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## CHAPTER 1 GOVERNMENT

### GENERAL PROVISIONS

#### Definitions

**1.000 Definitions.** In this code, the following words and phrases mean:

- (a) City. The city of Astoria, Oregon.
- (b) Code. This code and amendments thereof.
- (c) Minor. A person under the age of 21 years, except where this code provides a different age requirement.
- (d) Owner. The person who holds title to real property or who is the contract purchaser of real property, of record, as shown on the last available complete assessment roll in the office of the county assessor.
- (e) Person. A natural person, firm, partnership, association, corporation or joint stock company.
- (f) Person in charge of property. An agent, occupant, lessee, or person, other than the owner, having possession or control of property.
- (g) To. "To and including" when used in reference to a series of sections, subsections or paragraph.

**1.005 Title of Code.** This code is known as the "ASTORIA CODE." Such title may be referred to in a prosecution for violation of this code and such title may be used in amending, repealing or adding code provisions.

#### Penalty and Violation Provisions

**1.008 Soliciting to Violate Code.** No person may solicit, aid, abet, employ or engage another, or confederate with another to violate a provision of this code. *[Section 1.008 added by Section 2 of Ordinance No. 73-12, passed September 4, 1973.]*

**1.009 Attempt to Commit Offense.** A person who shall attempt to commit any of the offenses mentioned in this code, but who for any reason is prevented from consummating such act, may be deemed guilty of an offense. *[Section 1.009 added by Ordinance No. 73-12, Section 2, passed September 4, 1973.]*

**1.010 Penalties.**

- (1) Except as otherwise provided in this section, a violation of a provision of this code may be punishable by imprisonment not to exceed one year, or by a fine not to exceed \$1,000, or by both fine and imprisonment. However, if there is a violation of a provision substantially similar to a state statute with a lesser penalty attached, punishment shall be limited to the lesser penalty prescribed in the state law.
- (2) Each violation of a separate provision of this code constitutes a separate offense, and each day that a violation of this code is committed or permitted to continue constitutes a separate offense.
- (3) Fines fees and costs imposed pursuant to Sections 5.680, 5.682, 5.720 are not subject to the limitations of Subsection (1) and the abatement of a nuisance under Section 5.706 through 5.728 is a remedy in addition to any penalty for violation of the Code. *[Section 5.010(3) amended by Ordinance No. 11-04, passed February 7, 2011; and Ordinance 13-09, passed September 24, 2013.]*
- (4) Violations of the Astoria Traffic Code are as follows:
  - (a) Violation of Section 6.050 subsection (1), 6.060 subsection (1), 6.100, 6.105 and 6.110, is punishable by a minimum fine of \$10.00, and not to exceed \$40.00, to be paid within 168 hours (seven days) of issuance of a parking ticket. If the fine is not paid within 168-hour (seven days), the fine shall increase to \$20.00 for each violation, and a Courtesy Notice will be sent to the violator or, registered owner of the vehicle. If this \$20.00 fine is not paid within ten days of the date of the Courtesy Notice, the fine shall increase to \$40.00 and a warrant for arrest may be issued by the Municipal Court.
  - (b) Violations of Sections 6.055, 6.060 subsection (2), (3) and (4), 6.065 to 6.085, 6.115, 6.150 to 6.170, 6.185, 6.205 to 6.230 and 6.250 to 6.270 is punishable by a minimum fine of \$25.00 and not to exceed \$55.00, to be paid within 168 hours (seven days) of issuance of a parking ticket. If this fine is not paid within the 168-hour (seven days) period, the fine shall increase to \$35.00 for each violation, and a Courtesy Notice will be

sent to the violator or, registered owner of the vehicle. If the \$35.00 fine is not paid within ten days of the date of the Courtesy Notice, the fine shall increase to \$55.00 and a warrant for arrest may be issued by the Municipal Court.

- (c) Violation of Sections 6.360 is punishable by a minimum fine of \$50.00 and not to exceed \$80.00, to be paid within 168 hours (seven days) of issuance of a parking ticket. If this fine is not paid within the 168-hour (seven days) period, the fine shall increase to \$60.00 for each violation, and a Courtesy Notice will be sent to the violator or, registered owner of the vehicle. If the \$60.00 fine is not paid within ten days of the date of the Courtesy Notice, the fine shall increase to \$80.00 and a warrant for arrest may be issued by the Municipal Court.
  - (d) Violation of Sections 6.380 is punishable by a fine of \$100.00, to be paid within 168 hours (seven days) of issuance of a parking ticket. If this fine is not paid within the 168-hour (seven days) period, the fine shall increase to \$125.00 for each violation, and a Courtesy Notice will be sent to the violator or, registered owner of the vehicle. If the \$125.00 fine is not paid within ten days of the date of the Courtesy Notice, the fine shall increase to \$150.00 and a warrant for arrest may be issued by the Municipal Court
  - (e) Violation of Section 6.390 constitutes a traffic violation and is punishable by a fine not to exceed \$75.00.
  - (f) When a warrant of arrest issued by the Municipal Court is served, the amount of bail shall be increased \$100.
- (5) Remedies for unlawful structures or land use.
- (a) In case any land, building or other structure is used, advertised for use, or proposed to be used or, located, constructed, maintained, repaired, altered, or used, in violation of a city ordinance or regulation designated to implement the city's comprehensive plan, the City Council may, in addition to other remedies provided by law or ordinance, institute injunction, mandamus, abatement, or other appropriate proceedings to prevent, temporarily or permanently enjoin, abate, or remove the unlawful location, construction, maintenance, repair, alteration, or use. The City can also pursue action in Municipal Court or State Circuit Court.
  - (b) The court may allow the City reasonable attorney fees and expenses in a judicial proceeding authorized by this section.

- (c) Nothing in this section requires the City Council to avail itself of a remedy allowed by this section or by any other law.
- (d) The City can pursue revocation of any permit issued.

*[Section 1.010 amended by Ordinance No. 81-18, Section 1, passed December 21, 1981; Ordinance No. 85-11, passed June 17, 1985; Ordinance No. 86-19, passed November 17, 1986; Ordinance No. 88-30, passed November 7, 1988; Ordinance 00-09, passed September 18, 2000; Ordinance No. 12-09, passed September 4, 2012; and Ordinance No. 17-08, passed April 17, 2017; Ordinance No. 18-09, passed November 5, 2018; Amended by Ordinance No. 19-04, passed April 1, 2019]*

**1.015 Payment of Fines and Costs.** ORS 161.645 and 161.665 to 161.685 (Oregon Criminal Code of 1971), as now or hereafter constituted, is adopted by reference and made a part of this code. However, references to state shall be deemed to refer to city. *[Section 1.015 amended by Ordinance No. 64-20, Section 1, passed December 21, 1964; Ordinance No. 68-02, passed January 15, 1968; and Ordinance No. 73-12, section 1, passed September 4, 1973.]*

### **Rules of Interpretation**

**1.020 Intent of City Council.**

- (1) The intent of the city council shall be determined followed whenever possible in the interpretation of this code.
- (2) If a general and a particular provision of this code are inconsistent, the particular provision is paramount to the general provision.

**1.025 Severability.** The sections, subsections and subparagraphs of this code are hereby declared severable. The invalidity of any section, subsection or subparagraph of this code shall not affect the validity of the remainder of this code.

**1.030 Amendment of Interrelated Sections.** When one part of this code refers to another part of this code, the reference shall include the original section and all amendments of the section to which reference is made.

**1.035 No Revival of Repealed Sections.** When a part of this code is expressly repealed by an ordinance which is then itself repealed, the part of the code in effect before repeal is not revived until the city council specifically amends this code to reenact such part.

- 1.040 Number and Gender.** In this code, words in the singular number may include the plural and words in the plural number may include the singular. Words in this code in the masculine gender may include the feminine and the neuter.
- 1.045 Computation of Time.** The time within which an act is to be done is computed by excluding the first day and including the last day unless the last day falls upon any legal holiday or on Saturday, in which case the last day is also excluded.
- 1.047 Readoption of Oregon Revised Statutes.** Oregon Revised Statutes adopted either referentially or directly in the Astoria Code, including but not limited to Astoria Code Sections 1.010, 1.015, 1.085, 1.211, 1.230, 1.345, 1.365, 1.555, 1.602, 1.608, 1.620, 1.632, 1.638, 1.640, 1.705, 1.900, 1.960, 1.961, 1.962, 1.963, 1.964; 1.965, 1.967, 1.970, 1.971, 2.220, 2.360, 2.700, 2.705; 2.710, 3.010, 3.015, 3.118, 5.000, 5.010, 5.100, 5.110, 5.255, 5.260, 5.300, 5.335, 5.385, 5.425, 5.726, 5.740, 5.925, 5.931, 5.933, 6.005, 6.010, 6.025, 6.030, 6.060, 6.135, 6.220, 6.250, 6.255, 6.305, 6.400, 6.500, 6.510, 6.520, 6.530, 6.550, 7.000, 7.005, 8.045.15, 8.045.17, 8.045.18, 8.104, 8.138, 9.005, 9.025, 9.030, 9.090, and 9.160, are hereby readopted to include all amendments, repeals, and additions made by legislative action of the State of Oregon, up to and including those of the 2016 legislative session. *[Section 1.047 amended by Ordinance No. 99-22, passed November 1, 1999; amended by Ordinance No. 02-02, passed February 4, 2002; amended by Ordinance No. 04-01, passed January 20, 2004; amended by Ordinance No. 06-01, passed March 6, 2006; amended by Ordinance No. 08-02, passed February 19, 2008; amended by Ordinance No. 10-02, passed January 25, 2010; amended by Ordinance No. 12-05, passed February 21, 2012; amended by Ordinance No. 13-03, passed February 4, 2013; amended by Ordinance No. 15-01, adopted January 20, 2015; amended by Ordinance No. 16-01, adopted January 19, 2016; amended by Ordinance 17-01, adopted January 17, 2017; amended by Ordinance 18-01, adopted January 16, 2018.]*
- 1.050 Section Titles Not Part of Law.** Section titles in this code are not part of the substance of the code.
- 1.055 Amendment and Repeal of Code Sections.** This code is the general and permanent law of the city. The city council may enact three types of general ordinances to affect this code. Such ordinances may (a) amend the code to change existing provisions or (b) may add new provisions to the code, or (c) may repeal existing code provisions. A general ordinance shall specifically amend or repeal a particular section of this code and a general ordinance creating a new code section shall integrate the new section into the numbering system and organization of this code.

**1.060 Acts of Substitute Officers.** Unless this code provides to the contrary, the city manager and city department heads, or their authorized representatives or deputies, may exercise any power granted by this code to the city manager or department head. The city manager and department heads remain responsible for the performance of such acts.

**1.065 Service and Proof of Notice.**

- (1) Except when this code provides a specific procedure for giving notice, whenever oral or written notice is required by this code, the notice may be given either by personal delivery to the person to be notified or by deposit in an official mailbox in a sealed, postage-prepaid envelope, addressed to the last-known business or residence address. The time when the notice is deposited in a mailbox is considered the time when the notice is given.
- (2) Proof of giving notice may be made by the certificate of any officer or employee of the city or by affidavit of any person 18 years of age or older.

**1.070 Uniform Appeal and Hearing Procedure.** In this section the word "appellant" means a person appealing from an administrative decision. Except as otherwise provided in this code, a person who is authorized to appeal from an administrative decision under this code shall follow the procedure stated in this section:

- (a) Within 10 days after the day on which he is notified of the administrative decision from which appeal is requested the appellant shall file with the city auditor a written notice of appeal together with a written statement listing the reason for requesting the revocation or modification of the decision.
- (b) If the city council is to hear the appeal or if an authorized appellate board has a regularly scheduled meeting time, it shall hear the appeal at the next regularly scheduled meeting of the body after the city auditor receives the notice and statement of appeal.
- (c) If an appellate board which does not hold a regularly scheduled meeting is to hear the appeal, it shall hold a hearing on the matter within 10 days after the city auditor receives the notice and statement of appeal.
- (d) The city auditor shall notify the appellant of the time and place of the hearing and shall notify other persons who have an interest in the subject matter of the hearing.

- (e) At the hearing the appellant or other persons may present witnesses and offer evidence in support of its case and, in the discretion of the city council or appellate board, evidence may be heard to sustain the administrative decision.
- (f) The city council or appellate board shall make written findings, recommendations or orders on any matter heard by it, and the city auditor shall send a copy thereof to the appellant.
- (g) The city council may review the official action of any city official, city employee, city board, city commission or other official city body. A person requesting such city council review shall follow the procedure established in this section, unless this code provides a special appeal procedure applicable to such an appeal.

**1.075 Official Seal.**

- (1) The seal described in this section is the official seal of the city of Astoria. It consists of an outer rim on which is inscribed the words "Seal of the City of Astoria, Clatsop County, Oregon," including also the date "1865," the date of incorporation of the town of Astoria, now the city of Astoria. Across the face and below the center of the seal is a scroll bearing upon it the inscription "Ea Spectat Occassum Solis," (it looks upon the setting sun); and beneath the scroll is the figure of a salmon, representing a major industry of Astoria. Above the scroll is a representation of the mouth of the Columbia River, a ship under full sail, Cape Hancock and the lighthouse and trees thereon with background of a sunset in the heavens. Above the river is placed a figure of the American eagle. The seal is to make an impression of 1-3/4 inches in diameter.
- (2) The city auditor shall keep the official seal.

