buildings are not hazardous to life or health or the proposed variance does not conflict with the public interest. The Board shall consider the historic performance of the building, the structural stability, and the occupancy classification. Any variances granted by the Board shall be subject to the established occupancy classification, and any changes in occupancy classification occurring after the Board's decision shall terminate the Board's order thus subjecting the building or structure to be resubmitted for reconsideration or abated. The Board shall adopt reasonable rules and regulations for conducting its business. In any matter relating to or involving fire prevention, fire safety measures, or building construction requirements for safety, any modification by the Board of a strict application of this Title shall be made only on condition that a substantially equivalent degree of safety is provided generally conforming to national standards concerning fire prevention, fire safety measures, and building construction requirements for safety. A certified copy of the Board's decision shall be delivered to the appellant. The fee for each appeal shall be stated in the Fee Schedule adopted by City Council. Fees will be updated annually or on an as needed basis. The approved Fee Schedule will be available at the Development Services Center.

24.35.020 Special Approval.

Any permit application for exterior remodeling or alteration, construction of a new building, or demolition of a building, which involves an historical building or site so designated by the City Council, shall be submitted to the Portland Historical Landmarks Commission for approval, conditional approval or rejection prior to the issuance of any permit, to the extent required by the provisions of the planning and zoning regulations of the City. Issuance of the permit shall be subject to the terms and provisions of the planning and zoning regulations relative to the historical buildings or sites.

Chapter 24.40

**USE OF AND PROJECTIONS OVER
PUBLIC STREETS AND PROPERTY**

Sections:

- 24.40.010 Street Use.
- 24.40.020 Dirt on Streets from Construction Projects.
- 24.40.030 Fees.

24.40.010 Street Use.

(Amended by Ordinance No. 169905, effective Apr. 1, 1996.) A person undertaking work covered by a building permit, may, on proof of necessity, be entitled to a permit for use of the street, sidewalks, and/or roadway. Applications shall be subject to the approval of the Traffic Engineer and the Director. Material or equipment necessary for the work may be placed or stored on public property in the following locations:

- A. On the roadway, adjacent to the curb in front of the site for which a building permit has been issued.
- B. On the roadway in front of an adjoining site.
- C. On the public sidewalk, in front of the construction site, except on those sidewalks required to be kept open. A street use permit shall be issued for a minimum period of 1 week and a maximum period of 90 days. The permit may be extended if in the judgment of the Director an extension is warranted by existing conditions. The use of the street by persons holding a permit and/or the fencing-off of street space shall not be continued longer than is necessary. If the permit for street use is within the Special Traffic Control Districts outlined in Section 17.23.030, the prior approval of the City Engineer must be obtained if the street use extends beyond the curb line.

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When work not requiring a building permit is undertaken for maintenance of buildings or structures in the congested areas where parking meters are located, the person undertaking such work shall not close off any portion of the sidewalk or roadway areas without first obtaining, subject to the approval of the Traffic Engineer, a street use permit; the time limit for such permit shall be as specified above. If the street use permit is within the special Traffic Control Districts outlined in Section 17.23.030, the prior approval of the City Engineer must be obtained if the street use extends beyond the curb line. While work is in progress, a roped-off passageway not less than 4 feet in width shall be maintained for pedestrians. This passageway shall be no closer, than 6 feet horizontally from any scaffold, ladder, machinery, or equipment. The passageway shall be entirely contained within the existing sidewalk area. The Director may also require pedestrian protection as outlined in Chapter 33 of the Structural Specialty Code. In order to ensure coordination of construction activity within the Street area and to provide that the private and public needs are met, the Director may also require a preconstruction meeting as outlined in Section 24.10.090 of this Title.

24.40.020 Dirt on Streets from Construction Projects.

If dirt or debris falls on any public right-of-way and such debris originates from a construction project for which a building, plumbing, or electrical permit has been issued, it is unlawful for the permit holder and/or owner not to remove it immediately. Failure of either the owner and/or permit holder to remove the spillage within 24 hours after notification given either orally or in writing may result in the Director gaining compliance by any of the methods outlined in Section 24.10.060 of this Title.

24.40.030 Fees.

Fees for street use shall be as indicated in Section 24.10 of this Title.

Chapter 24.45

PARKING AND DRIVEWAY SURFACES

Sections:

- 24.45.010 General.
- 24.45.020 Minimum Surfacing Standards for Parking Areas and Garages for Passenger Cars and Trucks not Exceeding 1/2-Ton Capacity and Driveways Serving Structure 150 Feet or Less from an Improved Public Right-of-Way.
- 24.45.030 Minimum Surfacing Standards for Driveways Serving Structures More than 150 Feet from an Improved Public Right-of-Way.
- 24.45.040 Minimum Surfacing Standards for Trucks Over 1/2-Ton Capacity and Other Vehicles.
- 24.45.050 Private Streets.

24.45.010 General.

All vehicular driveways, parking spaces, and areas utilized for the maneuvering of vehicles shall be surfaced in accordance with this Chapter.

24.45.020 Minimum Surfacing Standards for Parking Areas and Garages for Passenger Cars and Trucks not Exceeding 1/2-Ton Capacity and Driveways Serving Structures 150 Feet or Less from an Improved Public Right-of-Way.

(Amended by Ordinance No. 173270, effective May 21, 1999.) Surfaced areas shall be constructed on properly drained, well-compacted subgrade, that is free of organic materials. Minimum pavement structure shall be:

- A. Three and one-quarter inches Portland cement concrete having a compressive strength of 2,000 psi after 28 days, or
- B. One and one-half inches of asphalt concrete placed over a base of 4 inches of crushed stone or gravel, or
- C. Grid paving blocks, paving stones or materials with adequate spacing for drainage infiltration, or other stormwater management control surfaces. Where such surfaces are provided in accessible parking and as part of an accessible pedestrian path, the surfaces shall meet accessibility standards of the state building code.

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24.45.030 Minimum Surfacing Standards for Driveways Serving Structures More than 150 Feet from an Improved Public Right-of-Way.

(Amended by Ordinance No. 173270, effective May 21, 1999.) Surfaced areas shall be constructed on properly drained, well-compacted subgrade, that is free of organic materials. Minimum pavement structure shall be:

- A.** Two inches of asphalt concrete on 4 inches of 1-inch minus, compacted crushed rock; or
- B.** Five inches of Portland cement concrete having a compressive strength of 3,000 psi after 28 days, or
- C.** A driveway surfaced as per Section 24.45.020 for the first 40 feet contiguous with the right-of-way paving and the remaining portion of 8 inches of 1-inch minus, compacted crushed gravel over filter fabric, or
- D.** Grid paving blocks, paving stones or materials with adequate spacing for drainage infiltration, or other stormwater management control surfaces. Where such surfaces are provided in accessible parking and as part of an accessible pedestrian path, the surfaces shall meet accessibility standards of the state building code.

24.45.040 Minimum Surfacing Standards for Trucks Over 1/2-Ton Capacity and Other Vehicles.

Surface of parking, storing, and maneuvering areas for vehicles and motorized equipment not regulated elsewhere in this Chapter shall be by a method approved by the Director that will effectively eliminate dust, mud, or other contaminating elements on surrounding street areas and/or abutting property and be constructed of materials capable of supporting the maximum axle weight of the largest piece of equipment. At each street entrance, a concrete or asphalt driving apron shall extend from the right-of-way paving at least 40 feet into the surface area.

24.45.050 Private Streets.

(Amended by Ordinance No. 169228, Aug. 23, 1995.) Private street improvements shall consist of 1-1/2 inches of Class "C" asphalt concrete on 1-1/2 inches of Class "B" asphalt concrete on 6 inches of 1-1/2 inch minus compacted crushed gravel upon a compacted subgrade that has achieved 95 percent compaction.

No gates or other barriers which would restrict vehicles or pedestrians from using the private street may be located on a private street approved under this section.

Chapter 24.50

FLOOD HAZARD AREAS

(New Chapter substituted by Ordinance
No. 160413, effective Jan. 14, 1988.)

Sections:

- 24.50.010 Purpose.
- 24.50.020 General.
- 24.50.030 Flood Related Definitions.
- 24.50.040 FIA Study and Flood Hazard Maps.
- 24.50.050 Flood Hazard Areas and Flood Protection Elevations.
- 24.50.060 Provisions for Flood Hazard Reduction.
- 24.50.065 Recreational Vehicles located in Areas of Special Flood Hazard or Base Flood Zones.
- 24.50.070 Appeals and Variances.

24.50.010 Purpose.

The purpose of this Chapter is to protect the public health, safety, and welfare by restricting or prohibiting uses which are dangerous to health, safety, or property in times of flood or which cause increased flood heights or velocities, and by requiring that uses and structures vulnerable to floods be protected from flood danger at the time of initial construction.

24.50.020 General.

(Amended by Ordinance No. 182370, effective November 26, 2008.)

- A.** The provisions of this Chapter shall regulate development and construction in flood hazard areas identified in Section 24.50.030.
- B.** Land classified in a flood hazard area may restrict or affect uses and development permitted in one or more of the regular zones listed in Chapter 33.16. If an inconsistency exists between Chapter 24.50 and other titles of this Code, the more restrictive uses or requirements shall prevail.
- C.** A structure or the use of a structure or property which was lawful before the original date of this Chapter but which is not in conformity with the provisions of this Chapter may be continued subject to provisions of the State Building Code, regulations for existing structures.

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- D.** The flood protection elevations and the floodway and floodway fringe areas specified by this Chapter, based on the 100-year flood elevations, are considered reasonable. Greater flood heights and more extensive floodway fringe areas associated with longer flood frequency occurrences may occur or the flood height and extent of flooding may be increased by human or natural causes, such as log jams, bridge openings restricted by debris, or changes in basin conditions. Areas within designated drainage districts and those areas not covered by adequate topographic maps may contain unmapped watercourses subject to flooding. The identification of designated flood hazard areas does not imply that lands outside of such areas will be free from flooding or flood damage.
- The City of Portland or any officer or employee thereof, or the Federal Insurance Administration shall not be liable for any flood damages that result from reliance on the provisions or designations of this Chapter or any administrative decision lawfully made thereunder.

24.50.030 Flood Related Definitions.

(Amended by Ordinance Nos. 178741, 182370 and 184235, effective November 26, 2010.) The definitions contained in this Section relate to flood hazard areas and considerations outlined in this Chapter.

- A.** "Appeal" means a request for a review of the City of Portland's interpretation of any provision of this ordinance or a request for a variance.
- B.** "Area of shallow flooding" means a designated AO or AH zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from 1 to 3 feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.
- C.** "Areas of Special Flood Hazard" mean the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters A or V.
- D.** "Base Flood (100-year flood)" means the flood having 1 percent chance of being equaled or exceeded in any given year. Designation on maps always includes the letters A or V.
- E.** "Basement" means any area of the building having its floor subgrade (below ground level) on all sides.
- F.** "City Datum" means the reference datum for the City of Portland maps. The FIRM maps described in Section 24.50.050 are referenced to the North American

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Vertical Datum (NAVD) of 1988. To convert NAVD 1988 level to City datum, subtract 2.125 feet from the elevation referenced to NAVD 1988 level.

- G.** "Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings, bridges, other structures, and mining, dredging, filling, grading, paving, excavation, fencing, landscaping, drainage facilities, drilling operations, or storage of equipment or material.
- H.** "Existing manufactured home park or manufactured home subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale for which the construction of facilities for servicing the lot on which the manufactured home is to be affixed (including as a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed before the original date of this Chapter.
- I.** "Expansion to an existing manufactured home park or manufactured home Subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets).
- J.** "FIA" means Federal Insurance Administration.
- K.** "Flood Hazard Area" means any area which has been identified as subject to flooding.
- L.** "Flood Insurance Study" means the official report provided by the Federal Insurance Administration that contains information regarding flooding, discusses the engineering methods used to develop the Flood Insurance Rate Maps (FIRMs), includes flood profiles, and the water surface elevation of the base flood.
- M.** "Flood Insurance Rate Map (FIRM)" means the official map on which the Federal Insurance Administration has delineated the areas of special flood hazards.
- N.** "Flood or flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters, and/or the unusual and rapid accumulation of runoff of surface waters from any source.
- O.** "Flood protection elevation" means the water surface elevation of the base flood plus a freeboard allowance.

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- P.** "Floodplain" means the channel of watercourse and adjacent land areas which are subject to inundation by the base flood.
- Q.** "Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, sanitary, and water facilities, structures, and their contents.
- R.** "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. The actual floodway boundaries are computer activated and approximate. These boundaries are depicted on the FIRM. Boundaries for other watercourses may be subject to identification by the Sewage System Administrator. The width of the floodway for unidentified watercourses should not be less than 15 feet.
- S.** "Flood fringe area" means any area lying outside the floodway which is subject to flooding by a base flood and for which water surface elevations and floodway and flood fringe boundaries have been determined by a Flood Insurance Study and are shown on the FIRMs. Boundaries for unidentified watercourses may be subject to identification by the Sewage System Administrator.
- T.** "Freeboard" means an additional height above the base flood level to account for factors that may contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as filling in the floodway fringe, wave action, effect of urbanization of the watershed, map inaccuracies, irregular stream cross sections, irregular constructions at bridges, and the uncertainties of flood discharge computations.
- U.** "Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance found at Section 24.50.060 F.2.
- V.** "Manufactured home" means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

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- W.** "New construction" means structures for which the start of construction commenced on or after the effective date of this Chapter.
- X.** "New manufactured home park or manufactured home subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale for which the construction of facilities for servicing the lots on which the manufactured home is to be affixed (including as a minimum, the installation of utilities, either final site grading or the pouring of concrete pads and the construction of streets) is completed on or after the original date of this Chapter.
- Y.** "Start of construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets, walkways, sanitary sewers, storm sewers, and/or drainage facilities; nor does it include excavation for a basement, footings, piers, or foundation or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.
- Z.** "Structure or accessory structure" means, for the purposes of this Chapter, a walled and roofed building including a gas or liquid storage tank that is principally above ground.
- AA.** "Substantial Damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
- BB.** "Substantial Improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure, either:
- 1.** Before the improvement or repair is started, or
 - 2.** If the structure has been damaged, and is being restored, before the damage occurred. Substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the

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building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

- a.** Any project for improvement of a structure to comply with existing State or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or
 - b.** Any alteration of a structure listed on the National Register of Historic Places or the State Inventory of Historic Places.
- CC.** “Variance” means a grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.
- DD.** “Water surface elevation” means the height of the water surface of the base flood for any point along the longitudinal course of a stream.
- EE.** “Watercourse” means a channel in which a flow of water occurs, either continuously or intermittently, and if the latter, with some degree of regularity. Watercourses may be either natural or artificial.