**1.076 Name and Boundaries.** The City of Astoria, Clatsop County, Oregon, is a municipal corporation under the name of Astoria, with boundaries as follows:

Beginning at a point in the center of the main ship channel of the Columbia River at its intersection with the east line of the Robert Shortess donation land claim extended Northerly, in Clatsop County, in the State of Oregon; and running South along said extended line to a point on said line 4408.67 feet north of the north line of Birch Street in the town of Alderbrook; thence S44°39'E 2689.43 feet to a point on the meander line; thence S47°15'W along said meander line to the line between Government Lots 3 and 4, Township 8 North, Range 9 West, Willamette Meridian; thence easterly along said line between



Government Lots 3 and 4 to the northeasterly corner of said Government Lot 4; thence southerly along the line common to Government Lots 4 and 5, Township 8 North, Range 9 West, Willamette Meridian to the north right-of-way line of the Old Columbia River Highway 60.00 feet distant from the centerline of said highway; thence southeasterly along said right-of-way line to an intersection with the south line of said Government Lot 5; thence easterly along said south line of Government Lot 5 to an intersection with the east right-of-way of the Burlington Northern Railroad; thence northerly along said railroad right-of-way to a 5/8" iron rod and cap at the northwest corner of the tract shown on a survey drawing dated December, 1981 by the Oregon Division of State Lands; thence N72° 13' 41"E 58.5 feet to a point; thence N17° 41' 27"W 30.0 feet to a point; thence N72° 13' 41"E 305.60 feet to a point; thence S17° 31' 00"E 30.0 feet to a point; thence N72° 15' 12"E 2344.89 feet to a point; thence S32° 45' 00"E 394.68 feet to a point; thence S12° 20' 00"E 1544.4 feet to a point; thence S26° 50' 00"E 988.7 feet to the southeast corner of Parcel 2 as shown on a Record of Survey filed February, 1991, as CS No. B-9939 at the office of the Clatsop County Surveyor; thence N72° 21' 59"E 560.00 feet to a point; thence S35° 13' 00"E 1700.0 feet to a point; thence S73° 30' 07"E 784.79 feet to a point; thence S27° 40' 00"E 1650.00 feet to a point; thence S17° 20' 00"W 707.11 feet to a point; thence S27° 40' 00"E 1500.00 feet to a point; thence S89° 34' 08"W 2105.00 feet to a point on the east right-of-way of the Burlington Northern Railroad; thence northwesterly along said east railroad right-of-way to Mill Creek; thence southwestly along Mill Creek to a line 100 feet southerly and paralleling the centerline of the Columbia River Highway Number 30; thence northwesterly along said line paralleling the Columbia River Highway centerline to an intersection with the east right-of-way of Eleventh Street in the Town of Van Dusen's Astoria; thence south along the east line of said Eleventh Street to a point where, if the same were extended, it would intersect a line drawn through the center of sections 14 and 15 of Township 8 North, Range 9 West, Willamette Meridian; thence west along the extension of a line drawn through the center of said sections 14 and 15, to the point of its intersection with the east boundary line of the John M. and Susan L. Shively donation land claim; thence south along the east boundary line of said Shively donation land claim to the southeast corner thereof; thence west, along the south boundary of said Shively donation land claim to its intersection with the east line of the town of Williamsport; thence south along the east line of said Williamsport to the southeast corner of Lot 5, Block 26, of said Williamsport; thence west, along the south line of said Lot 5 and an extension thereof to its

intersection with the pierhead line of Young's Bay; thence westerly along said pierhead line to its intersection with the southerly extension of the easterly line of Dresden Avenue, in the town of Taylor's Astoria; thence southerly along said southerly extension of the east line of Dresden Avenue to its intersection with the main channel of Young's River; thence down said channel to its intersection with the main channel of the Columbia River; thence due north across said main channel of the Columbia River to the north side thereof; thence up and along the north side of said main channel of the Columbia River to a point due north of the beginning; thence south to the point of beginning.

*[Section 1.076 added by Ordinance No. 80-12, passed December 1, 1980; amended by Ordinance No. 88-34, passed December 19, 1988; amended by Ordinance No. 94-14, passed December 5, 1994.]*

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**SPECIAL PROVISIONS AND PROCEDURES**

- 1.080** *[Section 1.080 added by Ordinance No. 76-01, passed February 16, 1976; and repealed by Ordinance No. 05-03, passed March 7, 2005.]*
- 1.081** *[Section 1.081 added by Ordinance No. 84-09, passed July 2, 1984; amended by Ordinance 99-07, passed April 19, 1999; and repealed by Ordinance No. 05-03, passed March 7, 2005.]*
- 1.085** **County Jail Imprisonment.** Any person sentenced to imprisonment for the violation of a city ordinance may be imprisoned in the Clatsop County Jail with the consent of the Clatsop County Court. The city, according to ORS 221.914, may enter into an agreement with the Clatsop County government for the imprisonment of such persons. *[Section 1.085 provided by Section 1 of Ordinance No. 81-02, passed April 6, 1981.]*
- 1.090** *[Section 1.090 added by Ordinance No. 80-08, passed October 20, 1980; repealed by Ordinance No. 86-25, passed December 15, 1986; reinstated by Ordinance No. 87-01, passed January 5, 1987; and repealed by Ordinance No. 89-10, passed May 15, 1989.]*

- 1.095 Signature Authorization.** The signature of the Mayor, city manager, and Finance Director, in combination or individually, is hereby authorized by simple motion of the City Council for Federal Government or State Government grant applications for funds or on any other document or agreement that may require formal Council action. Such motion may be adopted at a legally authorized meeting of the City Council, by majority vote. *[Section 1.095 added by Ordinance No. 83-13, passed September 19, 1983.]*

### **Audit Procedures**

- 1.100 Audit of City Accounts.** The accounts and fiscal affairs of the city shall be audited and examined at least once each fiscal year. The audit and examination shall be made pursuant to a written contract between the city and accountant. The contract shall provide that the accountant shall file with the city a signed and written audit report in the form prescribed by the state of Oregon and that he shall file a specified number of copies of the audit report with the city. The accountant who performs the city audit shall be listed in the roster of accountants authorized by the State Board of Accountancy to conduct a municipal audit. The audit report and certificate submitted to the city shall be signed by the accountant who signs the contract with the city.

### **Reapportionment**

- 1.101 Ward Boundaries.** The following descriptions define the boundaries of each Ward for election of members to the City Council:

**WARD NO. 1.** Beginning at the point of intersection of the northerly extension of the centerline of Portway Street and the north boundary of the City of Astoria; thence south along the northerly extension, and the centerline of Portway Street, to the point of intersection with the centerline of West Marine Drive; thence East along the centerline of West Marine Drive to the point of intersection with the centerline of Ilwaco Avenue; thence south along the centerline of Ilwaco Avenue to the point of intersection with the centerline of Alameda Avenue; thence westerly, southerly and easterly along the centerline of Alameda Avenue to the point of intersection with the centerline of Glasgow Avenue; thence southeasterly along the centerline of Glasgow Avenue to the point of intersection with the centerline of Denver Street South; thence northeasterly along the centerline of Denver Street South to the point of intersection with the centerline of Niagara Avenue West; thence northeasterly, easterly and southeasterly along the centerline of Niagara Avenue West to a point of intersection with the centerline of Niagara Avenue; thence east along the centerline of Niagara Avenue to the point of intersection with the centerline of 3<sup>rd</sup> Street; thence south along the centerline of 3<sup>rd</sup> Street to a point of

intersection with the centerline of Klaskanine Avenue; thence east along the centerline of Klaskanine Avenue to the point of intersection with the centerline of 5<sup>th</sup> Street; thence north along the centerline of 5<sup>th</sup> Street, and the extension thereof, to the north boundary of the City of Astoria; thence westerly along the said north boundary to the point of beginning.

WARD NO. 2. Beginning at the point of Intersection of the northerly extension of the centerline of Portway Street and the north boundary of the City of Astoria; thence south along the northerly extension, and the centerline of Portway Street to the point of intersection with the centerline of West Marine Drive; thence east along the centerline of West Marine Drive to the point of intersection with the centerline of Ilwaco Avenue; thence south along the centerline of Ilwaco Avenue to the point of intersection with the centerline of Alameda Avenue; thence westerly, southerly and easterly along the centerline of Alameda Avenue to the point of Intersection with the centerline of Glasgow Avenue; thence southeasterly along the centerline of Glasgow Avenue to the point of Intersection with the centerline of Denver Street South; thence northeasterly along the centerline of Denver Street South to the point of Intersection with the centerline of Niagara Avenue West; thence northeasterly, easterly and southeasterly along the centerline of Niagara Avenue West to a point of intersection with the centerline of Niagara Avenue; thence east along the centerline of Niagara Avenue to the point of intersection with the centerline of 3rd Street; thence south along the centerline of 3rd Street to a point of intersection with the centerline of Klaskanine Avenue; thence east along Klaskanine Avenue to the point of intersection with the centerline of 5th Street; thence north along the centerline of 5<sup>th</sup> Street to the point of intersection with the centerline of Niagara Avenue; thence east along the centerline of Niagara Avenue to the point of intersection with the centerline of 11<sup>th</sup> Street; thence south along the centerline of 11<sup>th</sup> Street to a point of intersection with the centerline of James Street; thence east along the centerline of James Street and the extension thereof to the point of intersection with the southerly extension of the centerline of 18<sup>th</sup> Street; thence north along the centerline of the southerly extension of 18<sup>th</sup> Street to the point of intersection with the easterly extension of the centerline of Niagara Avenue; thence east along the easterly extension of the centerline of Niagara Avenue to the point of intersection with the southerly extension of the centerline of 28th Street; thence southeasterly along the southerly extension of the centerline of 28th Street to the south boundary of the City of Astoria; thence westerly, southerly, northwesterly and easterly along the boundary of the City of Astoria to the point of beginning.

WARD NO. 3. Beginning at the point of Intersection of the north boundary of the City of Astoria and the northerly extension of the centerline of 5th Street;

thence south along the northerly extension and the centerline of 5th Street to the intersection with the centerline of Niagara Avenue; thence east along the centerline of Niagara Avenue to the point of intersection with the centerline of 11<sup>th</sup> Street; thence south along the centerline of 11<sup>th</sup> Street to a point of intersection with the centerline of James Street; thence east along the centerline of James Street and the extension thereof to the point of intersection with the southerly extension of the centerline of 18<sup>th</sup> Street, thence north along the centerline of the southerly extension of 18<sup>th</sup> Street to the point of intersection with the easterly extension of the centerline of Niagara Avenue; thence east along the easterly extension of the centerline of Niagara Avenue to the point of intersection with the southerly extension of the centerline of 22<sup>nd</sup> Street; thence north along the southerly extension of the centerline of 22<sup>nd</sup> Street to the point of intersection with the centerline of Irving Avenue; thence west along the centerline of the Irving Avenue to the point of intersection with the centerline of 21<sup>st</sup> Street; thence north along the centerline of 21<sup>st</sup> Street and the extension thereof to the north boundary of the City of Astoria; thence westerly along the north boundary of the City of Astoria to the point of beginning.

WARD NO. 4. Beginning at the point of intersection of the north boundary of the City of Astoria and the northerly extension of the centerline of 21<sup>st</sup> Street; thence south along the northerly extension and the centerline of 21<sup>st</sup> Street to the point of intersection with the centerline of Irving Avenue; thence east along the centerline of Irving Avenue to a point of intersection with the centerline of 22<sup>nd</sup> Street; thence south along the centerline of 22<sup>nd</sup> Street and the extension thereof to a point of intersection with the easterly extension of the centerline of Niagara Avenue; thence east along the centerline of the easterly extension of Niagara Avenue to a point of intersection with the southerly extension of the centerline of 28<sup>th</sup> Street; thence southeasterly along the centerline of the southerly extension of 28<sup>th</sup> Street to the south boundary of the City of Astoria; thence along the boundary of the City of Astoria easterly, northerly, southwesterly and northwesterly to the point of beginning.

*[Section 1.101 added by Ordinance No. 69-03, passed March 3, 1969; and amended by Ordinance No. 73-01, passed January 15, 1973; Ordinance No. 83-03, passed March 7, 1983; and Ordinance No. 85-06, passed February 4, 1985; Ordinance No. 12-02, passed January 3, 2012.]*

**1.102** *[Section 1.102 added by Ordinance No. 85-07, passed May 6, 1985; amended by Ordinance No. 88-04, passed March 21, 1988; and repealed by Ordinance No. 88-32, passed December 19, 1988.]*

**1.145** *[Section 1.145 amended by Ordinance No. 82-03, passed February 16, 1982.]*

**1.165** *[Section 1.165 amended by Ordinance No. 83-05, March 21, 1983; Ordinance No. 85-10, passed June 3, 1985; Ordinance No. 85-17, passed September 16, 1985; Ordinance No. 86-08, passed May 19, 1986; Ordinance No. 89-14, passed June 19, 1989; Ordinance No. 90-29, passed August 20, 1990.]*

**1.180** *[Section 1.180 amended by Ordinance No. 91-03, passed March 4, 1991.]*

*[Sections 1.190 and 1.195 repealed by Ordinance No. 76-08, Section 2, passed June 21, 1976.]*

*[Sections 1.105 through 1.210 repealed by Ordinance No. 93-02, passed January 4, 1993. Information now in City of Astoria Personnel Policies.]*

**1.211** **Collective Bargaining Procedures.** The city of Astoria shall follow state of Oregon law as contained within the Public Employee's Collective Bargaining Act (PECBA). *[Section 1.211 amended by Ordinance No. 93-02, passed January 4, 1993.]*

**1.215** *[Section 1.215 repealed by Ordinance No. 93-02, passed January 4, 1993.]*

### **Jury Trial Procedures**

**1.225** **Jury Trial Right.** Any person accused of an offense defined and made punishable by the charter or this code may have a trial by jury in the municipal court. The jury shall consist of six persons selected as provided in this code.

**1.230** **Jury List.**

- (1) On the fourth Monday in January of each year, a jury list shall be made from the persons in the city who are competent under the laws of Oregon to serve as jurors in a circuit court. Such persons shall serve as jurors in the municipal court until a new list is selected. The jury list is made and selected by lot in the same manner as juries are selected for the circuit court. The jury list shall contain the names of 100 qualified persons.
- (2) If a jury list is not made by the fourth Monday of January, it may be done on the first Monday of any month following, to serve until the close of the year.
- (3) The municipal judge may select and make the jury list. The municipal judge may call on two freeholders of the city, qualified to serve as jurors, and such freeholders together with the judge may make the jury list.

- (4) The names drawn of persons known or believed to be disqualified as jurors, or who are exempt from jury duty under the provisions of the laws of Oregon, or who are believed to be unavailable, shall be discarded in preparing the jury list.
- (5) The jury list shall contain the first name and surname, the place of residence and the occupation of each person named therein and shall be certified by the municipal judge at the time the list is prepared.

**1.235 Jury Ballot Box.** The municipal judge or, under his direction, his clerk shall keep a secured jury box. After the jury list has been made, the municipal judge shall prepare and deposit in such box separate ballots or slips containing the name, place of residence and occupation of each person on the jury list.