24.50.040 FIA Study and Flood Hazard Maps.

(Amended by Ordinance Nos. 173979, 176955, 178741, 182671 and 184235, effective November 26, 2010.) The following study and maps in this Section are hereby adopted and declared to be a part of this Chapter.

- A.** Flood Insurance Study is the official scientific and engineering report entitled “Flood Insurance Study for City of Portland, Oregon: Multnomah, Clackamas and Washington Counties”, dated November 26, 2010 prepared by the Federal Insurance Administration (FIA) under agency agreement with the Portland District Corps of Engineers. The latest edition of the report, along with accompanying FIRMs, are on file with the Bureau of Development Services.
- B.** Flood Insurance Rate Maps (FIRMs) are the official maps entitled “The Flood Insurance Rate Maps (FIRMs) for City of Portland, Oregon: Multnomah, Clackamas and Washington Counties”, dated either October 19, 2004 or November 26, 2010, whichever is more current, on which the Federal Insurance Administration has delineated the areas of flood hazards along with the 100-year (base flood) and 500-year flood boundaries, the floodway zone boundaries and the 100-year flood elevations.

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- C. Water Features Map is the official map, dated May, 1981, or latest edition, compiled by the Bureau of Planning and Sustainability delineating certain watercourses which are subject to special flood hazard and drain 30 acres or more.
- D. When base flood elevation data has not been provided by the FIA study, the Sewage System Administrator may obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source. This data shall be utilized only after technical review and approval of the Sewage System Administrator.
- E. The "Title 3 Water Quality and Flood Management Area Map," as adopted by Metro Council on June 18, 1998, is the official map which identifies areas as "February 1996 Flood Inundation." The identified areas are subject to the regulations of this Title.

24.50.050 Flood Hazard Areas and Flood Protection Elevations.

(Amended by Ordinance Nos. 173979, 178741 and 182370, effective November 26, 2008.) Flood hazard areas shall contain all lands located within the Floodway boundary, Flood 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

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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.
- 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

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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 and 184235, effective November 26, 2010.) 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.
 - 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

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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.
- 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:

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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. Special 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:
 - (1) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
 - (2) The bottom of all openings shall be no higher than one foot above grade;
 - (3) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

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- (a) Fills required to elevate the lowest floor to the flood protection level shall comply with Chapter 24.70. Fill selection and placement shall recognize the effects of inundation from floodwaters on slope stability, fill settlement, and scour. The minimum elevation at the top of the fill slope shall be at the base flood level. Minimum distance from any point of the building perimeter to the top of the fill slope shall be either 25 feet or twice the depth of fill at that point, whichever is the greater distance.
 - (b) Piling foundations required to elevate the lowest habitable floor to the flood protection level shall comply with Section 1809 and 1808 of the Structural Specialty Code. Pilings shall be spaced no more than 10 feet apart, and reinforcement shall be provided for piling more than 6 feet above the ground level.
3. Subdivision proposals.
 - a. All subdivision proposals shall be consistent with the need to minimize flood damage;
 - b. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
 - c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and,
 - d. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).
4. Nonresidential construction. New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the flood protection elevation, or, together with attendant utility and sanitary facilities, shall:

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- a. Be floodproofed so that below the flood protection elevation the structure is watertight with walls substantially impermeable to the passage of water;
 - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
 - c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this Subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the Bureau of Development Services.
 - d. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described for residential structures.
 - e. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g. a building constructed to the base flood level will be rated as one foot below that level).
- 5. **Manufactured homes.** All manufactured homes to be placed or substantially improved within Zones AO, AH and AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the flood protection elevation and be securely anchored to prevent flotation, collapse or lateral movement and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Refer to FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).
- 6. **Utilities.** All new and replacement water supply and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the sanitary sewage systems into flood waters. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- 7. **Construction materials and methods.** All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage, using methods and practices that minimize flood damage. Electrical, heating, ventilation, plumbing and

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air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

- 8.** Balanced Cut and Fill Required. In all Flood Management Areas of the City not addressed by Section 24.50.060 G, balanced cut and fill shall be required. All fill placed at or below the base flood elevation shall be balanced with at least an equal amount of soil material removal. Soil material removal shall be within the same flood hazard area identified in Section 24.50.050 A. through I.
 - a.** Excavation shall not be counted as compensating for fill if such areas will be filled with water in non-storm winter conditions.
 - b.** Temporary fills permitted during construction shall be removed.
 - 9.** Tank anchoring. Tanks containing hazardous materials must be anchored to prevent flotation if they are located in areas of special flood hazard or flood management areas.
 - 10.** Uncontained hazardous materials as referred to in Section 101 (14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S. Section 9601 et seq.) (CERCLA), section 502 (13) of the Clean Water Act and any other substances so designated by the Director of the Bureau of Development Services are prohibited in flood management areas.
 - 11.** AH/AO Zone Drainage. Adequate drainage paths shall be provided around structures on slopes to guide floodwaters around and away from proposed structures.
- G.** Johnson Creek Flood Zones - Special Provisions. In addition to other requirements of this chapter the following requirements shall apply within designated portions of the Johnson Creek Flood Zones:
- 1.** All Johnson Creek Flood Zones
 - a.** Balanced cut and fill. Within all areas of the Johnson Creek Flood Zones, all new fills below the base flood elevation shall be accompanied by an equal amount of excavation on the same site so that the storage capacity of the floodway and floodway fringe is retained.

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- b.** Mitigation payment allowed in lieu of balanced cut and fill. After September 1, 1998 residential properties within the area of the 100 year floodplain, but outside of the floodway and Flood Risk Area, and bounded by I-205 on the west, SE 142nd Avenue on the east, and the Springwater Corridor Trail on the south, may elect to pay into the Johnson Creek Fill Mitigation Bank in lieu of creating a balanced cut and fill. The amount of the payment shall be determined by the Bureau of Environmental Services.
- 2.** Johnson Creek Flood Risk Area. The following provisions shall apply within the Johnson Creek Flood Risk Area, as established in Chapter 33.535 of the City Code:
 - a.** Balanced cut and fill. The requirements of subsection G.1. above, shall apply within the Johnson Creek Flood Risk Area.
 - b.** Reduction in flooding capacity prohibited. Structures, fill or other development shall only be allowed in the Johnson Creek Flood Risk Area when they are designed so that there is no significant reduction in the storage capacity of the floodway and floodway fringe and there is no significant impediment to the passage of flood waters.
 - c.** Exceptions to Section 24.50.060 G.2.:
 - (1)** One story detached accessory buildings used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 120 square feet.
 - (2)** Parking garages accessory to one and two family structures, provided the floor area does not exceed 300 square feet.
 - (3)** Fences which do not prevent the flow of water.
 - d.** Buildings designed to meet all of the following criteria shall be presumed to comply with Section 24.50.060.G.2.:
 - (1)** At least 50% of perimeter walls located at, or below, the base flood elevation shall remain open and unenclosed;
 - (2)** At least 25% of each perimeter wall located at, or below, the base flood elevation shall remain open and unenclosed; and

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- (3) The footprint of all portions of the building located at, or below, the base flood elevation shall not exceed 15% of the footprint of the building located above the base flood elevation.

24.50.065 Recreational Vehicles located in Areas of Special Flood Hazard or Base Flood Zones.

(Added by Ordinance No. 180330, effective August 18, 2006.)

- A. Any recreational vehicle placed on a site located in either an Area of Special Flood Hazard or in the base flood zone shall:
1. Meet the elevation and anchoring requirements for manufactured homes;
 2. Be on the site for fewer than 180 consecutive days; or
 3. Be fully licensed and ready for highway use. As used in this section, “ready for highway use” means that the vehicle is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and has no permanently attached additions.
- B. For the purpose of this section, “recreational vehicle” means any vehicle which is:
1. Built on a single chassis;
 2. 400 square feet or less when measured at the largest horizontal projection;
 3. Designed to be self propelled or permanently towable by a light duty truck; and
 4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

24.50.070 Appeals and Variances.

(Amended by Ordinance No. 178741, effective October 19, 2004.)

- A. Appeals. Any person aggrieved by a requirement, decision, or determination made pursuant to the administration of this Chapter may appeal such action to the Building Board of Appeal in accord with Chapter 24.10.
- B. Variances. If variances from requirements of this Chapter are requested, all relevant factors and standards specified in other sections of this Chapter shall be considered, as well as the following:

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1. The danger that materials may be swept into other lands to the injury of others;
2. The danger to life and property due to flooding or erosion damage;
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. The importance of the services provided by the proposed facility to the community;
5. The necessity to the facility of a waterfront location, where applicable;
6. The availability of alternative locations, not subject to flooding or erosion damage;
7. The compatibility of the proposed use with existing anticipated development;
8. The relationship of the proposed use to the Comprehensive Plan and Floodplain Management Program for that area;
9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
10. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
11. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges; Upon consideration of the factors listed above and the purposes of this Chapter, such conditions may be attached to the granting of variances as deemed necessary.

C. Conditions for variances.

1. Generally the only condition under which variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (1-11) have been fully considered. As

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the lot size increases, the technical justification required for issuing the variance increases.

2. Variances shall not be issued within designated floodway if any increase in flood levels during the base flood discharge would result.
3. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in this Section.
4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
5. Variances shall only be issued upon:
 - a. A showing of good and sufficient cause,
 - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant, and
 - c. A determination that the granting of a variance would not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
6. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
7. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.
8. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have

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low damage potential, complies with all other variance criteria except 24.50.070 C.1. and otherwise complies with Section 24.50.060 F.1. and 24.50.060 F.7.

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Chapter 24.51

WILDFIRE HAZARD ZONES

(New Chapter added by Ordinance
No. 177433, effective May 30, 2003.)

Sections:

- 24.51.010 Purpose.
- 24.51.020 Definitions.
- 24.51.030 Wildfire Hazard Zone Map Adoption.
- 24.51.040 Map Revision Process.
- 24.51.050 Appeals of Decisions Made by the Chief.
- 24.51.060 General.

24.51.010 Purpose.

The purpose of this Chapter is to adopt the criteria that will be used to specify areas of the City to be classified as Wildfire Hazard Zones, so that roof materials may be limited.

24.51.020 Definitions

(Amended by Ordinance No. 180917, effective May 26, 2007.) The definitions contained in this Section relate to Wildfire Hazard zones and considerations outlined in this Chapter.

- A. Chief** means the Chief of Portland Fire & Rescue or the Chief's duly authorized representative.
- B. Department of Forestry (DOF)** means the State of Oregon Department of Forestry.
- C. Wildfire Hazard Zone** means those areas of the City as determined by the Chief that rate a minimum score of 5 or higher using the following criteria developed by DOF:
 - 1. Topography hazard factor value
 - 2. Natural vegetative fuel hazard factor value
 - 3. Natural vegetative fuel distribution hazard factor value

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- D. Wildfire Hazard Zone Map** means the WHZM attached to Ordinance No. 177433 and as it may be amended from time to time based on the criteria herein.
- E. Hazard Factor.** Hazard Factors are topography, certain natural vegetative fuels and natural, vegetative fuel distribution. Any of these factors, or a combination thereof, may cause an area of the City to be included within a Wildfire Hazard Zone.
- F. Topography Hazard Factor Value** means the hazard value as determined by DOF associated with site slope which effects the fire spread velocity.
- G. Natural Vegetative Hazard Factor Value** means the numerical value assigned by DOF, extrapolated from the “Aids to Determining Fuel Models for Estimating Fire Behavior” published by the Forest Service, USDA Intermountain Forest and Range Experiment Station in 1982 as General Technical Report INT-122, for various common vegetation.
- H. Natural Vegetative Fuel Distribution Hazard Factor Value** means the numerical value assigned by DOF for the percentage of site that is covered by vegetation described in 24.51.020 G.

24.51.030 Wildfire Hazard Zone Map Adoption.

- A. Wildfire Hazard Zone Map Adoption.**
 - 1.** A Wildfire Hazard Zone Map (WHZM) has been developed for the City of Portland through a review of topography, weather, type vegetation and fuel density. This map is dated October 11, 2002.
 - 2.** The WHZM dated October 11, 2002, is hereby adopted by reference and incorporated into this ordinance.
 - 3.** The Chief shall provide the Director with a copy of the official map adopted in Subsection one of this Section. Copies of the map shall be available for review in the Development Services Center, First Floor 1900 SW 4th Avenue, Portland Oregon.
- B. Revisions to the Wildfire Hazard Zone Map.**
 - 1.** The WHZM may be amended from time to time to either include or exclude properties as the facts may warrant.
 - 2.** The Chief shall have the authority to revise the Wildfire Hazard Zone Map.

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3. All Wildfire Hazard Zone map revisions shall be determined using the criteria set forth below. Any site having a cumulative hazard value of five (5) or more shall be included in a wildfire hazard zone.
- a. Topography Hazard Factor Value. The topography hazard value shall be calculated as follows:
- (1) Determine site slope using the appropriate 7.5 minute quadrangle map published by the U.S. Geological Survey, USDI.
 - (2) Select appropriate hazard value using Table 1.