**1.240 Drawing Jurors and Alternate Jurors.** When a jury is demanded in the municipal court the jury shall be drawn and selected from the jury list. The municipal judge or, under his direction, his clerk shall draw from the jury box, in the presence of the defendant or his attorney and in the presence of the city attorney, 12 ballots, or any greater number, if necessary, until the names of 12 persons who are deemed able to attend at the time and place required are obtained, The defendant, his attorney or the city attorney may move, or the court on its own motion may direct, that four additional names be drawn from the box from which alternate jurors may be selected.

**1.245 Disqualification of Jurors.** When it appears to the municipal judge that the person whose name is drawn is dead or resides out of the city, the ballot shall be destroyed. If it appears to the municipal judge or he has good reason to believe that a person whose name is drawn is temporarily absent from the city, or is ill, or is so engaged as to be unable to attend at the time of the trial without great inconvenience, the ballot shall be laid aside, the name not placed on the jury list for which the jury is being selected, but such ballot shall be returned to the jury box after the drawing is completed.

**1.250 Selection of Jury.**

- (1) When the drawing is complete, and from the 12 names drawn, the defendant and the city shall select the jury by each striking from the list three names, alternately, commencing with the defendant. The six persons remaining shall be summoned as jurors in the case, If either party does not exercise all of his peremptory challenges, the jury may be summoned from among the names remaining.



(2) When four names are drawn from the jury box as alternates each party shall strike one of such names. No other peremptory challenges shall be allowed. No alternate juror shall be summoned to serve at the trial of the action except when six principals are not available.

**1.255 Jury Fee.** No jury trial may be granted a defendant unless the defendant or his attorney shall give notice not less than three days before the time fixed for the trial to the municipal judge and the city attorney of the desire for a jury trial and shall deposit with the municipal judge a jury fee of \$30.00.

**1.260 Jury Verdict.** Five of the six jurors summoned to try any cause must concur to render a verdict.

**1.265 Acquittal.** If the defendant is acquitted by the jury, the jury fee deposited by him shall be refunded.

**1.270 Juror Fee.** Jurors who appear at the trial and serve as jurors shall receive as compensation for such services the sum of \$5.00 for each day of attendance upon the municipal court.

**1.275 Jury Summons.** When a jury is drawn, summons therefor shall be issued by the municipal judge, and the notices to the jurors shall be served by the police chief or any other police officer of the city by giving written notice to each member of the jury by mail, with postage prepaid to their last known address. Any person notified to appear as a juror and disregarding such notice may be adjudged in contempt of court by the municipal judge and be fined a sum not exceeding \$100.00, or imprisoned for five days, or both. *[Section 1.275 as amended by Ordinance No. 75-04, passed May 5, 1975.]*

### **Cemetery Regulations**

**1.280 Public Burying Ground.** All cemeteries now owned or hereafter acquired by the city are declared to be public burying grounds. No person may establish any other cemetery within the city; nor may any body be buried in any place other than in a designated cemetery.

**1.285 Hillside Cemetery.** Hillside Cemetery, located on Block 93, Shively's, together with all improvements thereon, is a municipal cemetery operated by the city. No further interments are permitted in this cemetery.

**1.290 Ocean View Cemetery.** Ocean View Cemetery, located within its boundary as now established or as hereafter established, together with all improvements thereon, is a municipal cemetery operated by the city.

**1.295 Cemetery Operation.** There is established a cemetery division of the recreation and parks department of the city. The cemeteries shall be operated according to rules and regulations promulgated by the city manager.

**1.300 Rules and Regulations.**

- (1) The city manager shall make, adopt and enforce rules and regulations for the use, care, control, management, restriction and protection of the municipal cemeteries. Such rules and regulations may restrict and limit the use of all property within the cemeteries, regulate the uniformity, class and kind of all markers, monuments and other structures within the cemeteries, prohibit the erection of monuments, markers or other structures in or upon any portion of the cemeteries, regulate monuments, effigies and structures within the cemeteries, regulate the introduction and care of plants or shrubs within the cemeteries, prevent interment in any part of the cemeteries of a body not entitled to interment therein, prevent the use of burial plots for purposes violative of its restrictions, regulate the conduct of persons, prevent improper assemblages therein, and regulate for all other purposes deemed necessary by the city manager for the proper conduct of the business of the cemeteries and the protection and safeguarding of the premises and the principles, plans and ideals on which the cemeteries are established. The city manager may amend, revise or modify such rules and regulations.
- (2) All rules and regulations relating to city cemeteries shall be approved by the city council before becoming effective.
- (3) The rules and regulations shall be printed or typewritten and maintained subject to inspection in the office of the cemetery superintendent and in such additional places as the city manager may prescribe. All rules, regulations and amendments shall be filed with the city council at its next regular meeting following publication.
- (4) No person may violate the provisions of cemetery rules and regulations adopted pursuant to this section.

**1.305 Superintendent Appointment.** Supervision of the cemetery is under the direction of a cemetery superintendent. He is responsible to the Parks and Recreation Director for the control and management of the municipal cemeteries, for the direction of all assistants assigned to his supervision and for the administration of the provisions of Sections 1.280 to 1.370 of this code and any supplemental rules and regulations. The superintendent shall utilize the services of existing city officials, employees and equipment. *[Section 1.305 as amended by Ordinance No. 95-14, passed September 5, 1995.]*

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- 1.310 Platting.** Before any new block of a municipal cemetery is opened for the sale of lots, the city manager shall cause it to be platted and recorded in the office of the registrar of deeds. Six copies of the plat map shall be deposited with the cemetery superintendent and six copies with the city auditor. The plat shall be so designed as to provide direct access to each lot from either a road or a walk.
- 1.315 Single Grave Section.** The city manager may designate certain lots as a single grave section, and lots therein shall be platted and sold as single grave lots. Unused portions of lots repossessed for nonpayment of assessments may likewise be designated and sold as single graves, or otherwise.
- 1.320 Sale of Lots.** The sale of lots in the municipal cemeteries is under the control of the finance director, subject to the rules and regulations of the cemetery and the general supervision of the city manager. Any applicant may apply to the cemetery superintendent or his assistants and select from those lots available for sale the lot or lots he desires to buy. Upon payment in full of the purchase price, the city shall issue a deed to the lot in the form approved by the city attorney. The deed shall be signed by the mayor, attested by the city auditor, sealed with the corporate seal and acknowledged so as to entitle it to be recorded. The purchaser may record the deed with the county registrar of deeds. The sale of lots on a time basis may be made in accordance with the rules and regulations.
- 1.325 Perpetual Care.** All lots hereafter sold in the municipal cemeteries shall be provided with perpetual care services. The expense of such care is included in the price of the lot in accordance with the provisions of this code.
- 1.330 Purchase of Perpetual Care.** Owners of lots previously sold without perpetual care may secure the benefits of perpetual care by paying to the city a sum pursuant to a schedule which shall be set by the city council as a reasonable amount for the care of said lots in perpetuity.
- 1.335 Price of Lots.** The city council shall from time to time fix a schedule of prices for all lots in the municipal cemeteries. Forty percent of the funds derived from sales of lots shall be credited by the finance director to the perpetual care trust fund and shall be considered as full payment by the purchaser for perpetual care of the lot by the city.
- 1.340 Perpetual Care Trust Fund.** All monies received for and credited to the perpetual care trust fund shall be held by the finance director as trustee and shall be invested as provided by law. The income from such trust fund shall be paid into the city treasury but shall not be used for any purpose except the care of the cemetery. Until such time as the income from the perpetual care trust fund is sufficient to maintain the cemetery properly, such funds as are needed for this
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maintenance and operation shall be drawn from the cemetery general operating fund.

**1.345 Annual Assessments for Care.** Owners of lots who have not provided for perpetual care shall pay to the city an annual assessment for care in the amount determined by the city council. All amounts so received shall be deposited in the cemetery general operating fund. Notice of such assessment shall be sent to the last-known address of the lot owner pursuant to state statutes. Upon failure of the lot owner to pay the assessment for five consecutive years, the city council shall order the repossession of such lots and shall offer for sale those portions not occupied.

**1.350 Cemetery Account.** The city council shall appropriate annually to the cemetery general operating fund an amount necessary to maintain and operate the municipal cemeteries for the fiscal year. The monies in the account shall be expended for the development, improvement, upkeep and care of the cemeteries. Unless previously authorized by the city council, no debt or deficit shall be incurred which cannot be paid in full by monies in the cemetery general operating fund.

**1.355 Duties of the Finance Director.**

(1) The finance director shall serve as trustee to receive and hold monies in trust, the income of which is to be used for the improvement, maintenance, repair, preservation or ornamentation of the cemeteries or any lot or structure therein. Such monies shall be invested pursuant to law in the same manner as monies in the perpetual care trust fund, but shall be accounted for separately. No additional compensation shall be paid to the finance director for his duties under Sections 1.280 to 1.370 of this code. The bond of the finance director shall cover the performance of all such duties.

(2) The finance director shall deposit all sums in payment of lots and in payment of cemetery services into the cemetery general operating fund, except that such sums as are paid for perpetual care shall be held and invested according to the provisions of this code.

**1.360 Fiscal Year.** The cemetery shall be operated on a fiscal year basis commencing from July 1 of each year and ending June 30 of the year following.

**1.365 Records.** The cemetery superintendent shall keep the following records:

(a) A diagram of each lot sold in the cemetery and identified by number of block, number of lots, date sold and name and address of owner.

- (b) An index of lot owners showing full name of the owner and the lot and block number.
- (c) An interment register containing a cumulative record of burials showing the date of interment, the name, place of death, name and address of funeral director, lot, block and location of grave.
- (d) A burial record containing the current index for each person interred giving name and date of burial, lot, block and grave number.
- (e) A lot ownership record containing the duplicate copies of receipts issued at the time of the sale of the lots.
- (f) A file of burial permits as required by state statutes showing the date of interment.

**1.370 Suspension of Free Burial Privileges.** As established under Ordinance No. 52-66, enacted December 15, 1952, the city council declares that no further privilege to reserve a grave at Ocean View Cemetery is allowed to a United States veteran or his spouse.

**1.375 Sections Reserved for Veterans.**

- (1) Sections 44, 53, 54 and 75 are reserved for the exclusive use of veterans of the armed services of the United States of America and his or her spouse.
- (2) The price of lots in the reserved sections shall be governed by the provisions of Section 1.335 of this code.
- (3) So long as graves are available in Sections 53 and 54, no graves may be sold in Section 75. Should the time come when only single graves are available in Sections 53 and 54, adjacent graves may be sold in Section 75 for a veteran and his or her spouse. *[Section 1.375 added by Ordinance No. 75-20, passed September 2, 1975.]*

**1.380 Block Reserved for Cremated Remains Only.**

- (1) Block 68, Lots 1 through 44 in Ocean View Cemetery are reserved for the exclusive burial of cremated remains.
- (2) The price of lots in above reserved sections shall be governed by provisions of Section 1.335 of the Astoria Code.

- (3) Any markers placed on individual graves shall be flush type markers.
- (4) There shall not be more than two burials of cremated remains to any one individual grave. *[Section 1.380 added by Ordinance No. 78-14, passed November 20, 1978.]*

*[Sections 1.400 through 1.450 repealed by Ordinance No. 86-09, passed May 19, 1986.]*

### **Initiative and Referendum Procedures**

**1.455 Necessary Votes.** The manner of voting upon a new city charter, an amendment to the city charter or other measure submitted to the legal voters shall be the same as now is or may hereafter be provided by law. No new city charter, amendment to the city charter or other measure shall be adopted unless it receives the affirmative majority of the total number of legal votes cast on such measure and such votes entitled to be counted thereon. If two or more laws on the same subject or conflicting provisions are approved by the voters at the same election, the one receiving the greatest number of affirmative votes shall be proclaimed to be the law adopted.

**1.460 Election Returns.** The votes on a new city charter, amendment to the city charter or other measure shall be counted, canvassed and returned in the same manner as votes for candidates are counted, canvassed and returned. Upon the completion of the canvass, the mayor shall forthwith issue a proclamation which shall be published once in the official newspaper of the city, giving the number of votes cast for and against a new city charter, an amendment to the city charter or other measure and declaring the measure, if approved by a majority of those voting thereon, to be in full force and effect, or to be in full force and effect at the time fixed therein.