TABLE 1
APPROPRIATE TOPOGRAPHY
HAZARD FACTOR VALUE

Site Slope as determined by the 7.5 minute quadrangle map	Hazard Value
Slopes 00 to < 03%	0
Slopes 03 to < 12%	1
Slopes 12 to < 20%	2
Slopes 20% or greater	3

- b. Natural Vegetative Fuel Hazard Factor Value. The natural vegetative fuel hazard value shall be calculated as follows:
- (1) Divide the jurisdiction into geographic areas which best describe the natural vegetation expected to occupy sites for the next 10 to 15 years.
 - (2) Select the appropriate hazard value from Table 2.

TABLE 2
NATURAL VEGETATIVE FUEL
HAZARD FACTOR VALUE

Natural Vegetative Fuel Description ¹		Hazard Value ²
Limited	Little or no natural vegetative fuels are present.	0

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Natural Vegetative Fuel Description ¹		Hazard Value ²
Grass	Very little shrub or timber is present, generally less than one-third of the area. Main fuel is generally less than two feet in height. Fires are surface fires that move rapidly through cured grass and associated material. (Fuel model 1)	3
Grass	Open shrub lands and pine stands or scrub oak stands that cover one-third to two-thirds of the area. Main fuel is generally less than two feet in height. Fires are surface fires that spread primarily through the fine herbaceous fuels, either curing or dead. (Fuel model 2)	3
Grass	Beach grasses, prairie grasses, marshland grasses and wild or cultivated grains that have not been harvested. Main fuel is generally less than four feet in height, but considerable variation may occur. Fires are the most intense of the grass group and display high rates of spread under the influence of wind.(Fuel model 3)	3
Shrubs	Stands of mature shrubs have foliage known for its flammability, such as gorse, manzanita and snowberry. Main fuel is generally six feet or more tall. Fires burn with high intensity and spread very rapidly. (Fuel model 4)	3

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Natural Vegetative Fuel Description ¹		Hazard Value ²
Shrubs	Young shrubs with little dead material and having foliage not known for its flammability, such as laurel, vine maple and alders. Main fuel is generally three feet tall or less. Fires are generally carried in the surface fuels and are generally not very intense. (Fuel model 5)	1
Shrubs	Older shrubs with foliage having a flammability less than fuel model 4, but more than fuel model 5. Widely spaced juniper and sagebrush are represented by this group. Main fuel is generally less than six feet in height. Fires will drop to the ground at low wind speeds and in stand openings. (Fuel model 6)	2
Timber	Areas of timber with little undergrowth and small amounts of litter buildup. Healthy stands of lodgepole pine, spruce, fir and larch are represented by this group. Fires will burn only under severe weather conditions involving high temperatures, low humidity and high winds. (Fuel model 8)	1
Timber	Areas of timber with more surface litter than fuel model 8. Closed stands of healthy ponderosa pine and white oak are in this fuel model. Spread of fires will be aided by rolling or blowing leaves. (Fuel model 9)	2

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Natural Vegetative Fuel Description ¹		Hazard Value ²
Timber	Areas of timber with heavy buildups of ground litter caused by over-maturity or natural events of wind throw or insect infestations. Fires are difficult to control due to large extent of ground fuel. (Fuel model 10)	3
1. Some areas may contain vegetative fuels other than those listed in Table 2. Additional natural fuel hazard factors may be found in “Aids to Determining Fuel Models for Estimating Fire Behavior” published by the Forest Service, USDA Intermountain Forest and Ranger Experiment Station in 1982 as General Technical Report INT-122. Vegetative fuel hazard factors determined using General Technical Report INT-122 shall be used as alternative factors, for review under this chapter, as the facts warrant. 2. Due to various factors, such as variations in local vegetation species or vegetation conditions, the fuel models used in Table 2 may not accurately portray wildfire behavior. The Chief may make modifications to the hazard values as necessary to accurately reflect the following characteristics: (a) A hazard value of 1 shall describe vegetation that typically produces a flame length of up to 5 feet, a wildfire which exhibits very little spotting, torching, or crowning, and which results in a burned area that can normally be entered within 15 minutes. (b) A hazard value of 2 shall describe vegetation that typically produces a flame length of 5 to 8 feet, a wildfire which exhibits sporadic spotting, torching, or crowning, and which results in a burned area that can normally be entered within one hour. (c) A hazard value of 3 shall describe vegetation that typically produces a flame length of over 8 feet, a wildfire that exhibits frequent spotting, torching, or crowning, and which results in a burned area that normally cannot be entered for over one hour.		

c. Natural Vegetative Fuel Distribution Hazard Factor Value . To determine the natural vegetative fuel distribution hazard factor value:

- (1)** Determine the percentage of each individual area that is covered by vegetation.

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- (2) Using the calculated percentage, assign a value using Table 3.

TABLE 3
NATURAL VEGETATIVE FUEL
DISTRIBUTION HAZARD FACTOR

Natural Vegetative Fuel Distribution	Hazard Value
0 to 10% of the area	0
10 to 25% of the area	1
25 to 40% of the area	2

24.51.040 Map Revision Process

- A.** Wildfire Hazard Zones may be applied to or removed from areas of the City as follows:
1. During periodic review by the Chief, based upon the criteria listed in section 24.51.030. Periodic review shall occur every 5 years.
 2. Upon request to the Chief by any property owner, prior to periodic review, on the grounds that conditions have changed.
- B.** Prior to applying the Wildfire Hazard Zone to any property the Chief shall provide notice of such proposed zoning and provide a date for a public hearing. The notice shall be sent to all properties to which the zone would be applied. The notice shall be sent fourteen days prior to the date of the hearing. Extensions of time for the hearing may be requested and may be provided by the Chief. The notice shall provide information regarding the City's intention to apply the Wildfire Zone, the reasons therefore and the time and place for the hearing. Within 7 days of the hearing the Chief shall issue a written decision, based upon the criteria listed above, and which shall include findings supporting that decision and shall contain information regarding the right to appeal the Chief's decision to the Bureau of Development Service's Appeals Board (Board). A copy of the decision shall be sent to all properties that received notice of the City's intention to include these properties within a Wildfire Hazard Zone.
- C.** When a property owner provides the Chief with a written request that the Wildfire Hazard Zone be removed from specific property the Chief shall consider the request and, based upon the criteria listed above, shall either approve or deny the request. Such action by the Chief shall occur within 14 days of the date of the request and shall be in writing, shall include findings based upon the facts and criteria and shall contain information regarding the right to appeal the Chief's decision to the

Board. This decision shall be mailed to the property owner requesting the change in status.

24.51.050 Appeals of Decisions Made by the Chief

Notwithstanding any contradictory portion of Code Section 24.10.080:

- A.** Any decision made by the Chief, regarding the application of a Wildfire Hazard Zone to any area in the City, may be appealed to the Bureau of Development Services Board of Appeals (Board) solely in accordance with this subsection. In considering such appeals the Board shall act solely in accord with this section.
- B.** Such appeal shall be in writing and shall be filed with the Board within fourteen days of the date of the Chief's decision. The appeal shall include a statement regarding the elements of the Chief's decision with which the appellant takes issue. Reference to facts and the criteria listed above, is required.
- C.** A copy of the appeal shall be provided to the Chief at the same time that it is filed with the Board. The Chief shall have fourteen days from the date of the appeal to respond, in writing, to the Board and all appellants.
- D.** The Board shall issue a notice of a hearing date and the place and time of the hearing. Notice shall be provided to the appellants and the Chief.
- E.** The Board shall then hold a hearing upon any such appeal. After considering the issues raised on appeal, and the reasonableness of the Chief's interpretation of applicable criteria, the Board shall, by majority vote, affirm or modify the Chief's decision. The Board's decision shall be based solely upon the criteria set out in this Chapter and shall include findings addressing the facts and the criteria. The decision of the Board shall have full force and effect. A certified copy of the decision shall be delivered to the appellant.

Any appeal of the Board's decision shall by writ of review.

24.51.060 General

(Amended by Ordinance Nos. 178745 and 179125, effective April 1, 2005.)

- A.** In addition to the other City codes, all structures located in wildfire hazard zones as identified in the Wildfire Hazard Zone map shall meet the applicable requirements in the State of Oregon Structural Specialty Code or the Residential Specialty Code as applicable.
- B.** The requirements in Chapter 24.75, Uniform Building Address System, supercede the requirements found in OSSC Appendix L, Section L101.7, for premises identification.

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Chapter 24.55

BUILDING DEMOLITION

(New Section substituted by
Ordinance No. 167088; amended by
171455, effective August 29, 1997.)

Sections:

- 24.55.100 Demolition - Debris - Barricades - Nuisances.
24.55.200 Demolition Delay - Housing Preservation.

24.55.100 Demolition - Debris - Barricades - Nuisances.

(Amended by Ordinance No. 171455, effective August 29, 1997.) It is unlawful for any owner or persons in control of any such structure which is being demolished, or which has been damaged by fire, to leave any portion of the structure unsupported for more than 1 hour, if such Section is liable to collapse or is in any way a danger to the public. In no event shall a portion of the structure be left unsupported for more than 24 hours. Suitable barricades shall be provided to prevent access to the vicinity of any unsupported Section of the structure. Any permanent structural supports provided as a result of application to this Section shall be designed by a structural engineer registered to practice in the State of Oregon and hired by the applicant. All such designs, calculations, drawings, and inspection reports shall be approved by the Director.

All combustible debris or material shall be removed from the premises on which the demolition is carried out within 30 days from the completion of the demolition, or from the stoppage of the work thereon if the work remains uncompleted. All non-combustible debris or material resulting from demolition shall be removed within 30 days after the completion of the demolition or stoppage thereof, unless the Director extends the time therefore because of weather, terrain, or other special circumstances, but such extension shall not exceed 3 months. It is unlawful for any owner or person in possession of real property to permit the debris to remain on the property without disposal in excess of the periods mentioned above or of any specific extension thereof as set forth above.

Any of the above-mentioned things existing while there is a duty to remove or correct the same, shall constitute a public nuisance. Any unsupported portions of a building or structure existing beyond the periods set forth above shall be subject to summary abatement by the City. The abatement shall be in accordance with the procedure set forth in Title 18, Chapter 18.03, Nuisance Abatement.

All structures to be demolished shall be taken down in a safe manner. The streets or sidewalks shall not be littered with rubbish and shall be wet down, if necessary. During

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any demolition work, all receptacles, drop boxes, shafts, or piping used in such demolition work shall be covered in an appropriate manner. After removal of any structure all foundations that are not to be used for new construction shall be removed and all excavations filled in compliance with Chapter 24.70 of this Title, to a level of the adjoining grade. Plans shall be submitted for any new construction proposed, utilizing the remaining foundations. Any remaining foundations approved for further use shall be barricaded by a fence no less than 8 feet high maintained until the new construction has progressed sufficiently to remove any hazards to the public. Such period of time is not to exceed 30 days. For regulations on the use of public streets and protection of pedestrians during demolition see Chapter 24.40 of this Title.

24.55.150 Definitions.

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

24.55.200 Demolition Delay - Housing Preservation.

(Amended by Ordinance Nos. 171455 and 176955, effective October 9, 2002.)

- A.** Purpose. The demolition delay provisions are intended to allow an adequate amount of time to help save viable housing in the City while recognizing a property owner's right to develop or redevelop property. The regulations provide an opportunity for public notice of impending demolitions and coordination of the efforts of various City bureaus. The regulations also encourage moving as an alternative to demolition. The provisions accomplished this through a two part process:

 - 1. a 35 day notice period during which demolition is delayed, and
 - 2. a possible 120 day extension of the demolition delay period.
- B.** Where the delay applies. The demolition delay regulations of this Section (24.55.200) apply to sites with residential structures in areas with a residential Comprehensive Plan Map designation. The regulations only apply to applications for demolition of residential structures. They do not apply to demolitions of accessory structures such as garages or other outbuildings.
- C.** Application for building permit for demolition.

 - 1. Signed statement. The application for a building permit for demolition must include a statement signed by the owner(s) of the property. The statement must acknowledge that the owner(s) are aware of the primary uses permitted under the current zoning on the site without a conditional use, zone change, Comprehensive Plan Map amendment, or other land use approval and that such an approval will be required before other uses will

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be permitted on the site. The statement may be on forms that the Director may make available.

2. Delay in issuing. The building permit for demolition will not be issued except as provided for in this Section (24.55.200).

D. Notice of application.

1. Posted notice. Within five days of receipt of the application for demolition, the Director will post a notice of the requested demolition at the site. The notice must be posted at the site for no less than 30 day. The notice must be at least 1-1/2 by 2 feet in size and must be visible to passers-by. The notice must contain at least the following information.
 - a. Notice that the site has been proposed for demolition,
 - b. The date the application for demolition was received,
 - c. Notice that there is a demolition delay period of 35 days which may be extended upon request from the Recognized Organization(s) whose boundaries include the site,
 - d. The last day that requests for extended delay may be submitted, and
 - e. The location where more information is available.
2. Notice to the recognized organization(s). Within 7 days of the receipt of the application for demolition, the Director will send a written notice of the demolition request to the recognized organization(s), recognized by the Office of Neighborhood Associations, whose boundaries include the site.
3. Notice to Portland Development Commission. Within 7 days of the receipt of the application for demolition, the Director will send a written notice of the demolition request to the Portland Development Commission. Within 14 days of the receipt of the application for demolition, the Portland Development Commission will forward to the owner of the property such materials explaining City housing programs that the Commission deems appropriate.

- E. 35-day notice period. The building permit for demolition will not be issued during the 35-day notice period. The notice period begins on the day the application is received. If no written request to extend the demolition delay is received during the 35 day notice period as provided in subsection 24.55.200 F.

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below, then the Bureau of Development Services will issue the building permit for demolition.

- F.** Requests for extension of demolition delay period. Requests to extend the demolition delay period may be made as follows:
- 1.** Who may request. Requests to extend the demolition delay period an additional 120 days may be made by a recognized organization whose boundaries include the site.
 - 2.** How to request. The request to extend the demolition delay period must be made in writing, on forms provided by the Director. They must be submitted to the Bureau of Development Services by 4:30 PM on the last day of the 35-day notice period.
- G.** 120-day extension of demolition delay period. If a request for extension of the demolition delay is received, the building permit for demolition will not be issued during the 120-day extension period except as provided in Subsection 24.55.200 H. below. During the 120-day extension period, private citizens or the City may pursue alternatives to demolition such as rehabilitating the structure or moving the structure in accordance with agreements reached with the applicant. These efforts may use private resources or public programs that may be available. Mitigation efforts such as a salvage agreement may also be pursued during this period.
- H.** Appeal of the 120 day extension. The applicant for demolition may appeal the 120-day extension to the Code Enforcement Hearings Officer as provided in Chapter 22.10, Appeals to the Code Hearings Officer. The appeal may be filed anytime within the 120-day extension period. The approval criteria for termination of the extension period are as follows: The demolition delay extension will be terminated if the Hearings Officer finds that the recognized organization that requested the extension has not made a good faith effort to work with the applicant for demolition to do any of the following:
- 1.** Move the structure;
 - 2.** Find a purchaser for the site; or
 - 3.** Agree on an alternative proposal that would not involve the demolition of the structure.
- I.** Moving as an alternative. If the applicant decides to move the structure instead of demolishing it, then the demolition notice period and/or extended delay period becomes moot. The demolition delay period is automatically terminated when a

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building permit to move the structure from the site and a building permit to relocate the structure to another site are issued.

- J.** End of the extension period. If the 120 day extension has not been terminated as provided in Subsection 24.55.200 H above, the building permit for demolition may be issued any time after 120 days have elapsed since the end of the 35 day notice period.
- K.** Exceptions to demolition delay.
 - 1.** The provisions of this Section (24.55.200) do not apply to applications for demolition of single family residences if the application is accompanied by an application for a building permit for a replacement single family residence.
 - 2.** The provisions of this Section (24.55.200) do not apply to applications for building permits for demolition that are required by the City to remove structures because of a public hazard, nuisance, or liability. The structure must be subject to a demolition order from the City, or be the subject of enforcement proceedings for demolition and be stipulated by the owner as a dangerous building, in order to be exempt from the demolition delay provisions.
 - 3.** The provisions of this Section (24.55.200) do not apply to applications for building permits for demolition, for structures that are designated historical landmarks, on the Portland Historic Resources Inventory, or in historic districts. In these situations, the provisions of Chapter 33.222 in Title 33, Planning and Zoning apply.

24.55.250 Enforcement.

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

24.55.300 Referral to the Hearings Officer.

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

24.55.350 Appeals.

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

24.55.400 Rehabilitation and Repair under Direction of Council.

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

24.55.450 Contracts to Repair or Demolish.

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

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24.55.500 Warehousing of Structures.

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

24.55.550 Interference with Demolition or Repair Prohibited.

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

24.55.600 Demolition - Debris - Barricades - Nuisances.

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

24.55.650 Demolition Permits - Investigations.

(Repealed by Ordinance No. 163608, effective Nov. 7, 1990.)

24.55.700 Demolition Delay - Housing Preservation.

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

24.55.750 Administrative Review

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

24.55.800 Appeals to the Code Hearings Officer.

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

24.55.850 Dangerous Building Enforcement Fees.

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

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Chapter 24.60

FENCES

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

Sections:

24.60.020 Barbed Wire Fencing.

24.60.010 Fences Around Swimming Pools.

(Repealed by Ordinance No. 180330, effective August 18, 2006.)

24.60.020 Barbed Wire Fencing.

(Added by Ordinance No. 176585, effective July 5, 2002.) It is unlawful for any person to construct or maintain a fence containing barbed wire, unless the barbed wire is placed not less than 6 inches above the top of the fence and the fence is not less than 4 feet high.

Chapter 24.65

SIDEWALK VAULT OPENINGS

Sections:

24.65.010 Location of Sidewalk Vault Openings.

24.65.020 Number of Sidewalk Vault Openings.

24.65.030 Sidewalk Elevators.

24.65.040 Operation of Sidewalk Elevators.

24.65.050 Plans Required.

24.65.010 Location of Sidewalk Vault Openings.

The outer edge of all openings constructed in sidewalks for fuel, elevators, stairs, or other purposes shall be located not less than 2 feet from the curb line and the inner edge of any sidewalk opening will not be any closer than 3 feet to the property line.

24.65.020 Number of Sidewalk Vault Openings.

There shall not be more than one opening for each individual building frontage and in no case openings closer than 25 feet to an existing sidewalk opening.

24.65.030 Sidewalk Elevators.

Openings in sidewalks provided for in Section 24.65.010 shall be supplied with doors attached to a frame built into the sidewalk and shall be capable of supporting a load of 100 pounds per square foot. The door shall be constructed of sheet steel or other approved metal which has an approved non-slip surface. The dimensions of the door in any direction shall not exceed the dimension of the opening by more than 6 inches. The doors and frames shall be so constructed and maintained that there is no projection above or below the sidewalk exceeding 1/4 inch and existing doors which do not conform to the requirements shall be changed to conform within a period of 10 days after notice is given to change the same. Sidewalk doors shall be provided with a metal guard which, when the doors are open, will hold the doors open. This guard shall be located on the side of the sidewalk opening nearest the property line. The guard shall be made in the form of a grating with openings not exceeding 6 inches in dimension and so arranged that a child cannot get under or through the guard. This guard shall not be required for doors having metal gratings which are level with the sidewalk when the doors are open and the elevator platform is below the sidewalk level. Such gratings shall be capable of supporting a load of 100 pounds per square foot. Elevators having these sidewalk gratings shall be provided with a 3/4-inch steel bar to hold the doors open.

24.65.040 Operation of Sidewalk Elevator.

- A. When not in operation the elevator shall be kept in its down position and the sidewalk doors shall be closed.
- B. When the elevator is being raised, pedestrians shall be warned of the fact by an automatic warning device approved by the Director.
- C. The sidewalk elevator shall not be raised sooner than 15 minutes prior to a delivery and shall be placed in a down position and the sidewalk doors closed within 15 minutes of the completion of a delivery.

24.65.050 Plans Required.

The construction of sidewalk vaults shall be considered as part of a building and plans shall be submitted showing the construction of the same.

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Chapter 24.70

CLEARING, GRADING AND EROSION CONTROL

Sections:

24.70.010	General.
24.70.020	Permits.
24.70.030	Hazards.
24.70.040	Special Definitions.
24.70.050	Information on Plans and in Specifications.
24.70.060	Bonds.
24.70.070	Cuts.
24.70.080	Fills.
24.70.090	Setbacks.
24.70.100	Drainage and Terracing.
24.70.120	Grading Inspection.
24.70.130	Completion of Work.

24.70.010 General.

(Amended by Ordinance Nos. 165678, and 168340, effective Dec. 7, 1994.) The provisions of this Chapter shall regulate clearing, grading, earthwork construction, erosion control on private property and shall include tree cutting on natural and finished slopes with gradients in whole or in part which exceed 25%.

24.70.020 Permits.

(Amended by Ordinance Nos. 165678, 168340 172209, 173532 and 173979, effective March 1, 2000.) Permits for clearing, grading and tree cutting are required as specified in this section. Applicants for permits made in conjunction with land divisions shall be responsible for all clearing, grading, tree cutting and erosion control within the land division, even where a specific activity is exempt from an individual permit.

A. Clearing Permits. A permit is required and shall be issued in accordance with Section 24.10.070 for clearing activities in the following areas:

- 1.** The Tualatin River sub-basins, Johnson Creek Basin Plan District, environmental zones, greenway zones, or natural resource management plans; or

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2. Property larger than five acres. Except that no permit shall be required for clearing an area less than 5,000 square feet.
- B.** Grading Permits. A permit is required and shall be issued in accordance with Section 24.10.070 for all grading operations with the exception of the following:
1. Grading in an area, where in the opinion of the Director, there is no apparent danger, adverse drainage, or erosion effect on private/public property, or inspection is not necessary;
 2. An excavation below finished grade for basements and footings of a building, retaining wall, or other structure authorized by a valid building permit. This shall not exempt any fill made with the material from such excavation nor exempt any excavation having an unsupported height greater than 5 feet after the completion of such structure.
 3. Cemetery graves.
 4. Refuse disposal sites controlled by other regulations.
 5. Excavations for wells or tunnels.
 6. Mining, quarrying, excavating, processing, stockpiling of rock, sand, gravel, aggregate, or clay where established and provided for by law provided such operations do not affect the lateral support or increase the stresses in or pressure upon any adjacent or contiguous property.
 7. Exploratory excavations under the direction of soil (geotechnical) engineers or engineering geologists.
 8. An excavation which
 - a. Is less than 2 feet in depth, or
 - b. Which does not create a cut slope greater than 5 feet in height and steeper than 1-1/2 horizontal to 1 vertical.
 9. A fill less than 1 foot in depth, and placed on natural terrain with a slope flatter than 5 horizontal to 1 vertical, or less than 3 feet in depth, not intended to support structures, which does not obstruct a drainage course and which does not exceed 10 cubic yards on any one lot.
- C.** Tree cutting permit. A tree cutting permit is required for tree cutting (except Christmas trees) and root grubbing operations on slopes with gradients which, in

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whole or in part, exceed 25%. This regulation applies when more than five trees of six-inch diameter are to be cut or if the area to be cleared is greater than 2,500 square feet. This applies in all areas except those designated environmental zones under the provisions of Title 33. Tree cutting permits shall be issued in accordance with Section 24.10.070.

1. Plans and specifications showing the scope of proposed tree cutting operations, together with a geotechnical engineering report assessing the stability of the slope(s) after both tree felling and root grubbing operations shall be submitted to the Director along with the permit application.
 2. Stripping of vegetation or other soil disturbance on the slopes shall be done in a manner which will minimize soil erosion and expose the smallest practical area at any one time. An erosion control and mitigation plan outlining how this is to be achieved and what erosion control measures are proposed to be implemented shall be submitted to the Director for approval.
 3. The permit applicant shall also identify the owner's agent who will be responsible for ensuring compliance with these requirements.
- D. Permits required under this Chapter shall be obtained before the commencement of any tree cutting, root grubbing or soil disturbance takes place.

24.70.030 Hazards.

(Amended by Ordinance No. 165678, effective July 15, 1992.) The Director may determine that any clearing, grading, or geologic condition on private property has or may become a hazard to life and limb, or endanger property, or cause erosion, or adversely affect drainage or the safety, use or stability of a public way or drainage channel. Upon receipt of notice in writing from the Director, the owner shall mitigate the hazard and be in conformity with the requirements of this Title. The Director may require that plans and specifications and engineering reports be prepared in compliance with this Chapter.

24.70.040 Special Definitions.

The definitions contained in this Section relate to excavation and grading work only as outlined in this Chapter.

- A. “**Approval**” shall mean a written engineering or geological opinion concerning the progress and completion of the work.
- B. “**As graded**” is the surface conditions exposed on completion of grading.
- C. “**Bedrock**” is in-place solid rock.

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- D.** **“Bench”** is a relatively level step excavated into earth material on which fill is to be placed.
- E.** **“Borrow”** is earth material acquired from an off-site location for use in grading on a site.
- F.** **“Civil engineer”** shall mean a professional engineer registered in the State to practice in the field of civil works.
- G.** **“Civil engineering”** shall mean the application of the knowledge of the forces of nature, principles of mechanics, and the properties of materials to the evaluation, design, and construction of civil works for the beneficial uses of mankind.
- H.** **“Clearing”** is the cutting or removal of vegetation which results in exposing any bare soil.
- I.** **“Compaction”** is the densification of a fill by mechanical means.
- J.** **“Earth material”** is any rock, natural soil, or fill and/or any combination thereof.
- K.** **“Engineering geologist”** shall mean a geologist experienced and knowledgeable in engineering geology and registered as an engineering geologist in the State of Oregon.
- L.** **“Engineering geology”** shall mean the application of geologic knowledge and principles in the investigation and evaluation of naturally occurring rock and soil for use in the design of civil works.
- M.** **“Erosion”** is the wearing away of the ground surface as a result of the movement of wind, water, and/or ice.
- N.** **“Excavation”** is the mechanical removal of earth material.
- O.** **“Fill”** is a deposit of earth material placed by artificial means.
- P.** **“Geological hazard”** shall mean a potential or apparent risk to persons or property because of geological or soil instability either existing at the time of construction or which would result from construction.
- Q.** **“Grade”** shall mean the vertical location of the ground surface.
- R.** **“Existing grade”** is the grade prior to grading.

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- S.** “**Rough grade**” is the stage at which the grade approximately conforms to the approved plan.
- T.** “**Finish grade**” is the final grade of the site which conforms to the approved plan.
- U.** “**Grading**” is any excavating or filling or combination thereof.
- V.** “**Key**” is a designed compacted fill placed in a trench excavated in earth material beneath the toe of a proposed fill slope.
- W.** “**Site**” is any lot or parcel of land or contiguous combination thereof, under the same ownership, where grading is performed or permitted.
- X.** “**Slope**” is an inclined ground surface the inclination of which is expressed as a ratio of horizontal distance to vertical distance.
- Y.** “**Soil**” is naturally occurring surficial deposits overlying bedrock.
- Z.** “**Soil (Geotechnical) engineer**” shall mean a civil engineer competent by education, training, and experience in the practice of soil engineering.
- AA.** “**Soil (Geotechnical) engineering**” shall mean the application of the principles of soil mechanics in the investigation, evaluation, and design of civil works involving the use of earth materials and the inspection and testing of the construction thereof.
- BB.** “**Terrace**” is a relatively level step constructed in the face of a graded slope surface for drainage and maintenance purposes.