*[Section 1.465 repealed by Ordinance No. 95-12, passed August 21, 1995.]*

*[Sections 1.475 through 1.495 repealed and Sections 1.475 through 1.481 added by Ordinance No. 99-09, passed May 17, 1999; and Sections 1.475 through 1.481 repealed by Ordinance No. 05-03, passed March 7, 2005.]*

### **Real Property Sale Procedures**

**1.500 Sale of Real Property.** The city may sell at public or private sale any real property which is owned by the city which is not needed for public use, or whenever the public interest may be furthered. The city, by resolution, may provide for sale procedures. *[Section 1.500 amended by Ordinance No. 05-15, passed September 6, 2005.]*

**1.501 Application and Fee.** Applications for purchase of city-owned property shall be filed with the City Manager's office or office designated by the City Manager on forms provided by the city. A fee as established in the Fee for Service Resolution shall accompany each application. The public works director shall require an appraisal except in those cases where it is deemed unnecessary, such as very small lot size or an appraisal that has been recently completed. When an appraisal is required, an additional fee, as established in the Fee for Service Resolution, shall be applied. If the property sale is denied prior to an appraisal and notices being published, the application fee will be refunded to the applicant. If the applicant is not the successful buyer, and the property is sold to another, any appraisal fee shall be refunded to the applicant and the successful buyer will be held responsible for the fee. If the public works director or city council determines a geological survey should be performed on the property, the applicant shall be required to obtain such a report and pay all costs associated with obtaining this report. *[Section 1.501 added by Ordinance No. 65-17, enacted November 1, 1965; amended by Ordinance No. 93-10, passed November 15, 1993; amended by Ordinance No. 01-11, passed November 5, 2001; amended by Ordinance No. 05-15, passed September 6, 2005.]*

**1.502 City Initiated Sales.** The city council or staff may initiate action to propose the sale of city-owned property which is not needed or foreseen to be needed for public use. *[Section 1.502 added by Ordinance No. 05-15, passed September 6, 2005.]*

**1.505 Report to Council and Call for Hearing.**

- (1) When real property is proposed to be sold, the city manager shall submit to the city council a report of the proposed sale. The report to city council shall include:
  - (a) A description of the property offered for sale.
  - (b) Reasons for the proposal to sell.
  - (c) The sale procedure recommended and, if appropriate, a recommended sales price or minimum sale price.
  - (d) The terms and conditions of the sale.
  - (e) Any other information which is pertinent.
- (2) After reviewing the city manager's report and if willing to proceed toward a property sale, the city council, at a regular meeting, shall call for a public hearing on the proposed sale of the property. If the city council deems it necessary, a geological survey shall be ordered on the property and the

applicant, if there is an applicant, will be responsible for all costs of said survey. *[Section 1.505 repealed by Ordinance No. 90-06, passed February 21, 1990; added by Ordinance No. 93-10, passed November 15, 1993; amended by Ordinance No. 05-15, passed September 6, 2005.]*

**1.507 Notice and Hearing.**

- (1) The city council shall publish a notice of the proposed sale and public hearing in a newspaper of general circulation in the city.
- (3) The notice shall be published at least once not more than 14 days nor less than 5 days prior to the public hearing required under this section. The notice shall state the time and place of the public hearing, a description of the property or interest proposed to be sold and the reason the council considers it necessary or convenient to sell the property.
- (3) A copy of the public notice shall be sent to all property owners who reside within 200-feet of the exterior boundary of the property proposed to be sold notifying them of the proposed sale and advising them of their opportunity to present written or oral testimony at the public hearing. *[Section 1.507 added by Ordinance No. 93-10, passed November 15, 1993.]*
- (4) Not earlier than five days after publication of the notice, the public hearing concerning the sale shall be held at the time and place stated in the notice. Any resident or property owner of the city shall be given the opportunity to present oral or written testimony.
- (5) The nature of the proposed sale and the general terms thereof, including an appraisal or other evidence of the market value of the property, and a copy of the geological survey if a survey was completed, shall be fully disclosed at the public hearing. *[Section 1.507 added by Ordinance No. 93-10, passed November 15, 1993; amended by Ordinance No. 05-15, passed September 6, 2005.]*

**1.510 Completion of Sale.** If the city council approves the sale, the sale shall be conducted by or arranged for by the public works director in the manner directed by the council. In approving the sale, the city council may modify any terms or conditions of the sale. *[Section 1.510 repealed by Ordinance No. 90-06, passed February 21, 1990; added by Ordinance No. 93-10, passed November 15, 1993; amended by Ordinance No. 05-15, passed September 6, 2005.]*

**1.515** *[Section 1.515 repealed by Ordinance No. 90-06, passed February 21, 1990, and Ordinance No. 93-10, passed November 15, 1993.]*



- 1.520 *[Section 1.520 repealed by Ordinance No. 90-06, passed February 21, 1990, and Ordinance No. 93-10, passed November 15, 1993.]*
- 1.525 **Exchange of Property.** Any city-owned real property may be exchanged for any other property of equal or superior value and benefit or for the payment of any services rendered to the city when the person performing the services agrees in advance to accept the exchange of such property as payment for the services rendered. All exchanges of city-owned real property shall be approved in advance of exchange by the city council.
- 1.530 **Leases.** Any city-owned property may be leased for any purpose. All leases of city-owned real property shall be approved by the city council before execution. The Mayor and City Manager shall sign all leases in the name of the City. *[Section 1.530 amended by Ordinance No. 05-15, passed September 6, 2005.]*
- 1.535 **Installment Payment/Contract.** A person acquiring real property from the City for a sale price in excess of \$10,000 may apply to the City to enter an installment payments contract for the purchase of such property. Approval of said applications shall be at the sole discretion of the City. The minimum down payment for such property shall be in cash and in an amount not less than 25% of the sale price which shall be paid at the time of closure of the transaction. The remaining unpaid balance shall be paid within nine years from the date of sale and shall be paid in nine annual installments in equal amount, including interest at the rate of not less than the prime lending rate plus 2%. The purchaser shall be responsible for the administrative costs of establishing an installment payments contract. Prepayment is allowed. If within the term of the installment payments contract the person acquiring real property from the City sells or transfers that property, the balance remaining shall be due and payable upon closing of the real estate transaction. *[Section 1.535 amended by Ordinance No. 98-11, passed July 20, 1998; amended by Ordinance No. 05-15, passed September 6, 2005.]*
- 1.540 **Required Signatures.** The mayor and the city manager shall sign all deeds and contracts to for the sale of real property. All documents shall be signed in the name of the city. *[Section 1.540 amended by Ordinance No. 05-15, passed September 6, 2005.]*
- 1.545 **Termination Condition.** The city reserves the right to make changes in prices, terms and conditions, and to withdraw its offer to sell, lease or exchange property at any time.
- 1.550 **Canceling Certain Assessment Liens.** When the city has unpaid assessment liens against property sold by Clatsop County after tax foreclosure proceedings,

the city manager and the finance director may cancel such assessment liens. The provisions of this section do not permit cancellation of liens imposed after tax foreclosure proceedings.

- 1.555 Statutory Powers Adopted.** All powers provided by state law regarding the sale, exchange, conveyance and leasing of public property, the power to relinquish title to property needed for public use to another governmental body, and the power to relinquish reversionary interests, are vested in the city. *[Section 1.555 amended by Ordinance No. 05-15, passed September 6, 2005.]*

### **Public Records**

**1.560 Copy of Public Records.**

- (1) The time and effort of city employees is being unduly burdened and the city is incurring expenses in searching the records of various departments and furnishing facsimiles or other copies of public records and reports to private individuals and private concerns. The city council deems it advisable for the efficient conduct of the affairs of the city and of various departments that reasonable fees be established for furnishing such services.
- (2) The city manager after consultation with the department directors may impose reasonable charges based upon material and equipment costs and employee time for furnishing facsimiles or other copies of records and of reports of a public nature and for making searches thereof.
- (3) The department directors shall establish appropriate rules and regulations for the furnishing of such copies or the making of such searches. The rules and regulations shall be effective when approved by the city council.
- (4) The rules and regulations and the schedule of charges which are established shall be posted in the office of the department or division affected.
- (5) All fees and charges collected under the provisions of this section shall be remitted to the finance director as required by finance procedures.

### **Ambulance Service Area Plan**

- 1.600** ORS 682.062 grants the authority to counties to develop a plan for ambulance services and to establish an Ambulance Service Area. Clatsop County has established the Ambulance Service Area Plan which comprises Clatsop County and incorporated cities.

*[Sections 1.600 to 1.640 added by Ordinance No. 76-14, passed August 16, 1976; Section 1.600 to 1.640 repealed by Ordinance No. 19-03, passed March 4, 2019]]*

### **Housing Practices**

**1.700 Declaration of Policy.** It is hereby declared to be the policy of the City of Astoria, in the exercise of its police power for the public safety, public health, and general welfare to assure equal opportunity to all persons to live in decent housing facilities regardless of race, color, religion, sex or national origin and, to that end, to prohibit discrimination in housing by any persons.

**1.705 Definitions.** When used in Sections 1.700 to 1.725:

- (1) "Real Property" includes buildings, structures, lands, tenements, leaseholds, cooperatives and condominiums.
- (2) "Discrimination" or "Discriminatory Housing Practice" means any difference in treatment based upon color, religion, sex, or national origin; or any act that is unlawful under Sections 1.700 to 1.725.
- (3) "Person" includes individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations and all other groups or combinations.
- (4) "Owner" includes a lessee, sublessee, co-tenant, assignee, managing agent or other person having the right of ownership or possession, or the right to sell, rent or lease any housing accommodation.
- (5) "Financial Institution" includes any person, as defined herein, engaged in the business of lending money or guaranteeing losses.
- (6) "Real Estate Broker" or "Real Estate Salesman" includes any individual, qualified by law, who, for a fee, commission, salary or for other valuable consideration, or who with the intention or expectation of receiving or collecting same, lists, sells, purchases, rents, or leases any housing accommodations, including options thereupon, who negotiates or attempts to negotiate such activities; who advertises or holds himself out as engaged in such activities; or who negotiates or attempts to negotiate a loan, secured by a mortgage or other encumbrance, upon transfer of any housing accommodation; or who is engaged in the business of charging an advance connection with a contract whereby he undertakes to promote the sale, purchase, rental or lease of any housing accommodation through its listing in

a publication issued primarily for such purpose; or an individual employed by or acting on behalf of any of these.

- (7) "Housing Accommodation" or "Dwelling" means any building, mobile home or trailer, structure, or portion thereof which is occupied as, or designed, or intended for occupancy, as, a residence by one or more families, and any vacant land which is offered to sale or lease for the construction or location thereon of any such building, mobile home or trailer, structure, or portion thereof or any real property, as defined herein, used or intended to be used for any of the purposes set forth in this subsection.
- (8) "Mortgage Broker" means an individual who is engaged in or who performs the business or services of a mortgage broker as the same are defined by Oregon Statutes.
- (9) "Open Market" means the market which is informed of the availability for sale, purchase, rental or lease of any housing accommodation, whether informed through a real estate broker or by advertising by publication, signs or by any other advertising methods directed to the public or any portion thereof, indicating that the property is available for sale, purchase, rental or lease.

**1.710 Unlawful Practices.** In connection with any of the transactions set forth in this section which affect any housing accommodation on the open market, or in connection with any public sale, purchase, rental or lease of any housing accommodation, it shall be unlawful within the City of Astoria for a person, owner, financial institution, real estate broker or real estate salesman, or any representative of the above, to:

- (1) Refuse to sell, purchase, rent or lease, or deny to or withhold any housing accommodation from a person because of his race, color, religion, ancestry, national origin, sex or place of birth; or
- (2) To discriminate against a person in the terms, conditions or privileges of the sale, purchase, rental or lease of any housing accommodation, or in the furnishing of facilities or services in connection therewith; or
- (3) To refuse to receive or transmit a bona fide offer to sell, purchase, rent or lease any housing accommodation from or to a person because of his race, color, religion, ancestry, national origin, sex or place of birth;
- (4) To refuse to negotiate for the sale, purchase, rental or lease of any housing accommodation to a person because of his race, color, religion, ancestry, national origin, sex or place of birth; or
- (5) To represent to a person that any housing accommodation is not available for inspection, sale, purchase, rental or lease when in fact it is so available, or to refuse to permit a person to inspect any housing accommodation, because of his race, color, religion, or national origin, sex or place of birth; or
- (6) To make, publish, print, circulate, post or mail, or cause to be made, published, printed, circulated, posted or mailed, any notice, statement or advertisement, or to announce a policy, or to sign or to use a form of application for the sale, purchase, rental, lease or financing of any housing accommodation, or to make a record of inquiry in connection with the prospective sale, purchase, rental, lease or financing of any housing accommodation, which indicates any discrimination or any intent to make a discrimination.
- (7) To offer, solicit, accept or use a listing of any housing accommodation for sale, purchase, rental or lease with the understanding that a person may be subjected to discrimination in connection with such sale, purchase, rental or lease, or in the furnishing of facilities or services in connection therewith; or

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- (8) To induce directly or indirectly, or attempt to induce directly or indirectly, the sale, purchase, rental or lease, or the listing for any of the above, of any housing accommodation by representing that the presence or anticipated presence of persons of any particular race, color, religion, sex or national origin or place of birth in the area to be affected by such sale, purchase, rental or lease will or may result in either:
    - (a) The lowering of property values in the area;
    - (b) An increase in criminal or antisocial behavior in the area; or
    - (c) A decline in the quality of schools serving the area.
  - (9) To make any misrepresentations concerning the listing for sale, purchase, rental or lease, or the anticipated listing for any of the above, or the sale, purchase, rental or lease of any housing accommodation in any area in the City of Astoria for the purpose of including or attempting to induce any such listing or any of the above transactions; or
  - (10) To engage in, or hire to be done, or to conspire with others to commit acts or activities of any nature, the purpose of which is to coerce, cause panic, incite unrest or create or play upon fear, with the purpose of either discouraging or inducing, or attempting to induce the sale, purchase, rental or lease, or the listing for any of the above, of any housing accommodation; or
  - (11) To retaliate or discriminate in any manner against a person because he has opposed a practice declared unlawful by this article, or because he has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding, hearing or conference under this ordinance; or
  - (12) To aid, abet, incite, compel or coerce any person to engage in any of the practices prohibited by this ordinance; or to obstruct or prevent any person from complying with the provisions of this ordinance; or any order issued thereunder; or
  - (13) By canvassing, to commit any unlawful practices prohibited by this ordinance; or
  - (14) Otherwise to deny to, or withhold any housing accommodation from a person because of his race, color, religion, ancestry, national origin, sex or place of birth; or
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- (15) For any bank, building or loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part, in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefore for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loans or other financial assistance, because of the race, color, religion, sex, or national origin of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given; or
- (16) To deny any qualified person access to or membership or participation in any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in their terms or conditions of such access, membership, or participation, on account of race, color, religion, sex, or national origin.

**1.715 Exemptions.** Sections 1.700 to 1.725 shall not apply to:

- (1) A religious organization, association, or society or any nonprofit institution or organization operating, supervised, or controlled by or in conjunction with a religious organization, association, or society, which limits the sale, rental, or occupancy, of dwellings which it owns or operates for other than commercial purpose to persons of the same religion, or which gives preference to such persons, unless membership in such a religion is restricted on account of race, color, sex or national origin.
- (2) A private club not in fact open to the public, which as an incident to its primary purpose or purposes, provides lodgings which it owns or operates for other than a commercial purpose, and which limits the rental or occupancy of such lodgings to its members or gives preference to its members.
- (3) Any single-family house sold or rented by an owner: Provided that such private individual owner does not own more than three such single-family houses at any one time; Provided further that in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period;

Provided further, that such bona fide private individual owner does not own any interest in, nor is there owned or served on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time; Provided further, the sale or rental of any such single-family house shall be excepted from the application of Sections 1.700 to 1.725 only if such house is sold or rented:

- (a) Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person, and
- (b) Without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of the provisions of 42 United States Code Section 3604(c) or of Section 3 of this ordinance; but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title; or
- (4) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

**1.720 Procedure.** Any person aggrieved by an unlawful practice prohibited by Sections 1.700 to 1.725 may file a complaint with the City Attorney within thirty (30) days after the aggrieved person becomes aware of the alleged unlawful practice, and in no event more than sixty (60) days after the alleged unlawful practice occurred. The City Attorney or his duly authorized representative shall investigate each complaint and attempt to resolve each complaint. Failure to achieve a resolution acceptable to both parties and compliance with this ordinance shall cause the City Attorney to forward the complaint and his findings to appropriate state and federal officials.