24.70.050 Information on Plans and in Specifications.

(Amended by Ordinance No. 173532, effective June 30, 1999.) Plans and specifications shall be submitted in accordance with Section 24.10.070 and in addition shall comply with the following:

- A.** Plans shall be drawn to scale upon substantial paper or cloth and shall be of sufficient clarity to indicate the nature and extent of the work proposed and show in detail that they will conform to the provisions of this Title and all relevant laws, ordinances, rules, and regulations. The first sheet of each set of plans shall give the location of the work and the name and address of the owner and the person by whom they were prepared.
The plans shall include the following information.
 - 1.** General vicinity of the proposed site.

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2. Property limits and accurate contours of existing ground and details of terrain and area drainage for the site and surrounding area.
3. Limiting dimensions, elevations, or finish contours to be achieved by the grading and the proposed drainage channels and related construction.
4. Detailed schedule of when each portion of the site is to be graded; how long the soil is to be exposed; and when the area is to be covered with buildings, paving, new vegetation or temporary erosion control measures.
5. Detailed plans of all surface and subsurface drainage devices, walls, cribbing, dams, and other protective devices to be constructed with, or as a part of, the proposed work together with a map showing the drainage area and the estimated runoff of the area served by any drains.
6. Location of any buildings or structures on the property where the work is to be performed and the location of any buildings or structures on land of adjacent owners which are within 15 feet of the property or which may be affected by the proposed grading operations.
7. Specifications shall contain information covering construction and material requirements.
8. Civil engineering report. The civil engineering report, when required by the Director, shall include hydrological calculations of runoff and the existing or required safe storm drainage capacity outlet of channels both on site and off site, and 1 in 100 year flood elevations for any adjacent watercourse. The report shall include recommendations for stormwater control and disposal.
9. Soil (Geotechnical) engineering report. The soil engineering report, when required by the Director, shall include data regarding the nature, distribution, and strength of existing soils, design criteria, and conclusions and recommendations applicable to the proposed development. The report shall include recommendation for subdrainage, and for groundwater control and disposal. Recommendations included in the report and approved by the Director shall be incorporated in the plans and specifications. For single family residences, a surface reconnaissance and stability questionnaire may be substituted for a formal soils report at the discretion of the Director.
10. Engineering geology report. The engineering geology report, when required by the Director, shall include an adequate description of the geology of the site, and conclusions and recommendations regarding the

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effect of geologic conditions on the proposed development and site(s) to be developed.

Recommendations included in the report and approved by the Director shall be incorporated in the grading plans and specifications.

B. Issuance. Section 24.10.070 is applicable to grading permits. The Director may require that:

- 1.** The amount of the site exposed during any one period of time be limited; and
- 2.** Grading work be scheduled to avoid weather periods or avoid critical habitat use periods for areas existing on, or adjacent to, the development site.

Subsequent to the issuance of the grading permit, the Director may require that grading operations and project designs be modified if delays occur which can result in weather generated problems not considered at the time the permit was issued.

24.70.060 Bonds.

The Director may require bonds in such form and amounts as may be deemed necessary to assure that the work, if not completed in accordance with the approved plans and specifications, will be corrected to eliminate hazardous conditions.

In lieu of a surety bond the applicant may file a cash bond or instrument of credit with the Director in an amount equal to that which would be required in the surety bond.

24.70.070 Cuts.

- A.** General. Unless otherwise recommended in the approved soil engineering and/or engineering geology reports, cuts shall conform to the provisions of this Section.
- B.** Slope. The slope of cut surfaces shall be no steeper than is safe for the intended use. Cut slopes shall be no steeper than 2 horizontal to 1 vertical.
- C.** Drainage and terracing. Drainage and terracing shall be provided as required by Section 24.70.100.

24.70.080 Fills.

- A.** General. Unless otherwise recommended in the approved soil engineering report fills shall conform to the provisions of this Section.

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In the absence of an approved soil engineering report these provisions may be waived for minor fills not intended to support structures. Such fills shall be subject to review at the discretion of the Director.

- B.** Ground preparation. The ground surface shall be prepared to receive fill by removing vegetation, noncomplying fill, top-soil, and other unsuitable materials scarifying to provide a bond with the new fill, and where slopes are steeper than 5 to 1, and the height greater than 5 feet, by benching into competent material or sound bedrock as determined by the soils engineer. The bench under the toe of a fill on a slope steeper than 5 to 1 shall be at least 10 feet wide. The area beyond the toe of fill shall be sloped for sheet overflow or a paved drain shall be provided. Where fill is to be placed over a cut the bench under the toe of a fill shall be at least 10 feet wide but the cut must be made before placing fill and approved by the soils engineer and engineering geologist as a suitable foundation for fill. Unsuitable soil is soil which in the opinion of the Director or the civil engineer or the soils engineer or the engineering geologist, is not competent to support either soil or fill, to support structures or to satisfactorily perform the other functions for which the soil is intended.
- C.** Fill material. Only permitted material free from tree stumps, detrimental amounts of organic matter, trash, garbage, sod, peat, and similar materials shall be used. Rocks larger than 6 inches in greatest dimension shall not be used unless the method of placement is properly devised, continuously inspected, and approved by the Director.
The following shall also apply:
1. Rock sizes greater than 6 inches in maximum dimension shall be 10 feet or more below grade, measured vertically.
 2. Rocks shall be placed so as to assure filling all voids with fines. Topsoil may be used in the top 12-inch surface layer to aid in planting and landscaping.
- D.** Compaction of fill. All fills shall be compacted to a minimum relative dry density of 90 percent as determined in accordance with ASTM Standard D-1557-78. Field density verification shall be determined in accordance with ASTM Standard D-1556-82 or equivalent and must be submitted for any fill 12 inches or more in depth where such fill may support the foundation for a structure. A higher relative dry density, or additional compaction tests, or both, may be required at any time by the Director.
- E.** Fill slope. The slope of fill surfaces shall be no steeper than is safe for the intended use. Fill slopes shall be no steeper than 2 horizontal to 1 vertical.

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- F.** Drainage and terracing. Drainage and terracing shall be provided and the area above fill slopes and the surfaces of terraces shall be graded and paved as required by Section 24.70.100.

24.70.090 Setbacks.

- A.** General. The setbacks and other restrictions specified by this Section are minimal and may be increased by the Director, or by the recommendation of the civil engineer, soils engineer, or engineering geologist, if necessary for safety and stability or to prevent damage of adjacent properties from deposition or erosion or to provide access for slope maintenance and drainage. Retaining walls may be used to reduce the required setbacks when approved by the Director.
- B.** Setbacks from property lines. The tops of cuts and toes of fill slopes shall be set back from the outer boundaries of the permit area, including slope right areas and easements, in accordance with Figure No. 2 and Table No. 24.70-C at the end of this Chapter.
- C.** Design standards for setbacks. Setbacks between graded slopes (cut or fill) and structures shall be provided in accordance with Figure No. 3 and Table No. 24.70-C at the end of this Chapter.

24.70.100 Drainage and Terracing.

(Amended by Ordinance No. 173270, effective May 21, 1999.)

- A.** General. Unless otherwise indicated on the approved grading plan, drainage facilities and terracing shall conform to the provisions of this Section.
- B.** Terrace. Terraces at least 6 feet in width shall be established at not more than 30-foot vertical intervals on all cut or fill slopes to control surface drainage and debris except that where only one terrace is required, it shall be at mid-height. For cut or fill slopes greater than 60 feet and up to 120 feet in vertical height one terrace at approximately mid-height shall be 12 feet in width. Terrace widths and spacing for cut and fill slopes greater than 120 feet in height shall be designed by the civil engineer and approved by the Director. Suitable access shall be provided to permit proper cleaning and maintenance.
A single run of swale or ditch shall not collect runoff from a tributary area exceeding 13,500 square feet (projected) without discharging into a down drain.
- C.** Subsurface drainage. Cut and fill slopes shall be provided with subdrainage as necessary for stability. Adequate culverts shall be laid under all fills placed in natural watercourses and along the flow line of any tributary branches in such a manner that the hydraulic characteristics of the stream are not adversely altered. In addition, subdrainage shall be installed if active or potential springs or seeps

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are covered by the fill. All culverts/subdrainage shall be installed after the suitable subgrade preparation. Design details of culverts/subdrainage shall be shown on each plan and be subject to the approval of the Director and of other government/private agencies as may be required.

A subdrain system shall be provided for embedded foundation/ retaining walls and floor slabs where ground water or seepage has a potential to affect the performance of the structure. The plans shall indicate

1. subdrainage details with appropriate specifications,
2. location of footing subdrain/discharge lines and,
3. method of disposal.

In lieu of above, walls/floors may be waterproofed and designed to resist hydrostatic pressure.

- D.** Disposal. All drainage facilities shall be designed to carry waters to the nearest practicable drainageway or approved stormwater management facility, as approved by the Director and/or other appropriate jurisdiction as a safe place to deposit such waters. Erosion of ground in the area of discharge shall be prevented by installation of non-erosive downdrains or other devices. Building pads shall have a drainage gradient of 2 percent toward approved drainage facilities, unless waived by the Director. Exception: The gradient from the building pad may be 1 percent if all of the following conditions exist throughout the permit area:

1. No proposed fills are greater than 10 feet in maximum depth.
2. No proposed finish cut or fill slope faces have a vertical line in excess of 10 feet.
3. No existing slope faces, which have a slope face steeper than 10 horizontal to 1 vertical, have a vertical height in excess of 10 feet.

- E.** Interceptor drains. Paved interceptor drains shall be installed along the top of all cut slopes where the tributary drainage area above slopes towards the cut and has a drainage path greater than 40 feet measured horizontally. Interceptor drains shall be paved with a minimum of 3 inches of concrete or gunite and reinforced. They shall have a minimum depth of 12 inches and a minimum paved width of 30 inches measured horizontally across the drain. The slope of the drain shall be approved by the Director.

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24.70.110 Erosion Control.

(Repealed by Ordinance No. 173979, effective March 1, 2000.)

24.70.120 Grading Inspection.

- A.** General. All grading operations for which a permit is required shall be subject to inspection by the Director. When required by the Director, special inspection of grading operations and special testing shall be performed in accordance with the provisions of Section 24.70.120 C.
- B.** Grading designation. All grading in excess of 5,000 cubic yards shall be performed in accordance with the approved grading plan prepared by a civil engineer and shall be designated as “engineered grading.” Grading involving less than 5,000 cubic yards may also be designated as “engineered grading” by the Director if the grading will
- 1.** support a building or structure of a permanent nature;
 - 2.** support other engineering works such as, but not limited to, tanks, towers, machinery, retaining wall, and paving;
 - 3.** be deemed a potential hazard under Section 24.70.030. The permittee with the approval of the Director may also choose to have the grading performed as “engineered grading.” Otherwise, the grading shall be designated as “regular grading.”
- C.** Engineered grading requirements. For engineered grading, it shall be the responsibility of the civil engineer who prepares the approved grading plan to incorporate all recommendations from the soil engineering and engineering geology reports into the grading plan. He shall also be responsible for the professional inspection and approval of the grading within his area of technical specialty. This responsibility shall include, but need not be limited to, inspection and approval as to the establishment of line, grade, and drainage of the development area. The civil engineer shall act as the coordinating agent in the event that need arises for liaison between the other professionals, the contractor, and the Director. The civil engineer shall also be responsible for the preparation of revised plans and the submission of as-graded grading plans upon completion of the work. The grading contractor shall submit in a form prescribed by the Director a statement of compliance to said as-graded plan.

Soil engineering and engineering geology reports shall be required as specified in Section 24.70.050. During grading all necessary reports, compaction data, and soil engineering and engineering geology recommendations shall be submitted to the civil engineer and the Director by the soil engineer and the engineering

geologist. The soil engineer's area of responsibility shall include, but need not be limited to, the professional inspection and approval concerning the preparation of ground to receive fills, testing for required compaction, stability of all finish slopes, and the design of buttress fills, where required, incorporating data supplied by the engineering geologist.

The engineering geologist's area of responsibility shall include, but need not be limited to, professional inspection and approval of the adequacy of natural ground for receiving fills and the stability of cut slopes with respect to geological matters, and the need for subdrains or other ground water drainage devices. He shall report his findings to the soil engineer and the civil engineer for engineering analysis.

The Director shall inspect the project at the various stages of work requiring approval and at more frequent intervals necessary to determine that adequate control is being exercised by the professional consultants.

- D.** Regular grading requirements. The Director may require inspection and testing by an approved testing agency. The testing agency's responsibility shall include, but need not be limited to, approval concerning the inspection of cleared areas and benches to receive fill, and the compaction of fills. When the Director has cause to believe that geological factors may be involved the grading operation will be required to conform to "engineered grading" requirements.
- E.** Notification of noncompliance. If, in the course of fulfilling their responsibility under this Chapter, the civil engineer, the soil engineer, the engineering geologist, or the testing agency finds that the work is not being done in conformity with this Chapter or the approved grading plans, the discrepancies shall be reported immediately in writing to the person in charge of the grading work and to the Director. Recommendations for corrective measures, if necessary, shall be submitted.
- F.** Transfer of responsibility for approval. If the civil engineer, the soil engineer, the engineering geologist, or the testing agency of record are changed during the course of the work, the work shall be stopped until the replacement has agreed to accept the responsibility within the area of their technical competence for approval upon completion of the work.

24.70.130 Completion of Work.

- A.** Final reports. Upon completion of the rough grading work and that final completion of the work the Director may require the following reports and drawings and supplements thereto:

 - 1.** An as-graded grading plan prepared by the civil engineer including original ground surface elevations, as-graded ground surface elevations,

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lot drainage patterns, and locations and elevations of all surface and sub-surface drainage facilities. He shall provide approval that the work was done in accordance with the final approved grading plan.