**1.725 Other Remedies.** Nothing herein contained shall prevent any person from exercising any right or seeking any remedy to which he might otherwise be entitled or from filing his complaint with any appropriate governmental agency.

*[Sections 1.700 to 1.725 added by Ordinance No. 85-09, passed May 20, 1985.]*



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### Parks and Recreation Board

- 1.750 Establishment of Board.** A Parks and Recreation Board of Astoria, Oregon, consisting of ten (10) persons, to be appointed as hereinafter provided, is hereby created. The members of said Board shall be appointed by the Mayor. Nine (9) members shall reside within the City of Astoria; one (1) member may reside outside of Astoria at any given time. Each of the ten (10) regular board members shall serve a term of three years with a term of at least one regular board member expiring annually. *[Section 1.750 amended by Ordinance No. 10-05, passed April 5, 2010; Ordinance No. 11-11, passed August 15, 2011.]*
- 1.755 Meetings; Chairman.** The board will elect a chairman annually. The board will conduct monthly meetings.
- 1.760 Powers and Duties.** The said board shall have the power and duty to advise the parks and recreation director concerning the management, care and control of public parks and recreation facilities owned by the city of Astoria and Ocean View Cemetery.
- 1.765 Compensation.** No member of said board shall receive any compensation for his services as a member of said board.
- 1.770 Vacancies.** Any vacancy which may occur in said board shall be filled for the unexpired term by appointment by the mayor.

*[Sections 1.750 through 1.770 added by Ordinance No. 87-07, passed May 4, 1987.]*

### NEIGHBORHOOD ASSOCIATIONS

- 1.800 Purpose.** The purpose of these sections is to establish a means for formally recognizing neighborhood associations, and to provide for neighborhood associations' communication with the city. This is an additional form of communication, and is not intended to inhibit other citizens or groups from communicating with the city.
- 1.805 Definitions.**
- (1) City Agency. Includes all departments, boards and commissions of the city of Astoria.
  - (2) Neighborhood Association. A neighborhood association means any group of people organized within a geographical area for the purpose of acting on issues affecting neighborhood and community livability. A recognized

neighborhood association is one that satisfies the standards of these sections and administrative procedures which may be established by the city council.

**1.810 Standards.** In order to be recognized by the city, neighborhood associations must satisfy the standards listed below, as well as administrative procedures which may be established by the city council. The city council is authorized to determine when an association has met these standards.

- (1) Membership. The membership of a neighborhood association shall not be limited by race, creed, color, sex, age, heritage, national origin, or income. Any resident, business owner or owner's representative, nonprofit organization or property owner within the recognized boundary of a neighborhood association shall be entitled to membership. Contributions shall be collected only on a voluntary basis, or a monthly membership dues may be designated.
- (2) Boundaries. The boundaries of a neighborhood association shall be drawn by the association membership. These boundaries must be mutually exclusive of other formally recognized associations. Neighborhood association boundaries shall be logical, contiguous, and follow identifiable physical features such as streets, property ownership boundaries, topographic features, boundaries of political jurisdictions, or city rights-of-way.
- (3) Structure. The neighborhood association must adopt written by-laws that provide for the following:
  - (a) That officers be elected annually;
  - (b) That a current map of the boundaries and a current list of the names and addresses of the officers be kept on file with the City Community Development Department;
  - (c) That a minimum of one general neighborhood association meeting be held each year, and the time, place, and purpose be well publicized throughout the neighborhood prior to the meeting;
  - (d) That a copy of the neighborhood association's by-laws be kept on file with the City Community Development Department and maintained and updated to reflect amendments by the neighborhood association;
  - (e) That meetings be conducted in conformance with public meetings law when the association meets to act in an advisory capacity to the city council, its boards and commissions, or the city manager; and

- (f) That written minutes, required by the public meetings law, also record minority opinions. Copies of minutes shall be made available to the public upon request.

**1.815 Responsibility of Neighborhood Associations.** Any neighborhood association meeting the standards of Section 1.810 shall be eligible to make recommendations to the city council, its boards or commissions, and the city manager on any matter affecting livability of the neighborhood, including, but not limited to, land use, community facilities, traffic and transportation, and police and fire service. When making a recommendation, a neighborhood association shall provide a record of relevant meetings held, including a record of attendance and results of any vote.

**1.820 Responsibility of City.** The city shall provide recognized neighborhood associations the following:

- (1) Timely notification of regular meetings of the council, and the planning commission;
- (2) General information regarding city services and activities as requested;
- (3) Assistance in educational efforts related citizen participation in city affairs;
- (4) Other resources as determined by the city manager or city council.

**1.825 Termination of Recognition.** The formal recognition of an association may be terminated by the city council if the association fails to abide by the standards in Section 1.810. Before the council terminates recognition, it must hold a public hearing to determine the standards violated and allow representatives of the association to be heard.

*[Sections 1.800 to 1.825 added by Ordinance No. 93-01, passed January 4, 1993.]*

## **REAL PROPERTY COMPENSATION**

**1.900 Purpose.** This Real Property Compensation Ordinance is intended to implement the provisions added to Chapter 197 of Oregon Revised Statutes by Ballot Measure 37 (November 2, 2004). These provisions establish a prompt, open, thorough, and consistent process that enables property owners an adequate and fair opportunity to present their claims to the City; preserves and protects limited public funds; and establishes a record of the City's decision capable of circuit court review.

**1.905 Definitions.** As used in this Ordinance, the following words and phrases mean:

1. City Manager: The City Manager of the City of Astoria, or his or her designee.
2. Claim: A claim filed under Ballot Measure 37 (November 2, 2004) and this claims ordinance.
3. Exempt Land Use Regulation: A land use regulation that:
  - a. Restricts or prohibits activities commonly and historically recognized as public nuisances under common law;
  - b. Restricts or prohibits activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;
  - c. Is required in order to comply with Federal law;
  - d. Restricts or prohibits the use of property for the purpose of selling pornography or performing nude dancing; or
  - e. Was enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.
4. Family Member: Includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.
5. Land Use Regulation: Includes:
  - a. Any statute regulating the use of land or any interest therein;
  - b. Administrative rules and goals of the Land Conservation and Development Commission;

- c. Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;
  - d. Statutes and administrative rules regulating farming and forest practices.
6. Owner: The present owner of the property, or any interest therein.

**1.910 Claim Filing Procedures.**

1. Authorization to File a Claim. A person seeking to file a claim under Sections 1.800 through 1.850 of this ordinance must be the current owner of the property that is the subject of the claim. The claim shall be filed with the City Manager's office, or another City office if so designated by the City Manager.
2. Content of Claim Application. A claim shall include:
  - a. The name(s), address(es), and telephone number(s) of all owners, and anyone with any interest in the property, including lien holders, trustees, lessees, and a description of the ownership interest of each;
  - b. The address, map and tax lot, and legal description of the real property that is the subject of the claim, the date the property was acquired by the owner, and the date the property was originally acquired by previous family members;
  - c. The current land use regulation(s) that allegedly restricts the use of the real property and allegedly causes a reduction in the fair market value of the subject property;
  - d. The amount of the claim, based on the alleged reduction in value of the real property noting the fair market value of the property and any evidence claimant has to support the asserted reduction in fair market value; and
  - e. Copies of any leases or Covenants, Conditions and Restrictions (CCR's) applicable to the real property, if any, that impose restrictions on the use of the property.
  - f. A plan indicating a proposed use and the sections of the relevant Codes that are included in the claim. If the claim is relative to

dimensions, the plan must include distances to property lines, dimensions of structures, parking areas, signs, etc. that are affected by the claim.

- g. A statement as to the preferred resolution of the claim:
  - 1) a monetary payment in a specific amount; or
  - 2) waiver of the applicable regulation(s); or
  - 3) modification of the applicable regulation(s), including a description of the desired modification(s).
- 3. Incomplete Application. The claimant's failure to provide all of the information required by Section 1.810 shall not invalidate the claim. The City may review and act on a claim whether the application is complete or incomplete.

#### **1.915 City Manager Investigation and Recommendation.**

- 1. Determination of Claim Validity. The City Manager or his designee shall investigate the claim to determine if the claim is valid.
- 2. Denial of Invalid Claim. If the claim is determined to be invalid, the City Manager shall notify the claimant that the claim is denied. Notice of Denial shall include the following information:
  - a. Reason for the denial.
  - b. A statement that the decision may be appealed by filing an appeal with the City Manager's Office within 15 days of the date that the Notification of Denial was mailed.
- 3. Processing of Potential Valid Claim. If the claim is determined to be potentially valid, the City Manager shall forward a recommendation on the claim to the City Council with one of the following recommendations:
  - a. Investigate the claim further;
  - b. Declare the claim valid, and remove, modify, or not apply the land use regulation(s) to allow the owner to use the property for a use permitted at the time the owner acquired the property; or

- c. Declare the claim valid and compensate the claimant; or
- d. Evaluate the claim with the expectation of the City acquiring the property by condemnation.

**1.920 City Council Public Hearing.** The City Council shall conduct a public hearing before taking final action on a recommendation from the City Manager. Notice of the public hearing shall be mailed to the claimant, and to property owners within 100 feet of the exterior boundary of the subject property.

**1.925 City Council Action on Claim.**

1. City Council Decision. Upon conclusion of the public hearing, and prior to the expiration of 180 days from the date the claim was filed, the City Council shall:
  - a. Determine that the claim does not meet the requirements of Measure 37 and this Ordinance, and deny the claim; or
  - b. Adopt a Resolution with findings therein that supports a determination that the claim is valid and direct that the claimant be compensated in an amount set forth in the Resolution for the reduction in value of the property; or
  - c. Adopt a Resolution with findings therein that supports a determination that the claim is valid and remove, modify, or not apply the land use regulation(s) to allow the owner to use the property for a use permitted at the time the owner acquired the property.
  - d. Adopt a Resolution with findings therein that supports a determination that the claim is valid and direct staff to initiate proceedings for the City to acquire the property by condemnation.
2. Applicable Land Use Regulations. If the City Council removes or modifies the challenged land use regulation, it may, at its discretion, put back into effect with respect to the subject property, any or all of the land use regulations in effect at the time the claimant acquired the property.
3. Notice of Decision. The City Manager shall mail a Notice of Decision by the City Council to the claimant and to all parties to the hearing. The

Notice of Decision shall include a brief description of the decision reached.

4. Compliance with Conditions of Approval. Compliance with conditions or modifications established for a claim and adherence to the submitted plan, as approved, is required. Any departure from these conditions of approval and approved plans constitutes a violation of this Code. See Section 1.010 of the Astoria City Code concerning penalties.
5. Payment of Compensation. If the City Council determines that the claim is valid and the claimant should be paid compensation in an amount set forth in the Resolution for the reduction in value of the property, the Council shall require the claimant to provide a copy of the property deed or title report verifying date of ownership prior to paying the compensation.

**1.930 Refiling a Claim.** Claims for which a substantially similar claim has been processed on a property by the same claimant or family shall not be valid. The City Manager or his designee shall determine if the claim is substantially similar and shall notify the claimant of the denial in accordance with Section 1.815.2 concerning Denial of Invalid Claim.

**1.935 Processing Fees.**

1. Claim Application Fee. The fee to process a claim application shall be set by Resolution and paid to the City upon the filing of a claim. Such fees shall not be refundable.
2. Additional Costs. Where the City Manager deems it necessary to incur additional costs, such as the hiring of independent experts, appraisals, or other technical expertise during the course of the claim review, such costs shall be charged to the claimant. Such costs shall not exceed actual costs.
3. Collection of Processing Fees. If the claimant does not pay the application fee or additional costs, the City may pursue collection of the fee, additional costs, and any attorney fees necessary to collect the fee, including, but not limited to, filing a lien on the property.

**1.940 Private Cause of Action.** If the City Council's approval of a claim by removing or modifying a land use regulation causes a reduction in value of other property located in the vicinity of the claimant, the neighbor(s) shall have a cause of action in State circuit court to recover from the claimant the amount of the reduction, and shall also be entitled to attorney's fees."

*[Sections 1.900 to 1.940 added by Ordinance No. 05-01, passed January 18, 2005.]*



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**LOCAL GOVERNMENT PUBLIC CONTRACTING REGULATIONS****1.960 Introduction.**

**A. Purpose of Purchasing Policy.** This Astoria Purchasing Code (APC) is adopted by the Astoria City Council as the governing body of Astoria to establish the rules and procedures for contracts entered into and purchases made by the City. It is the policy of the City in adopting this APC to utilize public contracting and purchasing practices and methods that maximize the efficient use of City resources and the purchasing power of City funds by:

- (1) Promoting impartial and open competition;
- (2) Using solicitation materials that are complete and contain a clear statement of contract specifications and requirements; and
- (3) Taking full advantage of evolving procurement methods that suit the purchasing needs of the City as they emerge within various industries.

**B. Interpretation of Purchasing Policy.** Except as specifically provided in this

APC, public contracts and purchases shall be awarded, administered and governed according to ORS Chapters 279A, 279B and 279C (the "Public Contracting Code") and the Attorney General's Model Public Contract Rules ("Model Rules"), as they now exist.

- (1) In furtherance of the purposes of the objective set forth above in subsection A, it is the city's intent that this APC be interpreted to authorize the full use of all contracting and purchasing powers described in ORS Chapters 279A, 279B and 279C.
- (2) The Model Rules adopted under ORS 279A.065 shall apply to the contracts and purchases of the City to the extent they do not conflict with this APC and the rules and regulations adopted by the City.
- (3) In the event of a conflict between any provisions of this APC and the Model Rules, the provisions of this APC shall prevail.

**C. Specific Provisions' Precedence over General Provisions.** In the event of a conflict between the provisions of this APC, the more specific provision shall take precedence over the more general provision.

- D. Conflict with Federal Statutes and Regulations.** Except as otherwise expressly provided in ORS Chapters 279A, 279B and/or 279C, applicable federal statutes and regulations govern when federal funds are involved.

**1.961 Definitions.**

Unless a different definition is specifically provided herein, or context clearly requires otherwise, the following terms have the meanings set forth herein. Additionally, any term defined in the singular includes the meaning of the plural, and vice versa.

- A. Administering agency.** The contracting agency that solicited and established the original contract in a cooperative procurement for goods, services, personal services, professional services or public improvements.
- B. Affected person/offeror.** A person whose ability to participate in a procurement is adversely impaired by a City decision.
- C. Architectural, engineering and land surveying services.** Professional services performed by an architect, engineer or land surveyor and includes architectural, engineering or land surveying services, separately or any combination thereof, as appropriate within the context of a section of this Model.
- D. Award.** The decision to enter into a contract or purchase order with a specific offeror.
- E. Bid.** A response to an invitation to bid.
- F. Bidder.** A person who submits a bid in response to an invitation to bid.
- G. Business with which a City employee is associated.** Any business in which a City employee is a director, officer, owner or employee, or any corporation in which a City employee owns or has owned ten percent (10%) or more of any class of stock at any point in the preceding calendar year.
- H. City.** The City of Astoria, a municipal corporation and a contracting and purchasing agency.

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- I. City Manager.** The person appointed by the City Council to the position of City Manager. Where the context so requires the term City Manager shall also include those persons authorized by the City Manager to perform the described functions.
- J. Closing.** The date and time announced in a solicitation document as the deadline for submitting bids or offers.
- K. Contract.** See Public Contract.
- L. Contractor.** The person who enters into a contract with the City.
- M. Contract price.** As the context requires:
- (1) The maximum payment that the City will make under a contract if the contractor fully performs under the contract, including bonuses, incentives and contingency amounts;
  - (2) The maximum not-to-exceed payment specified in the contract; or
  - (3) The unit prices set forth in the contract.
- N. Contracting agency.** A public body authorized by law to conduct a procurement.
- O. Cooperative procurement.** A procurement conducted by, or on behalf of, one or more contracting agencies.
- P. Days.** Calendar days.
- Q. Emergency.** Involves circumstances that:
- (1) Could not have been reasonably foreseen;
  - (2) Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and
  - (3) Require prompt execution of a contract or amendment in order to remedy the condition.
- R. Findings.** The justification for a conclusion. If the justification relates to a public improvement contract, findings may be based on information that includes, but is not limited to:
- (1) Operational, budget and financial data;

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- (2) Public benefits;
  - (3) Value engineering;
  - (4) Specialized expertise;
  - (5) Market conditions;
  - (6) Technical complexity; and
  - (7) Funding sources.

**S. Goods and/or services.** Supplies, equipment, materials and services, other than personal services, and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto. The term includes combinations of any of the items identified in the definition.

**T. Grant.** An agreement under which:

- (1) The City receives moneys, property or other assistance, including but not limited to, federal assistance that is characterized as a grant by federal law or regulation, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets;
    - (a) 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
    - (b) No substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with grant conditions; or
  - (2) The City provides moneys, property or other assistance, including but not limited to, federal assistance that is characterized as a grant by federal law or regulation, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets;
    - (a) The assistance is given to the recipient for the purpose of supporting or stimulating a program or activity of the recipient; and
    - (b) No substantial involvement by the City is anticipated in the program or activity other than involvement associated with monitoring compliance with grant conditions.
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- U. Immediate family member.** An employee's spouse, and parents; children, and spouses; parents, and spouses; siblings, and spouses; grandparents and grandchildren, and spouses; and domestic partner, and parents.
- V. Offer.** A bid, proposal, quote or other response to a solicitation document.
- W. Offeror.** A person who submits an offer.
- X. Opening.** The date, time and place announced in the solicitation document for the public opening of written sealed offers.
- Y. Original contract.** The initial contract or price agreement solicited and awarded during a cooperative procurement by an administering agency.
- Z. Purchasing agency.** An agency that procures goods or services, personal services, or public improvements from a contractor based on the original contract established by an administering agency in a cooperative procurement.
- AA. Person.** An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public body, public corporation or other legal or commercial entity, and any other person or entity with legal capacity to contract.
- BB. Personal services.** Services, other than professional services, that require specialized skill, knowledge and resources in the application of technical or scientific expertise or in the exercise of professional, artistic or management discretion or judgment.
- (1) Qualifications and performance history, expertise and creativity, and the ability to exercise sound professional judgment are typically the primary considerations when selecting a personal services contractor, with price being secondary.
  - (2) Personal services contracts include, but are not limited to, the following classes of contracts:
    - (a) Contracts for services performed in a professional capacity, including but not limited to, services of an accountant, attorney, auditor, court reporter, information technology consultant, physician or broadcaster;
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- (b) Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which the City is or may become interested;
  - (c) Contracts for services as an artist in the performing or fine arts, including any person identified as a photographer, film maker, actor, director, painter, weaver or sculptor;
  - (d) Contracts for services that are specialized, creative or research-oriented; and/or
  - (e) Contracts for services as a consultant.
- CC. Price agreement.** A contract for the procurement of goods or services at a set price which has:
- (1) No guarantee of a minimum or maximum purchase; or
  - (2) An initial order or minimum purchase combined with a continuing contractor obligation to provide goods or services with no guarantee of any minimum or maximum additional purchase.
- DD. Procurement.** The act of purchasing, leasing, renting or otherwise acquiring goods or services, personal services or professional services. It includes each function and procedure undertaken or required to be undertaken to enter into a contract, administer a contract and obtain the performance of a contract for goods or services, personal services or professional services.
- EE. Professional services.** Architectural, engineering, land surveying, photogrammetric, transportation planning or related services, or any combination of these services, provided by a consultant.
- FF. Proposal.** A response to a request for proposals.
- GG. Proposer.** A person that submits a proposal in response to a request for proposals.
- HH. Provider.** As the context requires, a supplier of goods or services, personal services, or professional services.

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- II. Public contract.** A sale or other disposal, or a purchase, lease, rental or other acquisition, by the City of personal property, goods or services, including personal services, professional services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. It does not include grants.
- JJ. Public contracting.** Procurement activities relating to obtaining, modifying or administering contracts or price agreements.
- KK. Public improvement.** A project for construction, reconstruction or major renovation on real property, by or for the City. It does 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, or ordinary repair or maintenance necessary to preserve a public improvement.
- LL. Public improvement contract.** A contract for a public improvement. This does not include a contract for emergency work, minor alterations, or ordinary repair or maintenance necessary to maintain a public improvement.
- MM. Recycled product.** All materials, goods and supplies, not less than fifty percent (50%) of the total weight of which consists of secondary and post-consumer waste with not less than ten percent (10%) of its total weight consisting of post-consumer waste. It 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.
- NN. Related services.** Personal services, other than architectural, engineering and land survey services, which are related to the planning, design, engineering or oversight of public improvement projects or components thereof, including but not limited to:
- (1) Landscape architectural services;
  - (2) Facilities planning services;
  - (3) Energy planning services;
  - (4) Space planning services;
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- (5) Environmental impact studies;
  - (6) Hazardous substances or hazardous waste or toxic substances testing services;
  - (7) Wetland delineation studies;
  - (8) Wetland mitigation services;
  - (9) Native American studies;
  - (10) Historical research services;
  - (11) Endangered species studies;
  - (12) Rare plant studies;
  - (13) Biological services;
  - (14) Archaeological services;
  - (15) Cost estimating services;
  - (16) Appraising services;
  - (17) Material testing services;
  - (18) Mechanical system balancing services;
  - (19) Commissioning services;
  - (20) Project management services;
  - (21) Construction management services and owner's representatives' service; and/or
  - (22) Land use planning services.

**OO. Request for proposals.** A solicitation document used for soliciting proposals.



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- PP. Request for qualifications.** A written document issued by the City describing particular services to which potential contractors respond with a description of their experience and qualifications that results in a list of potential contractors who are qualified to perform those services, but which is not intended to create a contract between a potential contractor on the list and the City.
- QQ. Revenue generating agreements.** Contracts or agreements for services that generate revenue and that are typically awarded to the offeror proposing the most advantageous or highest monetary return.
- RR. Scope.** The range and attributes of the goods or services described in a procurement document.
- SS. Signed or signature.** Any mark, word or symbol attached to or logically associated with a document and executed or adopted by a person with the authority and intent to be bound.
- TT. Solicitation.** As the context requires:
- (1) A request for the purpose of soliciting offers, including an invitation for bid, a request for proposal, a request for quotation, a request for qualifications, or other similar documents;
  - (2) The process of notifying prospective offerors of a request for offers; and/or
  - (3) The solicitation document.
- UU. Work.** The furnishing of all materials, equipment, labor and incidentals necessary to successfully complete any individual item in a contract and successful completion of all duties and obligations imposed by the contract.
- VV. Written or in writing.** Conventional paper documents, whether handwritten, typewritten or printed, in contrast to spoken words, including electronic transmissions or facsimile documents when required by applicable law or permitted by a solicitation document or contract.

**1.962 Authority.**

- A. City Council as Local Contract Review Board.** The City Council is designated as the local contract review board of the City and has all the rights, powers and authority necessary to carry out the provisions of this APC, the Public Contracting Code, and/or the Model Rules.
- B. Application of Attorney General's Model Rules of Procedure.** Pursuant to ORS 279A.065(6), the City has elected to establish its own policy for public contracting and purchasing. Except as provided herein, the Model Rules do not apply to the City.
- C. Inapplicability of APC.** This APC does not apply to the following:
- (1) Contracts or agreement to which the Public Contracting Code does not apply;
  - (2) Contracts, intergovernmental and interstate agreements entered into pursuant to ORS Chapter 190;
  - (3) Grants;
  - (4) Acquisitions or disposals of real property or interests in real property;
  - (5) Procurements from an Oregon Corrections Enterprise program;
  - (6) Contracts, agreements or other documents entered into, issued or established in connection with:
    - (a) The incurring of debt, including 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 advance of funds, aid or assistance by the City to a public or private person for the purpose of carrying out, promoting or sustaining activities or programs authorized by law other than for the construction of public works or public improvements;
    - (c) The investment of funds by the City as authorized by law; or

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- (d) Banking, money management or other predominantly financial transactions that, by their character, cannot practically be established under the competitive contractor selection procedures, based upon the findings of the City manager.
- (7) Contracts for employee benefit plans;
  - (8) Contracts with newspapers and other publications for the placement of advertisements or public notices;
  - (9) Contracts for items where the price is regulated and available from a single source or limited number of sources;
  - (10) Insurance contracts;
  - (11) Revenue-generating agreements;
  - (12) Federal agreements where applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of the Oregon Public Contracting Code or this APC, or require additional conditions in public contracts not authorized by the Oregon Public Contracting Code or this APC;
  - (13) Contracts for legal professionals or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which the City of Astoria is or may become interested.
  - (14) Contracts for the abatement of public nuisances pursuant to the provisions of Astoria City Code §§ 5.706-5.746.
- D. Authority of City Manager.** For contracts and purchases covered by this APC, the City Manager is authorized to:
- (1) Award contracts and amendments without specific authorization by the City Council whenever the contract amount is \$50,000 or less and the proposed expenditure is included in the current fiscal year budget.
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- (2) Execute contracts and amendments with specific authorization by the City Council whenever the contract or amendment amount is greater than \$50,000 and the proposed expenditure is included in the current fiscal year budget.
  - (3) As the purchasing agent for the City, the City Manager is authorized to:
    - (a) Advertise for bids or proposals without specific authorization from the City Council, when the proposed purchase is included within the current fiscal year budget.
    - (b) Advertise for bids or proposals when the proposed purchase is not included within the current fiscal year budget after the City Council approves the proposed budget transfer.
    - (c) Purchase goods, services and/or property without specific authorization by the City Council whenever the amount is \$50,000 or less and the proposed expenditures are included in the current fiscal year budget.
    - (d) Purchase goods, services and/or property with specific authorization by the City Council whenever the amount is greater than \$50,000 and the proposed expenditure is included in the current fiscal year budget.
    - (e) Purchases of any goods or services in excess of \$7,500 from City employees require authorization of the City manager.
    - (f) Departments shall communicate purchase requirements to the City Manager and plan sufficiently in advance so that orders can be placed in economical quantities.
  - (4) Delegate, in writing, the signature authority described in the above subsection (2) and the purchasing powers described in the above subsection (3). In the absence of a written delegation to the contrary, and in the absence of the City Manager, the signature authority described in the above subsection (2) and the purchasing powers described in the above subsection (3) are delegated in order as follows:
    - (a) The Acting City Manager
    - (b) Finance director; and
    - (c) Mayor.
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- (5) Adopt forms, procedures, computer software, and administrative rules for all City purchases regardless of the amount.
- (a) When adopting the forms, procedures, computer software, and/or administrative rules, the City Manager shall establish practices and policies that:
- i. That allow for open and impartial competition; and
  - ii. Allow the City to take advantage of the cost-saving benefits of alternative contracting methods and practices;
- (b) The City shall use these forms, procedures, computer software and administrative rules unless they conflict with the APC.
- E. Favorable Terms.** Contracts and purchases shall be negotiated on the most favorable terms in accordance with this APC, other adopted ordinances, state and federal laws, policies and procedures.
- F. Unauthorized Contracts or Purchases.** Public contracts entered into or purchases not made as authorized herein shall be voidable at the sole discretion of the City.
- (1) The City may take appropriate action in response to execution of contracts or purchases made contrary to this provision.
  - (2) Such actions include, but are not limited to, providing educational guidance, imposing disciplinary measures, and/or holding individuals personally liable for such contracts or purchases.
- G. Purchasing from City Employees or Employees' Immediate Family Prohibited.** No contract shall be entered into with or purchase made from any City employee or employee's immediate family member, or any business with which the employee is associated, unless:
- (1) The contract or purchase is expressly authorized and approved by the City Council; or

- (2) The need for the contract or purchase occurs during a state of emergency, and the City Manager finds, in writing, that the acquisition from the employee, employee's immediate family member or business with which the employee is associated is the most expeditious means to eliminate the threat to public health, safety and welfare.