- 2.** A Soil Grading Report prepared by the soil engineer including locations and elevations of field density tests, summaries of field and laboratory tests and other substantiating data and comments on any changes made during grading and their effect on the recommendations made in the soil engineering investigation report. He shall provide approval as to the adequacy of the site for the intended use.
 - 3.** A Geological Grading Report prepared by the engineering geologist including a final description of the geology of the site including any new information disclosed during the grading and the effect of same on recommendations incorporated in the approved grading plan. He shall provide approval as to the adequacy of the site for the intended use as affected by geological factors.
- B.** Notification of completion. The permittee or his agent shall notify the Director when the grading operation is ready for final inspection. Final approval shall not be given until all work including installation of all drainage facilities and their protective devices and all erosion control measures have been completed in accordance with the final approved grading plan and the required reports have been submitted.

Chapter 24.75

**UNIFORM BUILDING ADDRESS
SYSTEM**

(Added by Ordinance No. 161984,
effective July 1, 1989.)

Sections:

24.75.010	Uniform System.
24.75.020	Size and Location of Building Numbers.
24.75.030	Administration.
24.75.040	Owner Responsibility.
24.75.050	Alteration of Building Number - Improper Number.
24.75.060	Building Defined.
24.75.070	Enforcement.

24.75.010 Uniform System.

- A.** There is established a uniform system of numbering all buildings in separate ownership or occupancy in the City dividing the City into five general districts. In establishing the system Williams Avenue and the center line of the Willamette River southerly from Glisan Street shall constitute the north and south base line from which the numbers on all buildings running easterly and westerly from said streets shall be extended each way, upon the basis of one number for each ten feet of property frontage, wherever possible, starting at the base line with the number 1 continuing with consecutive hundreds at each intersection, wherever possible; provided, however, that streets running easterly and westerly in that district south of Jefferson Street and lying between Front Avenue and the Willamette River shall have the prefix "0" placed before the assigned number, said numbers starting at Front Avenue with the number 1 and continuing with consecutive hundreds at each intersection, where possible. All even numbers shall be placed upon buildings on the southerly side of streets, avenues, alleys and highways, and all odd numbers shall be placed upon buildings on the northerly side of streets, avenues, alleys and highways. Burnside Street shall constitute the east and west base line from which the numbers on all streets running north and south from said streets shall be extended each way, upon the basis of one number for each 10 feet of property frontage, wherever possible, starting at the base line with number 1 and continuing with consecutive hundreds at each intersection, wherever possible. All even numbers shall be placed upon buildings on the easterly side of streets, avenues, alleys, and highways, and all odd numbers upon buildings on the westerly side of said streets, avenues, alleys, and highways. Freestanding

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buildings on private streets which are separately owned or occupied shall be separately numbered so as to most closely conform to this system. Each portion of a building which is separately owned or occupied and has a separate entrance from the outside shall have a separate number assigned to it.

- B.** Suffixes to Building Numbers. Where building address requirements exceed numbers available within the numbering system, the Director may use the suffix “A”, “B”, “C”, etc. as may be required to provide the numbering required by this Chapter.

24.75.020 Size and Location of Building Numbers.

All numbers placed in accordance with this Chapter shall be permanently affixed to a permanent structure and of sufficient size and so placed as to be distinctly legible from the public way providing primary access to the building. All numbers shall be posted as nearly as possible in a uniform place and positioned on the front of each building near the front entrance. Where outside illumination is provided, the numbers shall be placed so as to be illuminated by the outside light. In instances where building mounted numbers are not distinctly visible from a public way, a duplicate set of numbers shall be permanently affixed to a permanent structure at the primary entranceway to such property. If, in the judgment of the Director, the numbering, sequence, legibility, size or location does not meet the requirements as set forth above, the property owner or agent therefor shall be notified and within 30 days shall make such changes as required in the notification.

24.75.030 Administration.

The Director shall assign address numbers, keep records of address assignments, and exercise such other powers as are necessary to carry out the provisions of this Chapter.

24.75.040 Owner Responsibility.

Whenever any new building is erected, modified, or occupied in a manner requiring an address assignment, the owner or owner’s agent shall procure the correct address number or numbers designated by the Director and pay required fees.

The owner or agent shall prior to occupancy or within 30 days of assignment, whichever occurs later, place the assigned address number(s) upon the building or in a manner and location as provided in this Chapter.

24.75.050 Alteration of Building Number - Improper Number.

It is unlawful for any person to cause or knowingly permit a building number to be displayed which is different than that assigned pursuant to this Chapter. It is unlawful for any person to own or have possession of a building which does not display the number assigned pursuant to this Chapter in the manner provided by this Chapter.

24.75.060 Building Defined.

As used in this Chapter, “building” is any structure used or intended for supporting or sheltering any use or occupancy.

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24.75.070 Enforcement.

The Director shall provide written notices to the owner of any building in violation of the provisions of this Title. The notice shall state the violations existing and specify the owner has 30 days to obtain compliance.

In the event the owner fails or neglects to comply with the violation notice in the prescribed time the Director may gain compliance by:

- A.** Instituting an action before the Code Enforcement Hearings Officer as provided in Title 22 of the City Code, or
- B.** Causing appropriate action to be instituted in a court of competent jurisdiction, or
- C.** Taking such other action as the Director deems appropriate.

Chapter 24.80

DERELICT COMMERCIAL BUILDINGS

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

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Chapter 24.85

**SEISMIC DESIGN
REQUIREMENTS FOR EXISTING
BUILDINGS**

(Added by Ordinance No. 168627,
effective Mar. 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 No. 178831, effective November 20, 2004.)

- 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. 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 and 180917, effective May 26, 2007.) The definitions contained in this Section relate to seismic design requirements for existing buildings outlined in this Chapter.

- A.** **ASCE 31** means the Seismic Evaluation of Existing Buildings ASCE/SEI 31-03 published by the American Society of Civil Engineers and the Structural Engineering Institute.
- B.** **ASCE 31** 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 31. ASCE 31 Evaluation is divided into two categories:
- 1.** Non-essential facilities evaluation means a Tier 1 and a Deficiency-Only Tier 2 analysis to the Life Safety (LS) performance level as defined by ASCE 31 unless a complete Tier 2 analysis is required by ASCE 31.
 - 2.** Essential facilities evaluation means a Tier 2 analysis to the Immediate Occupancy (IO) performance level as defined by ASCE 31.
- C.** **ASCE 31** Improvement Standard means the Tier 1 and Tier 2 Life Safety Performance Level Criteria of ASCE 31.
- D.** **ATC 20** means the 1989 Edition of the manual on “Procedures for Post Earthquake Safety Evaluation of Buildings” published by Applied Technology Council.
- E.** **BDS** means the City of Portland’s Bureau of Development Services.
- F.** **Building Addition** means an extension or increase in floor area or height of a building or structure.

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- G. Building Alteration** means any change, addition or modification in construction.
- H. Catastrophic Damage** means damage to a building that causes an unsafe structural condition from fire, vehicle collision, explosion, or other events of similar nature.
- I. Essential Facility** has the same meaning as defined in the OSSC.
- J. Fire and Life-safety for Existing Buildings (FLEx) Guide** means a code guide published by the Bureau of Development Services, outlining alternative materials and methods of construction that are allowed for existing buildings in Portland.
- K. 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.
- L. 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.
- M. 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.
- N. Oregon Structural Specialty Code (OSSC)** means the provisions of the State of Oregon Structural Specialty Code as adopted by Section 24.10.040 A.
- O. 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.

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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.
- P. 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% or more of the total roof area within the previous five year period.
- Q. 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.
- R. 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 200 pounds per lineal foot of wall.
- S. 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 and 178831, effective November 20, 2004.) The following table shall be used to classify the relative hazard of all building occupancies:

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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
4	R-1, R-2, SR, I-1, I-4	
3	B, M	ASCE 31
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 31 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 31	1, 2, and 3
More than 1/3 of area	or	150 and above	OSSC	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 31 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 31 improvement standard; and
 - 2. The building meets the fire and life safety standards of either the FLEx Guide or 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 31 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 seismic requirements, regardless of other requirements in this section.

24.85.050 Building Additions or Structural Alterations.

(Amended by Ordinance No. 178831, effective November 20, 2004.) 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 three conditions listed below are met. Furthermore, structural alterations to an existing building or its structural elements shall also meet the following three conditions:

- A. The addition or structural alteration shall comply with the requirements for new buildings;
- B. The addition or structural alteration shall not increase the seismic forces in any structural element of the building by more than 5 percent unless the capacity of the element subject to the increased forces is equal to or greater than that required for new buildings. Multiple force increases on an element are allowed provided the cumulative force increase does not exceed 5 percent of the force on the element from its original, unaltered state; and
- C. The addition or structural alteration shall not decrease the seismic resistance of any structural element of the existing building unless the reduced seismic resistance of the element is equal to or greater than that required for new buildings.

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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 178831, effective November 20, 2004.)

- A.** Building structural systems damaged less than or equal to 50%.
 - 1.** If a building is damaged by a catastrophic event such that the area of the resulting structural damage is less than or equal to 50 percent of the building's net area, all 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 31, where they did not previously exist, or make existing conditions more hazardous.
- B.** Building structural systems damaged more than 50%. Where a building is damaged by a catastrophic event such that the area of the resulting structural damage is greater than 50 percent of the building's net floor area, all lateral load resisting components of the entire building's structural system must be designed and constructed to the current provisions of the OSSC.

24.85.056 Structural Systems Damaged by an Earthquake.

(Added by Ordinance No. 178831, effective November 20, 2004.) 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 31 improvement standard.

 - 1.** Where less than 50% of the lateral support system has been damaged, only the damaged elements must be repaired.
 - 2.** Where 50% 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 31 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 31 improvement standard.

 - 1.** Where less than 50% of the lateral support system has been damaged, only the damaged elements must be repaired.
 - 2.** Where 50% 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 31 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

TITLE 24

BUILDING REGULATIONS

weak story seismic deficiencies, as defined by ASCE 31, 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 178831, effective November 20, 2004). 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 31 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 31 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.
- 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 31 evaluation.

24.85.065 Seismic Strengthening of Unreinforced Masonry Bearing Wall Buildings.

(Added by Ordinance No. 169427; amended by 170997 and 178831, effective November 20, 2004). 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 may be submitted for consideration by the Bureau Director as equivalent to the ASCE 31 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 31 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 in a 2 year period exceeds the following criteria, then the building shall be improved to resist seismic forces such that the entire building conforms to the ASCE 31 improvement standard.

Table 24.85-C	
Building Description	Cost of Alteration or Repair
Single Story Building	\$40 per square foot
Buildings Two Stories or Greater	\$30 per square foot

- 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 \$30 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

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BUILDING REGULATIONS

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 2004 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.

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.)

- 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% when such fees would total \$2,500 or more.

24.85.095 Appeals.

(Amended by Ordinance No. 178831, effective November 20, 2004.) Because unanticipated circumstances may arise in the enforcement of these requirements for existing buildings, consideration as to the reasonable application of this Chapter may be addressed through the Board of Appeals as provided in Section 24.10.080.

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BUILDING REGULATIONS

Chapter 24.90

**MANUFACTURED DWELLING INSTALLATION AND ACCESSORY
STRUCTURES, MANUFACTURED DWELLING PARKS,
RECREATION PARKS, RECREATIONAL PARK
TRAILER INSTALLATION AND ACCESSORY STRUCTURES**

(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.)

- A.** Manufactured Dwelling Installation Specialty Code. The provisions of the State of Oregon, Manufactured Dwelling Installation Specialty Code, 2010 Edition, as developed at the direction of the Building Codes Division of the Oregon Department of Consumer and Business Services through the Residential and Manufactured Structures Board, is hereby adopted by reference. The Manufactured Dwelling Installation Specialty Code is on file in the Development Services Center of the City of Portland.
- B.** Manufactured Dwelling and Park Specialty Code. The following provisions of the State of Oregon, Manufactured Dwelling and Park Specialty Code, 2002 Edition, as developed at the direction of the Oregon Building Codes Division Administrator through the Oregon Manufactured Structures and Parks Advisory Board, a copy of which is on file in the Development Services Center of the City of Portland, are hereby adopted by reference:

 - 1.** All of Chapter One (Administration), except the following:

 - a.** 1-1.4 (Design Loads)
 - b.** 1-2.4 (Energy Conservation Equivalents)
 - c.** 1-3 (Manufactured Dwellings Sold “As Is”)
 - d.** 1-6.7 (Plot Plans Required)
 - e.** 1-6.8 (Plot Plans Not Required)
 - f.** 1-6.11 (Multiple-family Housing Plans)
 - g.** 1-7.12 (Manufactured Dwelling Installation Permits)
 - h.** 1-8.6 (Visual Inspections)
 - i.** 1-8.7 (Appliance Inspections)
 - j.** 1-8.9 (Alteration Inspections)
 - k.** 1-8.11 (Quality Assurance Inspections)
 - l.** 1-8.13 (Installation Inspections)

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BUILDING REGULATIONS

- m. 1-9 (Insignias and Labels)
 - n. 1-10 (Certifications), except section 1-10.2.1 (Certificates of Occupancy Required) is adopted
 - o. 1-11 (License Required) –all, except for introductory language and paragraph (h) in 1-11.3 (Electrical) and introductory language and paragraph (i) in 1-11.4 (Plumbing) are adopted
 2. All of Chapter Ten (Manufactured Dwelling Park Construction) and the corresponding tables and figures
 3. Appendix A (Definitions)
 4. Appendix B (Acronyms)
 5. Appendix C (Symbols)
- C. The City of Portland through the Bureau of Development Services (“Bureau”) adopts regulatory authority for the installation maintenance and alteration of manufactured dwellings and accessory structures as authorized in ORS 446.250 and 446.253, and OAR 918-500-0055; for the development and maintenance of manufactured dwelling parks as authorized in ORS 446.062 and 446.430 and OAR 918-600-0010; for the development and maintenance of recreation parks, picnic parks and organizational camps as authorized in ORS 455.170; and for the installation, maintenance and alteration of residential park trailers, other recreational vehicles and accessory structures as authorized in ORS 455.170 and OAR 918-525-0370. Nothing contained herein provides regulatory authority when delegation of authority is expressly withheld by the State.

24.90.040 Definitions.

(Amended by Ordinance No. 185798, effective December 12, 2012.) For the purposes of this Chapter definitions contained in Chapter 24.15 shall apply in conjunction with definitions found in ORS 446.003, ORS 455.010, OAR 918-500-0005, OAR 918-525-0005, OAR 918-600-0005 and OAR 918-650-0005. Definitions in ORS or OAR shall take precedence over other conflicting definitions.

24.90.050 Administration and Enforcement.

(Amended by Ordinance Nos. 176955 and 185798, effective December 12 , 2012.) This Chapter shall be administered and enforced in conformance with applicable provisions of the 2010 Edition of the Oregon Manufactured Dwelling Installation Specialty Code, the provisions of the 2002 Edition of the Oregon Manufactured Dwelling and Park Specialty Code adopted by reference in Subsection 24.90.030 B. of this Chapter, and the Oregon Administrative Rules contained in Chapter 918 Division 500, 515, 525, 530, 600 and 650.

24.90.060 Special Regulation.

Manufactured Dwellings and Cabanas installed on a residential lot shall be certified by the manufacturer to have an exterior thermal envelope meeting performance standards which reduce levels equivalent to the performance standards required of single family dwellings constructed under the state building code. Skirting and permanent enclosures shall be required for all park trailer and cabana installations.

24.90.070 Permit Application.

(Amended by Ordinance No. 185798, effective December 12, 2012.) Permits are required for the establishment, construction, enlargement, alteration or removal of manufactured dwelling parks, recreation parks, and organizational camps. Permit applications, plans and specifications and permit issuance shall conform to Section 24.10.070, and applicable Oregon Administrative Rules. Permits are required for the installation or alteration of manufactured dwellings, recreational park trailers, recreational vehicles as defined in OAR 918-525-0005, and accessory structures. Plans and specifications are required in conformance with Section 24.10.070 and applicable Oregon Administrative Rules except when:

- A. All installation is within an existing manufactured dwelling park and all the installation is performed in accordance with the manufacturer's approved installation instructions.
- B. All installation is within an existing recreational vehicle or combination park, and all installation is performed under OAR 918-530-0005 through 918-530-0120. When the Director determines special installation or construction requires design by a registered engineer or architect, such design shall be submitted in triplicate and approved by the Bureau prior to commencement or continuance of installation or construction.

24.90.080 Violations.

(Amended by Ordinance No. 185798, effective December 12, 2012.) Any person who violates any provision of this Chapter and/or any codes adopted herein shall be subject to the penalties as prescribed by law.

24.90.090 Appeals.

(Amended by Ordinance No. 185798, effective December 12, 2012.) Any person, firm or corporation aggrieved by a decision of the Bureau under this Chapter may request an administrative appeal and pay the appeal fee. An internal administrative appeal committee consisting of persons appointed by the Director who are especially qualified to provide expert opinions in matters of this Chapter under appeal shall act in an advisory capacity to the Director. Committee review shall culminate in a finding by the Director. Further appeal may be made without fee to the appropriate Board of Appeal described in Sections 24.10.080, 25.07, 26.03.070 and 27.02.030. Within 30 days of the final appeal

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BUILDING REGULATIONS

finding by the Board of Appeal, an appellant who continues to be aggrieved may appeal to the appropriate State Specialty Advisory Board pursuant to ORS 455.690.

Chapter 24.95

**SPECIAL DESIGN STANDARDS
FOR FIVE STORY APARTMENT
BUILDINGS**

(Chapter repealed by Ordinance No. 185798,
effective December 12, 2012.)

BASIC FLOODPLAIN RELATIONSHIPS

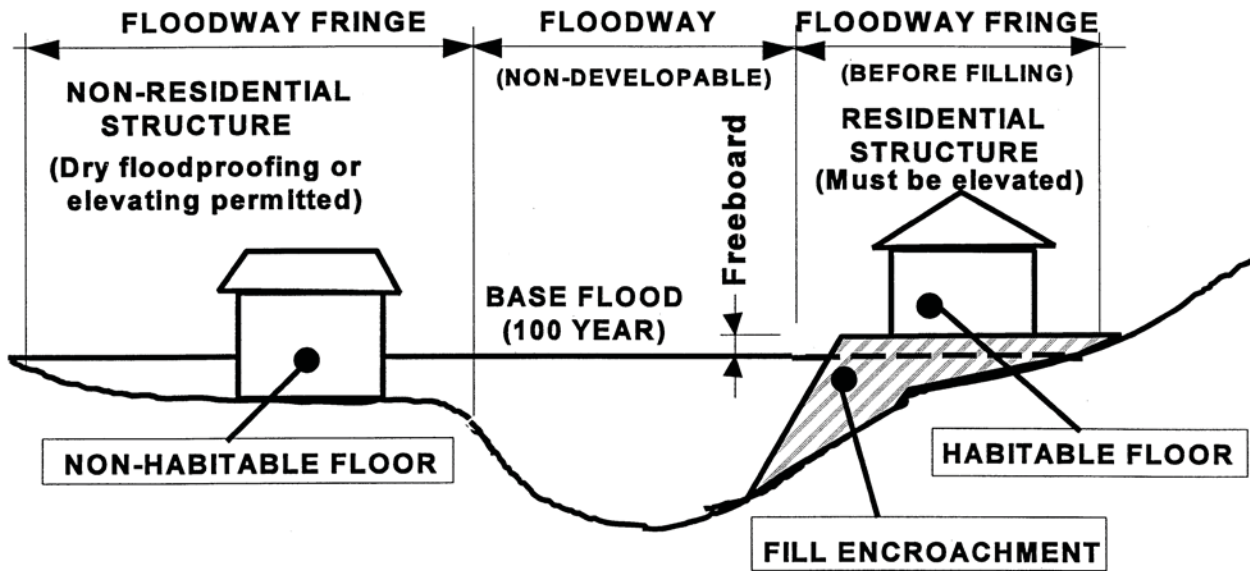


FIGURE 1 (Section 24.50.070)

**TITLE 24
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FIGURE 2 (24.70)

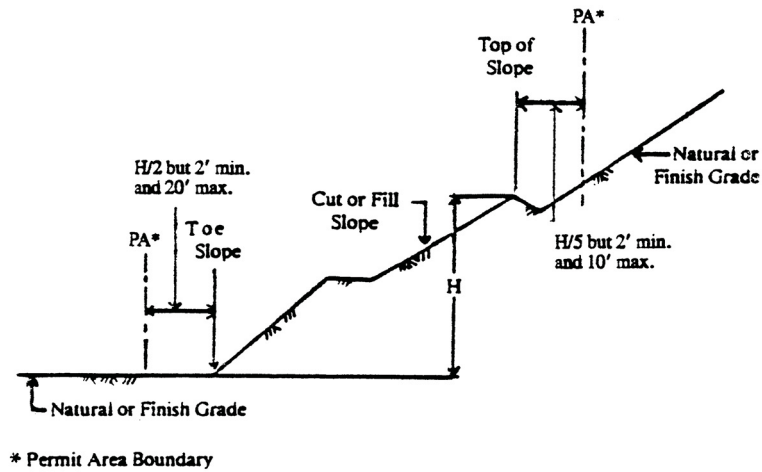


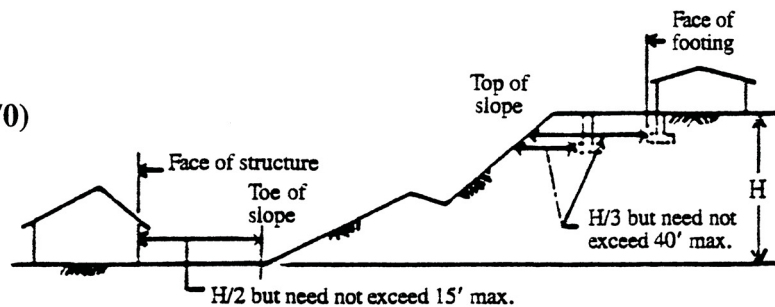
Table No. 24.70-C
Required Setbacks from permit area boundary (in feet)

TABLE 24-70C

H	SETBACKS	
	a	b'
Under 5	0	1
5 - 30	$H/2$	$H/5$
Over 30	15	6

Additional width may be required for interceptor drain.

FIGURE 3 (24.70)



TITLE 25
PLUMBING REGULATIONS

Chapter 25.01 **TITLE AND SCOPE**

- 25.01.010 Title.
- 25.01.020 Scope-Oregon State Plumbing Specialty Code.

Chapter 25.02 **DEFINITIONS**

- 25.02.020 Approved.
- 25.02.030 Building.
- 25.02.040 Building Wrecker.
- 25.02.050 Bureau of Development Services.
- 25.02.055 Director.
- 25.02.060 Journeyman Plumber.
- 25.02.070 Maintenance Person.
- 25.02.080 Plumbing Contractor.
- 25.02.090 Plumbing Inspector.
- 25.02.095 Rainwater Harvesting System.
- 25.02.100 Sewer Contractor.
- 25.02.110 Structure.

Chapter 25.03 **ADMINISTRATION**

- 25.03.010 Enforcement.
- 25.03.020 Chief Plumbing Inspector's Duties.
- 25.03.030 Inspector's Right of Entry.

Chapter 25.04 **ADMINISTRATIVE REGULATORY PROVISIONS**

- 25.04.010 Conformity Required.
- 25.04.015 Stop Orders.
- 25.04.020 Renewals and Repairs.
- 25.04.030 Plumbing Work To Be Regulated.
- 25.04.040 Minor Plumbing Labels.
- 25.04.050 Owner May Perform Plumbing Work.
- 25.04.060 Plumbing Work To Be Performed by Owner, Journeyman Plumber, or
Indentured Apprentice.
- 25.04.070 Certificate of Final Inspection.
- 25.04.080 Advertising or Display Signs.
- 25.04.090 Mechanical Devices.

Chapter 25.05	PERMITS
25.05.010	Required.
25.05.020	Permit and Report Required To Do Plumbing Work.
25.05.030	Plumbing Permit Application.
25.05.040	Plumbing Plan Examination.
25.05.050	Life of Permit Limited.
25.05.060	Fees.
25.05.070	Repairs, Replacements, and/or Completions.
25.05.080	Revocation.
25.05.090	Partial Refund of Fees.
25.05.100	Reduction of Fees.
Chapter 25.06	REGISTRATIONS
25.06.010	Compliance Agreement.
25.06.020	State Registration Number Required.
Chapter 25.07	BOARD OF APPEAL
25.07.010	Established-Terms-Vacancies.
25.07.020	Authority.
25.07.035	Registration Review Board.
25.07.040	Rules To Be Adopted.
25.07.050	Reports.
Chapter 25.08	REPAIR OF PRIVATE SEWER SYSTEMS INVOLVING MORE THAN ONE PROPERTY
25.08.010	Purpose.
25.08.020	Definitions.
25.08.030	Equal Responsibility for Repair and Nuisance Abatement.
25.08.040	Private Sewer System Traversing Another Property.
25.08.050	Damaged Private Sewer System as Nuisance.
25.08.060	Authority of City to Abate Nuisance and Lien Property.
25.08.070	Applicability.
Chapter 25.09	CONVERSION OR ABANDONMENT OF NONCONFORMING SEWERS
25.09.010	Purpose.
25.09.020	Authority of the Bureau of Environmental Services to Regulate by Administrative Rule.
25.09.030	Authority of the Bureau of Environmental Services to Require Information.
25.09.040	Damaged Nonconforming Sewer as Nuisance.
25.09.050	Equal Responsibility for Repair and Nuisance Abatement.
25.09.060	Participation of the Bureau of Development Services in Appeals.

TITLE 25
PLUMBING REGULATIONS

Upon submission to the Board of Appeals, including the advisory member, types of plumbing fixtures or valves, devices, or appliances for the direct supplying and flushing of plumbing fixtures and traps may be approved and may be permitted to be used by the unanimous vote of the Board after examinations or tests of such types of fixtures, valves, devices, or appliances have shown that they will not constitute a sanitary hazard or cause pollution of the water supply. If it is found by the Board that the fixtures, valves, devices, or appliances do not comply with the requirements herein specified, the Board of Appeals reserves the right to revoke any approval, after the permittee has had notice and an opportunity of a hearing. Record of the approval by the Board of types of plumbing fixtures, valves, devices, or appliances, as herein set forth, shall be posted in the Plumbing Division of the Bureau of Development Services; and, likewise, a record of the approval of equivalent materials and methods approved by the Board, as herein provided, shall be posted in the Plumbing Division in the Bureau of Development Services. The provisions relative to approval by the Board of Appeal for plumbing fixtures, valves, devices, or appliances for the direct supply and flushing of plumbing fixtures and traps shall apply to types of relief valves for which approval is sought that they will operate in a safe and efficient manner and will relieve at the pressures to which they are set. The provisions as to posting shall also apply. Any requirements deemed necessary to abate unsanitary conditions in connection with any Plumbing Inspection not specifically covered in this Title shall be determined by the Plumbing Inspector, subject to review by the Board of Appeals.

- B.** If any plumbing contractor, owner, or sewer contractor refuses or neglects to comply with the provisions of this Title within a reasonable time after written notice of any violation discovered by the Plumbing Inspector has been sent, the Board, upon request of the Plumbing Inspector, shall hold a hearing relative to the alleged violation. At the hearing, the Board shall determine if the plumbing contractor, owner or sewer contractor has refused or neglected to comply with the provisions of this Title.

25.07.030 Fees for Appeals.

(Repealed by Ordinance No. 174720, effective August 21, 2000.)