### 1.963 Preferences.

- A. Discretionary Local Preference.** If the solicitation is in writing, the City Manager may provide a specified percentage preference of not more than ten percent (10%) for goods fabricated or processed entirely in Oregon or services performed entirely in Oregon.
  - (1) When a preference is provided under this subsection, and more than one offeror qualifies for the preference, the City Manager may give further preference to a qualifying offeror that resides in or is headquartered in Oregon.
  - (2) The City Manager may establish a preference percentage of ten percent (10%) or higher if the City Manager makes a written determination that good cause exists to establish the higher percentage, explains the reasons, and provides evidence of good cause.
  - (3) The preference described in this subsection cannot be applied to a contract for emergency work, minor alterations, and ordinary repairs or maintenance of public improvements.
- B. Mandatory Tie Breaker Preference.** If offers are identical in price, fitness, availability and the quality is identical, and the City desires to award the contract, the preferences provided in ORS 279A.120 shall be applied prior to the contract award.
- C. Reciprocal Preference.** Reciprocal preferences must be given when evaluating bids, if applicable under ORS 279A.120.
- D. Preference for Recycled Materials and Supplies.** Preferences for recycled goods shall be given when comparing goods, if applicable under ORS 279A.125. The City Manager shall adopt standards to determine if goods are manufactured from recycled materials.

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**1.964 General Provisions.**

- A. Public Notice.** Unless otherwise specifically provided by this APC, any notice required to be published by this APC may be published using any method the City Manager deems appropriate, including but not limited to, mailing notice to persons that have requested notice in writing, placing notice on the city's website, or publishing in statewide trade or local publications.
- B. Procedure for Informal Written Solicitation.** Where allowed by this APC, informal written solicitations shall be made by a solicitation document sent to not less than three (3) prospective providers.
- (1) The solicitation document shall request competitive price quotes or competitive proposals, and include:
    - (a) The date, time and place that price quotes or proposals are due;
    - (b) A description or quantity of the good or service required;
    - (c) Any statement of period for which price quotes or proposals must remain firm, irrevocable, valid and binding on the offeror. If no time is stated in the solicitation document, the period shall be thirty (30) days;
    - (d) Any required contract terms or conditions; and
    - (e) Any required bid form or proposed format.
  - (2) Price quotes or proposals shall be received by the City Manager at the date, time and place established in the solicitation document.
    - (a) The City Manager shall keep a written record of the sources of the quotes or proposals.
    - (b) If three (3) quotes or proposals are not reasonably available, fewer shall suffice, but the City Manager shall make a written record of the effort made to obtain quotes or proposals as part of the procurement file.

- C. Procurement Methods for Professional Services and Public Improvements.** The City shall apply the Public Contracting Code and the Model Rules when procuring professional services and public improvements and processing protests thereof.
- D. Retroactive Approval.** Retroactive approval of a contract means the award or execution of a contract where work was commenced without final award or execution. The City Manager may make a retroactive approval of a contract only if the responsible employee submits a copy of the proposed contract to the City manager, along with a written request for contract retroactive approval that contains:
- (1) An explanation of the reason work was commenced before the contract was finally awarded or executed;
  - (2) A description of steps being taken to prevent similar occurrences in the future;
  - (3) Evidence that, but for the failure to finally award or execute the contract, the employee complied with all other steps required to properly select a contractor and negotiate the contract; and
  - (4) A proposed form of contract.

**1.965 Source Selection Methods for Goods or Services, Other Than Personal or Professional Services.**

- A. Small Procurements.** Contracts for or purchases of goods or services with a contract price of \$10,000 or less are small procurements.
- (1) The City Manager may use any procurement method the City Manager deems practical or convenient, including direct negotiation or award, for small procurements of goods or services.
  - (2) Amendments. Small procurement contracts may be amended if the cumulative amendments do not increase the total contract price to more than twenty-five percent (25%) of the original contract price.
  - (3) Public notice. No public notice of small procurements is required.



- B. Intermediate Procurements.** Contracts for goods or services with a contract price greater than \$10,000 and less than or equal to \$150,000 are intermediate procurements.
- (1) Intermediate procurements shall be by informal written solicitation.
  - (2) Negotiations. The City Manager may negotiate with an offeror to clarify an informal written solicitation, or to make modifications that will make the quote, proposal or solicitation acceptable or more advantageous to the City.
  - (3) Award. If a contract is awarded, the award shall be made to the offeror whose competitive verbal quote or proposal or informal written solicitation the City Manager determines will best serve the interests of the City, taking into account price or any other relevant considerations, including but not limited to, experience, expertise, product functionality, suitability for a particular purpose, delivery and contractor responsibility.
  - (4) Amendments. Intermediate procurement contracts may be amended if the cumulative amendments do not increase the total contract price by more than twenty-five percent (25%) of the original contract price.
  - (5) Public notice. Public notice is not required for intermediate procurements.
- C. Large Procurements.** Contracts for goods or services with a contract price greater than \$150,000 are large procurements.
- (1) The City Manager may use competitive sealed bidding as set forth in ORS 279B.055, or competitive sealed proposals as set forth in ORS 279B.060.
  - (2) When using either competitive sealed bidding or competitive sealed proposals, the City Manager shall follow the applicable procedures set out in the Model Rules.
  - (3) The City shall apply the applicable procedure set out in the Model Rules for processing protests of large procurements.

**1.966 Personal Services Contracts.**

**A. Classification of Services as Personal Services.** In addition to the classes of personal services contracts identified in the definition of personal services contracts, the City Manager may classify additional specific types of services as personal services. In determining whether a service is a personal service, the City Manager shall consider:

- (1) Whether the work requires specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment;
- (2) Whether the City intends to rely on the contractor's specialized skills, knowledge and expertise to accomplish the work; and
- (3) Whether selecting a contractor primarily on the basis of qualifications, rather than price, would most likely meet the city's needs and result in obtaining satisfactory contract performance and optimal value.
- (4) A service shall not be classified as personal services for the purposes of the APC if:
  - (a) The work has traditionally been performed by contractors selected primarily on the basis of price; or
  - (b) The services do not require specialized skills, knowledge and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment.

**B. Requests for Qualifications.** At the City manager's discretion, a request for qualifications may be used to determine whether competition exists to perform the needed personal services or to establish a non-binding list of qualified contractors for individual negotiation, informal written solicitations or requests for proposals.

- (1) A request for qualifications shall describe the particular type of personal services that will be sought, the qualifications the contractor must have to be considered, and the evaluation factors and their relative importance.
- (2) A request for qualifications may require information including, but not limited to:

- (a) The contractor's particular capability to perform the required personal services;
  - (b) The number of experienced personnel available to perform the required personal services;
  - (c) The specific qualifications and experience of personnel;
  - (d) A list of similar personal services the contractor has completed;
  - (e) References concerning past performance; and
  - (f) Any other information necessary to evaluate the contractor's qualifications.
- (3) A voluntary or mandatory qualifications pre-submission meeting may be held for all interested contractors to discuss the proposed personal services. The request for qualifications shall include the date, time and location of the meeting.
  - (4) Unless the responses to a request for qualifications establish that competition does not exist, the request for qualifications is canceled, or all responses to the request for qualifications are rejected, and all respondents who meet the qualifications set forth in the request for qualifications shall receive notice of any required personal services and have an opportunity to submit a proposal in response to request for proposals.

**C. Direct Negotiations.** Personal services may be procured through direct negotiations if:

- (1) The contract price does not exceed \$75,000 and the work is within a budgetary appropriation or approved by the City Council; or
- (2) The confidential personal services, including special counsel, or professional or expert witnesses or consultants, are necessary to assist with pending or threatened litigation or other legal matters in which the City may have an interest; or
- (3) The nature of the personal service is not project-driven but requires an ongoing, long-term relationship of knowledge and trust.

- (4) Amendments. Personal services contracts procured by direct negotiation pursuant to this section may be amended, provided the amendment is within the scope of the original contract and the cumulative amount of the amendments does not increase the total contract price by more than twenty-five percent (25%) over the original contract price; or the amendment is necessary to complete the work being performed and it would be unreasonable or impracticable to seek another provider within the time frames needed to complete the work.
- (5) Public Notice. No public notice of personal services contracts procured by direct negotiations is required.

**D. Informal Written Solicitations.** An informal written solicitation process may be used for personal services when the contract price is less than \$125,000.

- (1) An informal written solicitation shall solicit proposals from at least three (3) qualified providers. If the City Manager determines three (3) qualified providers are not reasonably available, fewer shall suffice if the reasons three (3) providers are not reasonably available are documented in the procurement file.
- (2) The solicitation document shall include:
  - (a) The date, time and place that proposals are due;
  - (b) A description of personal services sought, or the project to be undertaken;
  - (c) Any statement of the time period for which proposals must remain firm, irrevocable, valid and binding on the offeror. If no time is stated in the solicitation document, the period shall be thirty (30) days;
  - (d) Any required contract terms or conditions; and
  - (e) Any required bid form or proposal format.
- (3) Selection and ranking of proposals may be based on the following criteria:

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- (a) Particular capability to perform the personal services required;
  - (b) Experienced staff available to perform the personal services required, including the proposer's recent, current and projected workloads;
  - (c) Performance history;
  - (d) Approach and philosophy used in providing personal services;
  - (e) Fees or costs;
  - (f) Geographic proximity to the project or the area where the services are to be performed; and
  - (g) Such other factors deemed appropriate, including a desire to ensure an equitable distribution of work among highly qualified contractors.
- (4) The City Manager shall maintain written documentation of the solicitation, including solicitation attempts, responses, and provider names and addresses in the procurement file.
  - (5) Amendments. Personal services contracts procured by informal written solicitations pursuant to this section may be amended, provided the amendment is within the scope of the original contract and the cumulative amount of the amendments does not increase the total contract price by more than twenty-five percent (25%) over the original contract price; or the amendment is necessary to complete the work being performed and it would be unreasonable or impracticable to seek another provider within the time frames needed to complete the work.
  - (6) Public Notice. No public notice of personal services contracts procured by informal written solicitations pursuant to this section is required.
- E. Requests for Proposals.** A request for proposals shall be used to procure personal services when the contract price is \$125,000 or more or the complexity of the project requires the use of a formal competitive process to determine whether a particular proposal is most advantageous to the City.
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- (1) Request for Proposal. The request for proposal shall include:
- (a) Notice of any pre-offer conference, including:
    - i. The time, date and location;
    - ii. Whether attendance at the pre-offer conference is mandatory or voluntary; and
    - iii. A provision that statements made by representatives of the City at the pre-offer conference are not binding unless confirmed by written addendum.
  - (b) The form and instructions for submission of proposals, including the location where proposals must be submitted, the date and time by which proposals must be received and any other special information, e.g., whether proposals may be submitted by electronic means;
  - (c) The name and title of the person designated for the receipt of proposals and the person designated as the contact person for the procurement, if different;
  - (d) A date, time and place that pre-qualification applications, if any, must be filed and the classes of work, if any, for which proposers must be pre-qualified;
  - (e) A statement that the City may cancel the procurement or reject any or all proposals;
  - (f) The date, time and place of opening;
  - (g) The office where the request for proposals may be reviewed;
  - (h) A description of the personal services to be procured;
  - (i) The evaluation criteria;
  - (j) The anticipated schedule, deadlines, evaluation process and protest process;
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- (k) The form and amount of any proposal security deemed reasonable and prudent by the City Manager to protect the city's interests;
  - (l) A description of the manner in which proposals will be evaluated, including the relative importance of price and other evaluation factors used to rate the proposals;
  - (m) If more than one tier of competitive evaluation will be used, a description of the process under which the proposals will be evaluated in the subsequent tiers;
  - (n) If contracts will be awarded to more than one personal services contractor, an identification of the manner in which the City will determine the number of contracts to be awarded, or that the manner will be left to the city's discretion at time of award;
  - (o) If contracts will be awarded to more than one personal services contractor, the criteria to be used to choose from the multiple contracts when acquiring personal services shall be identified;
  - (p) All required contract terms and conditions, including the statutorily required provisions in ORS 279B.220, 279B.230 and 279B.235; and
  - (q) Any terms and conditions authorized for negotiation.
- (2) Public Notice. The City Manager shall provide public notice of a request for proposals for personal services.
- (a) Public notice shall be given not less than twenty-one (21) days prior to closing for the request for proposals, unless the City Manager determines that a shorter interval is in the public's interest, or a shorter interval will not substantially affect competition.
  - (b) The City Manager shall document the specific reasons for the shorter public notice period in the procurement file.

- (3) Amendments. Personal services contracts procured by requests for proposals pursuant to this section may be amended, provided the amendment is within the scope of the original contract and the cumulative amount of the amendments does not increase the total contract price by more than twenty-five percent (25%) over the original contract price; or the amendment is necessary to complete the work being performed and it would be unreasonable or impracticable to seek another provider within the time frames needed to complete the work.

**1.967 Alternative Source Selection Methods for Goods or Services & Personal Services.**

**A. Sole-Source Procurements.** A contract may be awarded as a sole-source procurement without competition pursuant to this section.

- (1) Determination of Sole Source. Before a sole-source contract may be awarded, the City Manager shall make written findings that the goods or services, personal services or professional services are available from only one source, based on one or more of the following criteria:
  - (a) The efficient use of existing goods or services, personal services or professional services requires the acquisition of compatible goods or services, personal services or professional services that are available from only one source;
  - (b) The goods or services, personal services or professional services are available from only one source and required for the exchange of software or data with other public or private agencies;
  - (c) The goods or services, personal services or professional services are available from only one source, and are needed for use in a pilot or an experimental project; or
  - (d) Other facts or circumstances exist that support the conclusion that the goods or services, personal services or professional services are available from only one source.
- (2) Negotiations. To the extent reasonably practical, contract terms advantageous to the City shall be negotiated with the sole source provider.



- (3) Notice. The City Manager shall post notice of any determination that the sole source selection method will be used on the city's website not less than ten (10) days prior to the date a sole source contract will be awarded. The notice shall describe the goods or services, personal services or professional services to be procured, identify the prospective contractor and include the date and time when, and place where, protests of the use of a sole source selection method must be filed.

**B. Special Procurements.** In its capacity as contract review board for the City, the City Council, upon its own initiative or upon request of the City manager, may create special selection, evaluation and award procedures for, or may exempt from competition, the award of a specific contract or class of contracts as provided in this section.