25.07.035 Registration Review Board.

- A.** The Board of Appeals shall act as the Registration Review Board in matters concerning violations of this Title by a plumbing or sewer contractor. The Review Board is authorized to revoke the registration of a plumbing or sewer contractor subsequent to a hearing. A revocation of registration shall be for a period of no less than 6 months.

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PLUMBING REGULATIONS

- B.** A written notice sent by certified mail shall be issued at least 10 days prior to the date of any hearing procedure.
- C.** The State of Oregon Builders Board, Department of Commerce, and/or the Department Of Environmental Quality shall be notified of any revocation order issued by the Review Board, including the length of such revocation.
- D.** A contractor may appeal the action of the Review Board by filing a written appeal to the City Council through the Office of the City Auditor within 10 days of a hearing decision by the Board. The appeal shall be placed on the next Calendar for a regular Council meeting. There shall be no fee required for an appeal filed under this Section.

25.07.040 Rules To Be Adopted.

The Board of Appeals from time to time shall make and adopt rules and regulations for tests which the Board deems advisable for the testing of fixtures, valves, appliances, and devices. The person applying to the Board of Appeals for an approval of any fixture, valve, appliance, or device shall pay the costs of any test required by the Board.

25.07.050 Reports.

It shall be the duty of the Board of Appeals to submit to the Council, on or before the first of January of each year in a report giving a summary of all decisions of the Board and a record of the business transacted, together with such recommendations for desirable legislation affecting plumbing installations as may be advisable.

Chapter 25.08

**REPAIR OF PRIVATE SEWER SYSTEMS
INVOLVING MORE THAN ONE PROPERTY**

(Chapter added by Ordinance No. 171028,
effective March 26, 1997)

Sections:

- 25.08.010 Purpose.
- 25.08.020 Definitions.
- 25.08.030 Equal Responsibility for Repair and Nuisance Abatement.
- 25.08.040 Private Sewer System Traversing Another Property.
- 25.08.050 Damaged Private Sewer System as Nuisance.
- 25.08.060 Authority of City to Abate Nuisance and Lien Property.
- 25.08.070 Applicability.

25.08.010 Purpose.

(Amended by Ordinance No. 183397, effective January 8, 2010.) The purpose of this Chapter is to establish responsibility for the operation and repair of damaged common private sewers or private sewers that traverse another private property in the absence of any written agreement among or between property owners. It is the goal of the City to have each individual property served by an individual lateral to a public sewer.

Nonconforming common private sewers or private sewers that traverse another property and are located in a private easement are exempt from this Section. This Chapter grants the City authority to abate nuisances created by the use of damaged private sewers, without regard to the fault of the property owner, and authorizes the City to recover the costs it incurs in abating these nuisances by assessing liens against properties served by the damaged private sewers. This Chapter allows property owners to seek any legal relief against any person responsible for causing or exacerbating damage to the private sewer.

25.08.020 Definitions.

(Amended by Ordinance No. 185694, effective November 23, 2012.)

- A. **“Common Private Sewer System (also called Party Sewer)”** means that portion of a building sewer that:
 - 1. Is not owned by the City of Portland;
 - 2. Is used for draining more than one building under different ownership; and

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3. Conveys the discharge to a sewer service lateral, public sewer, private sewage disposal system, or other point of disposal.

Common private sewers are found on private property and in private and public rights-of-way, including easements.

- B. **“Damaged Private Sewer System.”** Damaged Private Sewer System means a private sewer not in compliance with applicable governmental regulations.
- C. **“Owner.”** Owner means the person shown on current assessment records in the County Office of Assessment and Taxation as the owner of the title to the real property or the contract purchaser of the real property. Owner also includes a deedholder or contract purchaser whose name does not appear in the latest assessment record, but who presents to the Bureau a copy of a deed or contract of sale showing the date, book, and page of recording.
- D. **“Repair of Private Sewer System.”** Repair of a private sewer system means any work, including repairs, reconstruction, and replacement, required to return a damaged private sewer system to compliance with applicable government regulations.

25.08.030 Equal Responsibility for Repair and Nuisance Abatement.

An owner of a building using any damaged section of a common private sewer system shall be responsible equally for all costs of repair with any other owner whose building also uses that section of the damaged common private sewer. In addition, these owners shall be responsible equally for all costs associated with any abatement by the City of any nuisance created by their buildings’ use of that section of the damaged common private sewer and for all penalties for violations of this Code associated with the damaged sewer line.

Exception: When repair or abatement of a damaged common private sewer includes a new sewer connection of an individual property to a public sewer, the owner of that property shall be solely responsible for the cost of the new connection. In addition, the owner of the newly connected property may be responsible for other costs associated with repair and abatement of the damaged common private sewer when the Director determines that it would be fair and equitable to do so.

25.08.040 Private Sewer System Traversing Another Property.

When a damaged private sewer system serving a building on a property:

- A. traverses another property prior to connecting to a public sewage disposal system, and
- B. the damage occurs on the traversed property, and

- C. the owner of the traversed property does not use the damaged section of the private sewer system,

then the owner of the property using the damaged private sewer system shall be fully responsible for the damaged private sewer system and for all costs and penalties assessed by the City for violations of this Code associated with the damaged sewer line.

25.08.050 Damaged Private Sewer System as Nuisance.

Any damaged private sewer system is deemed a nuisance.

25.08.060 Authority of City to Abate Nuisance and Lien Property.

(Amended by Ordinance No. 180330, effective August 18, 2006.) If the owners using a damaged private sewer system neglect, refuse, or fail to correct the damage after the Bureau provides notice pursuant to Section 29.60.050, the City may correct the damage pursuant to Section 29.60.060, 29.60.070 or 29.60.080 and assess the property or properties using the system pursuant to the procedures in 29.70.020. In the case of a common private sewer system, the City shall calculate the amount of assessment on the property pursuant to 29.70.020. In addition, regarding a private sewer system traversing another property, the Bureau shall notify the owner whose property is traversed by but not connected to the damaged private sewer system that the system has been declared a nuisance. The City may enter that property to abate the nuisance after providing notice.

25.08.070 Applicability.

Section 25.08.030 shall not alter the terms and conditions of any easement of record, or of any other written agreement between or among owners. However, nothing in this section affects or impairs the City's authority under PCC 25.08.060.

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Chapter 25.09

CONVERSION OR ABANDONMENT OF NONCONFORMING SEWERS

(Chapter added by Ordinance No. 185694,
effective November 23, 2012.)

Sections:

- 25.09.010 Purpose.
- 25.09.020 Authority of the Bureau of Environmental Services to Regulate by Administrative Rule.
- 25.09.030 Authority of the Bureau of Environmental Services to Require Information.
- 25.09.040 Damaged Nonconforming Sewer as Nuisance.
- 25.09.050 Equal Responsibility for Repair and Nuisance Abatement.
- 25.09.060 Participation of the Bureau of Development Services in Appeals.

25.09.010 Purpose.

The purpose of this Chapter is to transfer from the Bureau of Development Services to the Bureau of Environmental Services (BES) certain regulatory authority over nonconforming sewers, as that term is defined in Chapter 17.33.

25.09.020 Authority of the Bureau of Environmental Services to Regulate by Administrative Rule.

The Director of BES may adopt, amend, repeal and enforce administrative rules and procedures pertaining to nonconforming sewers as provided by Titles 3, 17 and 22.

25.09.030 Authority of the Bureau of Environmental Services to Require Information.

BES may require owners of properties connected to nonconforming sewers to submit photographic or plumbing records or other evidence as it deems appropriate.

25.09.040 Damaged Nonconforming Sewer as Nuisance.

A damaged nonconforming sewer is deemed a nuisance. Subject to Title 22, BES may abate such nuisances and recover any costs incurred thereby through the assessment of liens against properties served by the nonconforming sewers.

25.09.050 Equal Responsibility for Repair and Nuisance Abatement.

The owner of each property connected to a damaged nonconforming sewer is proportionally liable for all costs of repair of the sewer, all costs associated with any City abatement efforts, and all penalties for violations of this Code.

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25.09.060 Participation of the Bureau of Development Services in Appeals.

Appeals of BES requirements pertaining to nonconforming sewers will be processed in conjunction with the Bureau of Development Services Board of Appeal.

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Chapter 27.01 **TITLE AND SCOPE**

- 27.01.010 Title.
- 27.01.020 Purpose.
- 27.01.030 Scope.
- 27.01.035 Solar Installation Specialty Code.
- 27.01.040 Existing Equipment.
- 27.01.050 Alternate Materials and Methods of Construction

Chapter 27.02 **ORGANIZATION AND ENFORCEMENT**

- 27.02.010 General.
- 27.02.020 Violations and Penalties.
- 27.02.030 Board of Appeals.
- 27.02.031 Powers of the Board of Appeals.

Chapter 27.03 **PERMITS AND INSPECTION**

- 27.03.010 Permits Required.
- 27.03.020 Permits.
- 27.03.030 Validity and Length of Permits.
- 27.03.031 Master Permit/Facilities Program.
- 27.03.035 Commercial and Industrial Minor Mechanical Labels.
- 27.03.040 Heating and Ventilating Fees.
- 27.03.050 Inspection.
- 27.03.060 Request for Inspection.

Chapter 27.05 **EQUIPMENT-GENERAL**

- 27.05.021 Capacity.

Chapter 27.19 **ELECTRIC HEATING SYSTEMS**

- 27.19.050 Serving Utility Requirements.
- 27.19.051 Requirements for Converting Electrical Energy to Thermal (Heat) Energy.
- 27.19.052 Electrical Service Capacity.
- 27.19.053 Electric Floor Furnaces.
- 27.19.054 Electric Central Heating Systems.
- 27.19.055 Electric Heating-Resistance Cable Type.
- 27.19.056 Electric Panel-Prefabricated Conductive Materials.
- 27.19.057 Resistance Heating Units.
- 27.19.058 Other Permanently Placed Electric Heaters.
- 27.19.059 Installation of Resistance Heaters in Air Ducts.

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HEATING AND VENTILATING REGULATIONS

Chapter 27.01

TITLE AND SCOPE

Sections:

27.01.010	Title.
27.01.020	Purpose.
27.01.030	Scope.
27.01.035	Specialty Solar Code.
27.01.040	Existing Equipment.
27.01.050	Alternate Materials and Methods of Construction

27.01.010 Title.

This shall be known as Title 27, Heating and Ventilating Regulations and will be referred to herein as “this Code.”

27.01.020 Purpose.

The purpose of this Code is to provide minimum standards to safeguard life or limb, health, property, and public welfare by regulating and controlling the design, construction, installation, quality of materials, location, operation, and maintenance of heating, ventilating, comfort cooling, refrigeration systems, incinerators, and other miscellaneous heat-producing appliances.

27.01.030 Scope.

(Amended by Ordinance Nos. 150873, 158654, 162693, 166110, 166438, 169905, 174891, 176956, 177414, 178745, 181359 and 184140, effective September 29, 2010.)

- A. Mechanical Specialty Code. The provisions of the State of Oregon Mechanical Specialty Code, 2010 Edition, as published by the International Code Council as the International Mechanical Code, 2010 Edition along with the International Fuel Gas Code, 2009 Edition, and as amended by the Building Codes Division of the Oregon Department of Consumer and Business Services, are hereby adopted by reference. The Mechanical Specialty Code is on file in the Development Services Center of the City of Portland.

Unless specifically provided for in other Chapters of this Code, where requirements of this Title do not provide for or are not fully detailed with regard to processes, methods, specifications, equipment testing and maintenance standards of design performance and installation, and other pertinent criteria, applicable standards and recommendations of the National Fire Protection Association (hereinafter referred to as N.F.P.A.) as set forth in its National Fire Codes, current edition shall apply.

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In the following Chapters references may have been made to equipment not governed by this Code, in which case other Code or Codes shall apply.

- B.** One- and Two-Family Dwelling Code. The provisions of the State of Oregon, One- and Two-Family Dwelling Specialty Code, 2008 Edition, as published by the International Code Council, as the International Residential Code, 2006 Edition, and amended by the Building Codes Division of the Oregon Department of Consumer and Business Services, is hereby adopted by reference. The One- and Two-Family Dwelling Specialty Code is on file in the Development Services Center of the City of Portland.

27.01.035 Solar Installation Specialty Code.

(Added by Ordinance No. 185798, effective December 12, 2012.) The provisions of the State of Oregon Solar Installation Specialty Code 2010 Edition, as published by the Building Codes Division of the Oregon Department of Consumer and Business Services, are hereby adopted by reference. The Solar Installation Specialty Code is on file in the Development Services Center of the City of Portland.

27.01.040 Existing Equipment.

Heating, ventilating, comfort cooling or refrigeration systems, incinerators or other miscellaneous heat-producing appliances lawfully installed prior to the effective date of this Code may have their existing use, maintenance or repair continued if the use, maintenance or repair is in accordance with the original design and location and is not a hazard to life, health, or property.

All heating, ventilating, comfort cooling, or refrigeration systems, incinerators or other miscellaneous heat-producing appliances, both existing and new, and all parts thereof, shall be maintained in a safe and sanitary condition. All devices or safeguards which are required by this Code in heating, ventilating, comfort cooling, or refrigeration systems, incinerators or other miscellaneous heat-producing appliances when installed, altered, or repaired, shall be maintained in good working order. The owner or his designated agent shall be responsible for the maintenance of heating, ventilating, comfort cooling, refrigeration systems, incinerators, or other miscellaneous heat-producing appliances.

27.01.050 Alternate Materials and Methods of Construction.

The provisions of this Code are not intended to prevent the use of any material or method of construction not specifically prescribed by this Code, provided any such alternate has been approved.

The Building Official may approve any such alternate provided he finds that the proposed design is satisfactory and complies with the provisions of this Code, and that the material, method, or work offered is, for the purpose intended, at least the equivalent of that prescribed in this Code in quality, strength, effectiveness, fire resistance, durability, and safety.

The Building Official shall require that sufficient evidence or proof be submitted to substantiate any claims that may be made regarding its use.