- (1) Basis for Approval. The approval of a special solicitation method or exemption from competition must be based upon a record before the City Council that contains the following:
  - (a) The nature of the contract or class of contracts for which the special solicitation or exemption is requested;
  - (b) The estimated contract price or cost of the project, if relevant;
  - (c) Findings to support the substantial cost savings, enhancement in quality or performance, or other public benefit anticipated by the proposed selection method or exemption from competitive solicitation;
  - (d) Findings to support the reason that approval of the request would be unlikely to encourage favoritism or diminish competition for the public contract or class of public contracts, or would otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the solicitation requirements that would otherwise be applicable under these regulations;
  - (e) A description of the proposed alternative contracting methods to be employed; and
  - (f) The estimated date by which it would be necessary to let the contract(s).

- (2) In making a determination regarding a special selection method, the City Council may consider the type, cost, amount of the contract or class of contracts, number of persons available to make offers, and such other factors as it may deem appropriate.
- (3) Hearing. The City shall approve the special solicitation or exemption after a public hearing before the City Council.
  - (a) At the public hearing, the City shall offer an opportunity for any interested party to appear and present comment.
  - (b) The City Council shall consider the findings and may approve the exemption as proposed or as modified by the City Council after providing an opportunity for public comment.

**C. Contracts.** Subject to award at the City manager's discretion. The following classes of contracts may be awarded in any manner that the City Manager deems appropriate to the city's needs, including by direct appointment or purchase. Except where otherwise provided, the City Manager shall make a record of the method of award.

- (1) Amendments. Contract amendments shall not be considered to be separate contracts if made in accordance with the APC.
- (2) Copyrighted Materials; Library Materials. Contracts for the acquisition of materials entitled to copyright, including but not limited to, works of art and design, literature and music, or materials even if not entitled to copyright, purchased for use as library lending materials.
- (3) Equipment Repair. Contracts for equipment repair or overhauling, provided the service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing.
- (4) Government-Regulated Items. Contracts for the purchase of items for which prices or selection of suppliers are regulated by a governmental authority.
- (5) Non-Owned Property. Contracts or arrangements for the sale or other disposal of abandoned property or other personal property not owned by the City.

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- (6) Specialty Goods for Resale. Contracts for the purchase of specialty goods by the City for resale to consumers.
  - (7) Sponsorship Agreements. Sponsorship agreements, under which the City receives a gift or donation in exchange for recognition of the donor.
  - (8) Structures. Contracts for the disposal of structures located on city-owned property.
  - (9) Renewals. Contracts that are being renewed in accordance with their terms are not considered to be newly issued contracts and are not subject to competitive procurement procedures.
  - (10) Temporary Extensions or Renewals. Contracts for a single period of one (1) year or less, for the temporary extension or renewal of an expiring and non-renewable, or recently expired, contract, other than a contract for public improvements.
  - (11) Temporary Use of City-Owned Property. The City may negotiate and enter into a license, permit or other contract for the temporary use of city-owned property without using a competitive selection process if:
    - (a) The contract results from an unsolicited proposal to the City based on the unique attributes of the property or the unique needs of the proposer;
    - (b) The proposed use of the property is consistent with the city's use of the property and the public interest; and
    - (c) The City reserves the right to terminate the contract without penalty, in the event that the City determines that the contract is no longer consistent with the city's present or planned use of the property or the public interest.
  - (12) Used Property. The City Manager may contract for the purchase of used property by negotiation if such property is suitable for the city's needs and can be purchased for a lower cost than substantially similar new property.
    - (a) For this purpose, the cost of used property shall be based upon the life-cycle cost of the property over the period for which the property will be used by the City.
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(b) The City Manager shall record the findings that support the purchase.

- (13) Utilities. Contracts for the purchase of steam, power, heat, water, telecommunications services, and other utilities.
- (14) Conference/Meeting Room Contracts. Contracts entered into for meeting room rental, hotel rooms, food and beverage, and incidental costs related to conferences and city-sponsored workshops and trainings.

**D. Emergency Procurements.** When the City Manager determines that immediate execution of a contract within the City manager's authority is necessary to prevent substantial damage or injury to persons or property, the City Manager may execute the contract without competitive selection and award or City Council approval, but, where time permits, competitive quotes should be sought from at least three (3) providers.

- (1) When the City Manager enters into an emergency contract, the City Manager shall, as soon as possible in light of the emergency circumstances, document the nature of the emergency, the method used for selection of the particular contractor, and the reason why the selection method was deemed in the best interest of the City and the public.
- (2) The City Manager shall also notify the City Council of the facts and circumstances surrounding the emergency execution of the contract.

**E. Cooperative Procurement Contracts.** Cooperative procurements may be made without competitive solicitation as provided in the Public Contracting Code.

## 1.968 Surplus Property.

**A. General Methods.** Surplus property may be disposed of by any of the following methods upon a determination by the City Manager that the method of disposal is in the best interest of the City. Factors that may be considered by the City Manager include costs of sale, administrative costs, and public benefits to the City.

- (1) Governments. Without competition, by transfer or sale to another government department or public agency.

- (2) Auction. By publicly advertised auction to the highest bidder.
- (3) Bids. By publicly advertised invitation to bid.
- (4) Liquidation Sale. By liquidation sale using a commercially recognized third- party liquidator selected in accordance with this APC for the award of personal services contracts.
- (5) Fixed Price Sale. The City Manager may establish a selling price based upon an independent appraisal or published schedule of values generally accepted by the insurance industry, schedule and advertise a sale date, and sell to the first buyer meeting the sales terms.
- (6) Trade-In. By trade-in, in conjunction with acquisition of other price-based items under a competitive solicitation. The solicitation shall require the offer to state the total value assigned to the surplus property to be traded.
- (7) Donation. By donation to any organization operating within or providing a service to residents of the state of Oregon, which is recognized by the Internal Revenue Service as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

- B. Disposal of Property with Minimal Value.** Surplus property which has a value of less than \$500, or for which the costs of sale are likely to exceed sale proceeds, may be disposed of by any means determined to be cost-effective, including by disposal as waste. The employee making the disposal shall make a record of the value of the item and the manner of disposal.
- C. Personal-Use Items.** An item (or indivisible set) of specialized and personal use with a current value of less than \$100 may be sold to the employee or retired or terminated employee for whose use it was purchased. These items may be sold for fair market value without bid and by a process deemed most efficient by the City manager.
- D. Restriction on Sale to City Employees.** City employees shall not compete, as members of the public, for the purchase of publicly sold surplus property.

- E. Conveyance to Purchaser.** Upon the consummation of a sale of surplus personal property, the City shall make, execute and deliver a bill of sale or similar instrument signed on behalf of the City, conveying the property in question to the purchaser and delivering possession, or the right to take possession, of the property to the purchaser.

**1.969 Protest and Appeal Procedures.**

**A. Appeal of Debarment or Prequalification Decision.**

- (1) **Right to Hearing.** Any person who has been debarred from competing for the city's contracts or for whom prequalification has been denied, revoked or revised may appeal the city's decision to the City Council as provided in this section.
- (2) **Filing of Appeal.** The person shall file a written notice of appeal with the City Manager within five (5) business days after the prospective contractor's receipt of notice of the determination of debarment or denial of prequalification.
- (3) **Notification of City Council.** Immediately upon receipt of such notice of appeal, the City Manager shall notify the City Council of the appeal.
- (4) **Hearing.** The procedure for appeal from a debarment or denial, revocation or revision of prequalification shall be as follows:
  - (a) Promptly upon receipt of notice of appeal, the City shall notify the appellant of the date, time and place of the hearing;
  - (b) The City Council shall conduct the hearing and decide the appeal within thirty (30) days after receiving notice of the appeal from the City manager; and
  - (c) At the hearing, the City Council shall reconsider, without regard to the underlying decision giving rise to the appeal, the notice of debarment, or the notice of denial, revocation or revision of prequalification, the standards of responsibility upon which the decision on prequalification was based, or the reasons listed for debarment, and any evidence provided by the parties.

- (5) Decision. The City Council shall set forth in writing the reasons for the decision.
- (6) Costs. The City Council may allocate its costs for the hearing between the appellant and the City.
  - (a) The allocation shall be based upon facts found by the City Council and stated in the City Council's decision that, in the City Council's opinion, warrant such allocation of costs.
  - (b) If the City Council does not allocate costs, the costs shall be paid by the appellant if the decision is upheld, or by the City if the decision is overturned.
  - (c) Judicial Review. The decision of the City Council may be reviewed only upon a petition in the circuit court of {County} filed within fifteen (15) days after the date of the City Council's decision. The appeal must be filed in accordance with all applicable state laws and trial court procedures.

**B. Protests and Judicial Review of Special Procurements.** An affected person may protest the request for approval of a special procurement as provided in this section.

- (1) Delivery; Late Protests. An affected person shall deliver a written protest to the City Manager within seven (7) days after the first date of public notice of a proposed special procurement, unless a different period is provided in the public notice.
  - (a) The written protest shall include a fee in an amount established in a schedule adopted by the City Manager to cover the costs of processing the protest.
  - (b) A protest submitted after the timeframe established under this subsection is untimely and shall not be considered.
- (2) Content of Protest. The written protest shall include:
  - (a) Identification of the requested special procurement;
  - (b) A detailed statement of the legal and factual grounds for the protest;

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- (c) Evidence or documentation supporting the grounds on which the protest is based;
  - (d) A description of the resulting harm to the affected person;  
and
  - (e) The relief requested.
- (3) **Additional Information.** The City Manager may allow any person to respond to the protest in any manner the City Manager deems appropriate, by giving such persons written notice of the time and manner whereby any response shall be delivered.
- (4) **City Response.** The City Manager shall issue a written disposition of the protest in a timely manner.
- (a) If the City Manager upholds the protest, in whole or in part, the City Manager may, in the City manager's sole discretion, implement the protest in the approval of the special procurement, deny the request for approval of the special procurement, or revoke any approval of the special procurement.
  - (b) If the City Manager upholds the protest, in whole or in part, the City shall refund the fee required to be delivered with the protest.
- (5) **Judicial Review.** An affected person may not seek judicial review of a denial of a request for a special procurement.
- (a) Before seeking judicial review of the approval of a special procurement, an affected person shall exhaust all administrative remedies.
  - (b) Judicial review shall be in accordance with ORS 279B.400.
- C. Protests and Judicial Review of Sole-Source Procurements.** An affected person may protest the determination that goods or services or a class of goods or services are available from only one source as provided in this section.



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- (1) Delivery; Late Protests. An affected person shall deliver a written protest to the City Manager within seven (7) days after the first date of public notice of a proposed sole source procurement is placed on the city's website, unless a different period is provided in the public notice.
    - (a) The written protest shall include a fee in an amount established in a schedule adopted by the City Manager to cover the costs of processing the protest.
    - (b) A protest submitted after the timeframe established under this subsection is untimely and shall not be considered.
  - (2) Content of Protest. The written protest shall include:
    - (a) A detailed statement of the legal and factual grounds for the protest;
    - (b) Evidence or documentation supporting the grounds on which the protest is based;
    - (c) A description of the resulting harm to the affected person;  
and
    - (d) The relief requested.
  - (3) Additional Information. The City Manager may allow any person to respond to the protest in any manner the City Manager deems appropriate by giving such person written notice of the time and manner whereby any response shall be delivered.
  - (4) City Manager Response. The City Manager shall issue a written disposition of the protest in a timely manner.
    - (a) If the City Manager upholds the protest, in whole or in part, the proposed sole-source contract shall not be awarded.
    - (b) If the City Manager upholds the protest, in whole or in part, the City shall refund the fee required to be delivered with the protest.
  - (5) Judicial Review. An affected person may not seek judicial review of an election not to make a sole-source procurement.
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(a) Before seeking judicial review of the approval of a sole-source procurement, an affected person shall exhaust all administrative remedies.

(b) Judicial review shall be in accordance with ORS 279B.400.

**D. Protests and Judicial Review of Personal Services Procurements.**

An affected person may protest the procurement of a personal services contract as provided in this section.

(1) Delivery. Unless otherwise specified in the solicitation document, the protest shall be in writing and delivered to the City manager.

(a) The written protest shall include a fee in an amount established in a schedule adopted by the City Manager to cover the costs of processing the protest.

(b) Protests of the procurement of a specific contract as a personal services contract shall be made prior to closing.

(c) Protests to the award or an intent to award a personal services contract shall be made within seven (7) days after issuance of the intent to award, or if no notice of intent to award is given, within forty-eight (48) hours after award.

(d) Protests submitted after the timeframe established under this subsection are untimely and shall not be considered.

(2) Contents of Protest. The written protest shall:

(a) Specify all legal or factual grounds for the protest as follows:

i. A person may protest the solicitation on the grounds that the contract is not a personal services contract or was otherwise in violation of this APC or applicable law. The protest shall identify the specific provision of this APC or applicable law that was violated.

ii. A person may protest award or intent to award for the reason that:

- All proposals ranked higher than the affected persons are nonresponsive;

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- The City failed to conduct the evaluation of proposals in accordance with the criteria or processes described in the solicitation document;
  - The City abused its discretion in rejecting the affected person's proposal as nonresponsive; or
  - The evaluation of proposals or the subsequent determination of award is otherwise in violation of this APC or applicable law.
- (b) The protest shall identify the specific provision of this APC or applicable law that was violated by the city's evaluation or award;
- (c) Include 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.
- (3) Additional Information. The City Manager may allow any person to respond to the protest in any manner the City Manager deems appropriate by giving such person written notice of the time and manner whereby any response shall be delivered.
- (4) City Manager Response. The City Manager shall issue a written disposition of the protest in a timely manner.
- (a) If the City Manager upholds the protest, in whole or in part, the proposed personal services contract procurement shall be cancelled, or the contract shall not be awarded, as the case may be.
- (b) If the City Manager upholds the protest, in whole or in part, the City shall refund the fee required to be delivered with the protest.
- (5) Judicial Review. Before seeking judicial review, an affected person shall exhaust all administrative remedies. Judicial review shall be in accordance with ORS 279B.420.
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- E. Protests of Cooperative Procurements.** Protests of the cooperative procurement process, contents of a solicitation document, or award may be filed with the City only if the City is the administering agency and under the applicable procedure described herein.

*[Sections 1.960 to 1.973 added by Ordinance No. 05-03, passed March 7, 2005; Sections 1.960 to 1.973 amended by ordinance No. 19-08, passed July 15, 2019]]*